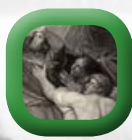




Deep impact

Low-velocity rear-end crashes and the minimum impact defence



The Tempest

Explaining the complaints and disciplinary provisions of the *Legal Services Act*



Rebrand of brothers

How your firm can refresh or rebrand its image to boost market share

gazette

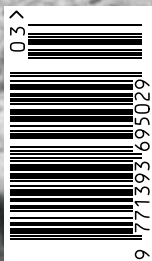
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A TERRIBLE BEAUTY

One solicitor's fight for Irish freedom

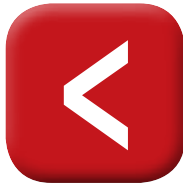




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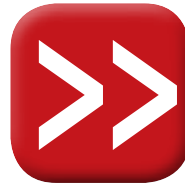
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LITIGATION SOLICITOR – ASSOCIATE LEVEL

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Commercial Property solicitor required for our client, a top tier Dublin law firm. This is an excellent opportunity for an ambitious solicitor to join an internationally renowned team. The right candidate will gain exposure to domestic and international property transactions.

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International private practice firm in Dublin seeks an experienced Aviation Finance Lawyer to join their team. The ideal candidate will have gained Aviation Asset Finance experience within a top tier law firm or as in-house counsel to an airline or aircraft leasing company.

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Top tier private practice firm require M&A lawyer to join their team at associate level. With their leading market position this firm is offering the right candidate a fantastic opportunity to grow their career among Ireland's best M&A lawyers

A SOUND RESULT

On 2 March, the Court of Appeal gave judgment in *Law Society of Ireland v Motor Insurers' Bureau of Ireland*. In this judgment, the court upheld the judgment of Mr Justice Hedigan in the High Court – that, in accordance with the terms of its own agreement, MIBI was liable in cases concerning Setanta Insurance, which went into liquidation almost two years ago.

As in the immediate aftermath of the High Court judgment, the judgment of the Court of Appeal was met with some derision from the insurance industry through the pages of the media, with threats of increased premiums for policyholders. There was, however, silence from these quarters on the relief for Setanta policyholders and for injured persons who now stand, subject to reservations expressed elsewhere in this *Gazette* (p28), to secure full compensation for their injuries.

It is interesting that, following the publication of almost €190 million in profits by one of the major insurers in the past few weeks, there was no similar outcry or demand in the media for a reduction in premiums from the insurance industry.

Law Society involvement in this case is well documented and was in response to major concerns expressed by a

significant proportion of the profession following the liquidation of Setanta.

While it is hoped that the Court of Appeal decision marks the end to the case, there is still the possibility of an appeal to the Supreme Court, and it remains to be seen whether the matter will further proceed in this regard.

Bar association meetings

On 8 March, I had the pleasure of hosting the first meeting, for a number of years, of the presidents, secretaries and PROs of the bar associations, which was held at the Law Society. The meeting was extremely well attended and concentrated primarily on the provisions of the recently passed *Legal Services Regulation Act*, although there was some discussion on other issues.

The feedback from the meeting was extremely positive and, of course, we now await the actual commencement of the various sections of the act, which at the earliest will await the formation of a new government.

Earlier in the month, I attended a joint seminar on the act, held by the Dublin Solicitors' Bar Association and the Law Society and attended by over 200 colleagues. Our efforts at keeping the profession fully informed and up to speed on the act and the implementation of its provisions will continue in these pages and by other means of communication and, of course,

by my continued visits to the bar associations.

In the last two weeks, I had the pleasure of attending the offices of Arthur Cox, which kindly hosted the official launch of the Calcutta Run this year. The support of firms across the board for the run is amazing. The organisers anticipate that up to €200,000 will be achieved this year for the two charities, GOAL and the Peter McVerry Trust.

Annual conference

Finally, just a reminder that the Law Society's Annual Conference takes place in the idyllic Fota Island Resort on Friday 15 April/ Saturday 16 April. Situated in my 'neck of the woods', I can give my first-hand assurance that this venue is superb, as is the outstanding line-up of speakers. These include Olympian Sonia O'Sullivan, journalist David Walsh (who uncovered the Lance Armstrong doping scandal) and Judy Khan QC (who represents 77 of the Hillsborough tragedy families). More information is on p22 of this *Gazette*. The closing date for registrations is 7 April, so take the opportunity to book now at www.lawsociety.ie/annualconference (email: law.society@mci-group.com or tel: 01 280 5405).

I would urge you not to delay your booking, as places are filling up very quickly. I look forward to seeing you at Fota Island in a few weeks' time!

Simon Murphy
President



There was silence from these quarters on the relief for Setanta policy holders and for injured persons



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Lorcan Roche meets solicitor Deirdre Burke, the Law Society's nominee to the Seanad's Cultural and Education Panel and co-founder of the Guardian Project, which assists children going through separation or bereavement.

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- ... as well as lots of other useful information

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nationwide

News from around the country



Keith Walsh is principal of Keith Walsh Solicitors, where he works on civil litigation and family law cases

MEATH

Royal County investigates decision making

The Meath Solicitors' Bar Association will hold a CPD programme on Wednesday 20 April on assisted decision making and the Fair Deal Scheme, in the Knightsbrook Hotel, Trim, from 2-5pm.

Patricia T Rickard-Clarke (solicitor and retired commissioner of the Law Reform Commission) will address attendees on the *Assisted Decision Making (Capacity) Act 2015*. Nick Reilly BL will tackle the topic of the Fair Deal Scheme and related services for the elderly or people who are infirm. The association's AGM will follow immediately afterwards, from 5.30pm to 6.30pm. Three general CPD points are available. Cost: €40 (members) or €60 (non-members). All are welcome.

Bookings should be made through committee member Stephen Murphy (Regan McEntee & Partners, High Street, Trim), tel 046 943 1202, or email smurphy@reganmcntee.ie.

DUBLIN

Joint mental health law seminar draws a crowd

Joan Doran, solicitor and chairperson of the Irish Mental Health Lawyers' Association, was on hand to welcome Mr Justice Groarke (president of the Circuit Court), Patricia Gilheaney (CEO of the Mental Health Commission), John Neville (solicitor) and Niall Nolan BL, who visited Blackhall Place on 22 February 2016 to present their 'Review of the *Mental Health Act 2001*'.

Those attending included several prominent former chairpersons of the Mental Health Tribunal and legal representatives from the Bar and the solicitors' profession.

The Irish Mental Health Lawyers' Association conference will take place in Cork on Saturday 9 April in UCC.

Crossing the Shannon in Dublin Law Society President Simon Murphy and DSBA president Eamonn Shannon hosted a joint seminar on the *Legal Services Regulation Act* in the Radisson Hotel, Golden Lane, Dublin, on 1 March.

Proving that his huge support is not confined to the Rebel County,



Speakers included Keith Walsh, Mr Justice Raymond Groarke, Patricia Gilheaney (member of the expert group that carried out a review of the *Mental Health Act 2001*), Niall Nolan BL and John Neville

and with the support of his Dublin cousin Eamonn Shannon, President Murphy welcomed over 200 delegates who had turned out to hear Ken Murphy, your nationwide correspondent, John Elliot and John Sludds (Behan & Associates) discuss the implications of the new act, which has yet to be commenced at time of writing.

DSBA treasurer and LLP guru Robert Ryan chaired the seminar and answered a number of questions on the proposed LLP structure. The Cork and

Dublin presidents retired for much needed refreshments with colleagues after the seminar.

Get your Washington tickets

DSBA conference organisers have informed 'Nationwide' that the conference in Washington, which takes place from 21-25 September this year, is almost sold out. In an unprecedented turn of events, only a small number of spots are left on this year's conference.

Immediate booking is essential to secure a place. Full details and booking available at www.dsba.ie.

WEXFORD

Raising funds on the road to nowhere

Damien Jordan (secretary, Wexford Solicitors' Association) is currently exhausted, having taken part in a 48-hour stationary cycle at the Bullring in Wexford on 27 and 28 March to assist four brave souls – Mark Ryan, Eddie

Macken, Frank Jordan and Darragh Coffey – who will climb **Mount Elbrus** in the Caucasus Mountains, Russia, on 7 July 2016. The summit stands at 5,642 metres (18,510 ft).

The four men have set a

fundraising target of €20,000 for the Irish Hospice Foundation. Any sums raised by Damien will be presented on behalf of the Wexford Solicitors' Association to the Irish Hospice Foundation.

Wellness in Wexford

The Wexford secretary tells 'Nationwide' that Wexford solicitors will hold their first CPD event of the year at The Riverside Park Hotel on Friday 8 April. Speakers include Rob

McCann (legal cost accountant) on the *Solicitors Accounts Regulations* and the *Legal Services Regulation Act 2015* and Dr Mark Rowe (founder and clinical director of *Waterford Health*

Park), who will be giving a masterclass on wellbeing. Points available are two hours' general, two hours' management and professional development skills, and one hour regulatory.

representation News from the Law Society's committees and task forces

HUMAN RIGHTS COMMITTEE

Committee meets leading Indian human rights campaigner at Blackhall Place



Michael Farrell (committee member), Grainne Brophy (committee chair), Aine Flynn, (committee member), Kevin Keane (Suas, TCD), Michelle Lynch (committee secretary), Colin Gonsalves (senior advocate of the Supreme Court of India), and Clare Naughton (committee member)

The Human Rights Committee was honoured to welcome Mr Colin Gonsalves to the Law Society on 25 January, ahead of his public lecture in Trinity College Dublin, *writes Michele Lynch*. The meeting represented a unique opportunity for members of the committee to share their own experiences working in human rights law and to hear Mr Gonsalves's own insights from his tireless campaigning for human rights in India.

Mr Gonsalves is a senior advocate in the Supreme Court of India and the founder of the Human Rights Law Network, India's leading public-interest law group. He spoke of the importance of the independence of the Indian judiciary, which is protected through an innovative collegium system that ensures independence from government. High and Supreme Court judges are appointed by a collegium of five/three senior judges of the Supreme Court, who consult the government in the matter.

He remarked that this level of independence is instrumental in ensuring the courts do not hesitate to find against the government and to monitor how decisions are implemented.

The focus in India, Gonsalves advised, is not on parliamentary supremacy but on constitutional supremacy, meaning that judges are free to intervene where the government has persistently failed to vindicate fundamental human rights protected under the Indian constitution. One of the Irish Constitution's greatest claims to fame is that the [Constitution of India](#) was significantly influenced by it, directly borrowing our directive principles of state policy enshrined under article 45.


Mr Gonsalves told the committee how article 32 of the Constitution of India gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of fundamental rights. The court is empowered to issue directions, orders or

writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* to enforce them. Gonsalves told the committee that the Indian courts frequently utilise contempt orders in cases of non-compliance with orders of the court. Where contempt orders are not complied with, the sanction may be a jail sentence, with no differential treatment given to government officials. This is a markedly different approach to that taken by the Irish courts and many neighbouring jurisdictions, which do not make such extensive orders.

Mr Gonsalves informed the committee of a recent landmark decision of the Supreme Court that involved the interpretation of article 21 of the Indian Constitution to include formal legal recognition of the rights of transgender persons. As a result of the decision in *National Legal Services Authority v Union of India & Ors*, transgender is now officially recognised as a 'third

gender' in Indian law and can be utilised in passports and other official documentation. The court also ordered that the government must provide transgender people with quotas in jobs and education in line with other minorities, as well as other key services.

Gonsalves also indicated that he considered that public-interest litigation is increasingly being utilised in jurisdictions in Latin America, Asia and Africa, but that much of Europe and America remained reluctant to embrace it in the same manner.

He noted that law students can be reluctant to acknowledge and embrace the efficacy of public-interest litigation in upholding human rights. However, his hope for the future is that this would start to change so that future generations begin to appreciate the power and influence of public interest litigation. 

For information on the Human Rights Law Network, see www.brln.org/brln.





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INTERNATIONAL

Turkey's lawyer arrests condemned

Nine Turkish lawyers were arrested and detained in Istanbul in the early hours of 16 March. The detained lawyers are members of the Association of Lawyers for Freedom (Ozgurlukcu Hukukcular Dernegi).

They were representing 46 lawyers arrested in 2011 on suspicion of "working for or belonging to a terrorist organisation". All are said to have participated in the defence of Abdullah Öcalan, the leader of the Kurdish Workers Party.

They were called to appear at a hearing on 17 March and were released from pre-trial detention on 19 March, but are still being prosecuted.

The Union Internationale des Avocats (International



PICT: WIKIMEDIA/COMMONS

Fighters from the Sinjar Resistance Units and Kurdish Workers Party hold up a painting of Abdullah Öcalan

Association of Lawyers) denounced what it described as the "recurrent attacks on human

rights lawyers, stemming from the abusive use of anti-terrorism legislation".

'Law Firm of the Year 2016'

McCann FitzGerald has won the 'Ireland Law Firm of the Year 2016' award at *The Lawyer* European Awards in London.

The firm was commended on a number of high-level strategic developments, including its client research programme, the appointment of its first chief information officer, and a number of significant hires.

Boards fail on gender parity

Irish organisations may have one or two women on their boards but, in 2016, the emphasis should be on equality and parity, says Prof Irene Lynch Fannon (School of Law, UCC). "A 'token woman' or two is not good enough," she added.

UCC's School of Law launched a report on the role of women on boards on 8 March. The research consisted of two surveys: of the top 100 Irish companies (based on turnover), and of the top 100 Irish charities. The study was funded by the Irish Research Council.

"Our research shows that we are very far away from having gender parity on the boards of these major Irish organisations, with less than 14% of companies and charities showing positive figures regarding the question of gender parity," Prof Lynch Fannon commented.

The research revealed that 93% of for-profit boards and 80% of not-for-profit boards failed to achieve gender parity. Taking both sectors together, only 13.5% of boards achieved male/female parity.

Court districts revised, effective 4 April

District Court districts have been revised by the *District Court (Districts) Order 2016* (SI 60/2016), writes Colette Reid (secretary, Litigation Committee). The new districts come into effect on 4 April 2016.

The order provides that business transacted in the District Court

that is initiated but not completed before that date shall be continued and completed as if the order had been in force at the time the business had been initiated.

The *District Court (Solicitors' Costs) Rules 2016* (SI 123/2016) will operate from 31 March 2016. These replace table 3

of schedule 1, which sets out solicitor costs in landlord and tenant (ejectment) proceedings.

This does not change the fee rates. It amends the title of the first column to 'annual rent', so that the rate of fee is based on the annual rent for the property in question.

Easter 1916 – The Court Martial Trials

Colonel Michael Campion, military judge and solicitor, will give a lecture in the Law Society's Education Centre at 1pm on 4 May 2016 – almost exactly 100 years since the first executions took place.

To reserve a place, email Yvonne Burke of the Law Society's facilities section at y.bourke@lawsociety.ie.

Legal capacity conference in University College Cork



The Centre for Criminal Justice and Human Rights (UCC) and the Irish Mental Health Lawyers' Association will hold a conference on legal capacity on Saturday 9 April 2016 from 10am to 2pm at UCC.

Speakers and chairs will include Prof Peter Bartlett (professor of mental health law, University of Nottingham), Louise Loughlin (National Advocacy Service for People with Disabilities), Dr Alan Corkery (North Cork Mental Health Services), Prof Mary Donnelly (UCC), and Áine Hynes (St John Solicitors).

Four CPD hours are available. For further information, contact Noreen Delea (School of Law, UCC), tel: 021 490 3220, email: n.delea@ucc.ie, <http://imhla.ie/events>.

FOCUS ON MEMBER SERVICES

Protecting your income

One of the most pressing concerns for many of our members is illness or injury preventing them from earning a living. This is particularly so for our self-employed members, who may not be entitled to social welfare benefits, and for those whose employer does not provide long-term disability cover. However, a little planning can help ease this worry.

The Law Society has teamed up with PenPro and Friends First to help members insure their income at a competitive rate. Members of the scheme who are unable to work because of injury, illness, or disability will receive up to 75% of their net earnings.

The cost of the scheme is €30 per annum per €1,000 of annual benefit, regardless of age, gender, or whether or not you smoke.

Contributions to the scheme are tax deductible, and premiums can be paid annually, half-yearly, quarterly or monthly.

The Group Income Protection Scheme is exclusive to Law Society members. You must be under 60 years of age to join the scheme. For information on the scheme or to download an application, see www.lawsociety.ie/memberbenefits or contact PenPro directly (tel: 01 200 0100, email: msheehan@penpro.ie). Completed application forms should be returned to PenPro.

Assuming tax relief at 40%, the gross and net cost is as follows:

Benefit	Gross monthly premium	Net monthly premium
€50,000.00	€125	€75
€75,000.00	€187.50	€112.50
€100,000.00	€250	€150

Age	Group policy: smoker and non-smoker rates	Individual policy: non-smoker rates. For smokers increase by 25%
30	€75	€78
35	€75	€97
40	€75	€121
45	€75	€156
50	€75	€206



Ar mhaith leat a bheith ar Chlár na Gaeilge?



The PPC2 elective Advanced Legal Practice Irish (ALPI)/ Ardchúrsa Cleachtadh Dlí na Gaeilge (CDG Ardchúrsa) is open to practising solicitors who wish to be registered on the Irish Language Register (Law Society)/Clár na Gaeilge (An Dlí-Chumann).

In order to be entered onto the register, a solicitor must take this PPC2 elective course and pass all course assessment and attendance requirements.

The course will run from 14 April until 16 June 2016. The course contact hours (lectures and workshops) will be delivered on Thursday evenings from 6-8pm at the Law Society. Lectures in weeks one and two will be made available online, so physical attendance on those particular Thursday evenings is not required.

This is a 'blended learning' course. In addition to physical attendance on the specific Thursday evenings, participants will be required to complete individual and group coursework online in between each session.

Due to the group-work logistics of this course, attendance at all the rest of the

Thursday evening workshops is essential.

Assessment will combine continuous assessment and an end-of-course oral presentation. It is recommended that course participants have a good level of IT skills and be familiar with web browsing, word processing, uploading/downloading files, and watching online videos. A Leaving Certificate Higher Level standard of Irish is a minimum standard. In advance of course commencement, participants will be invited to attend IT clinics to become familiar with the technology utilised in the course.

This course will fulfil the full practitioner CPD requirement for 2016.

The Advanced Legal Practice Irish Course was awarded the [European Language Label 2012](#).

The fee for 2016 is €625. The closing date for applications is Friday 8 April at 5pm. Further information is available at www.lawsociety.ie/alpi.aspx.

For further details and an application form, please contact: Robert Lowney/Roibeard Ó Leamhna; email: r.lowney@lawsociety.ie, tel: 01 672 4952.

New Blackhall catering contract goes to Fitzers



Fitzers Catering has been awarded a three-year contract by the Law Society, effective from 8 February 2016. Fitzers' MD Barry Storey said: "This is a very important contract for us. We believe that, working together with the Law Society, we can increase awareness of this historic venue to the corporate and wedding market in Ireland and abroad."

Fitzers holds contracts for high-profile venues such as Titanic Belfast, Slane Castle, the Royal College of Physicians, and Horse Racing Ireland's locations at Leopardstown, Fairyhouse and Navan.

The contract involves catering for the Society's employees and students at Blackhall Place, the Friary Café in the Four Courts, and corporate and private events.

The historic Blackhall building provides an idyllic setting for corporate functions, meetings, graduations, gala dinners, weddings and summer barbecues. Fitzers will place a particular focus on weddings and corporate events, with the picturesque walled gardens offering fabulous photo opportunities, with the option to host large events or wedding parties in a marquee.

Aperture adds to team



Aperture Partners are pleased to announce the appointment of Barry Crushell as an associate director, leading the legal and regulatory recruitment practice in both the Dublin and London offices. Pictured are Barry Crushell (associate director), Jonathan Brady (director) and Rory McCormick (director)

THERE'S AN APP FOR THAT



You've gotta pick a pocket or two

APP: **POCKET** PRICE: **FREE**

I find myself constantly looking up the interesting posts on LinkedIn, Facebook or Google and not having time to read the articles themselves, *writes Dorothy Walsh*. Generally, I will click to download the article within Facebook, Google or LinkedIn and then forget to review them later, lose them, or have to click in and out of the various apps to look at the contents saved in each one. Sometimes, I forget which app I used to save an article and end up searching through saved articles using the wrong app. First World problems! With time being precious, I needed a solution and, luckily, the free-to-download app *Pocket* came to my aid.

Essentially, this app acts as a mini iPad library of articles and posts of interest that I can store and read later – all in the one place and all saved from various apps. It has changed my online in-app reading and made a huge difference to my research.

I look at my *Pocket* app as a mini magazine of everything I have an interest in and want to read – but just not at the

very minute they appear in my newsfeeds. It is very easy to set up. You simply download the app from the App Store and set up your account with an email address. It asks for permission to synchronise with your Facebook, contacts, and so on, which you allow. You go into your settings and 'allow' *Pocket* to be a 'saved to' or 'open with' app. You are literally ready to start creating what I like to consider as my own personalised magazine.

For example, I opened LinkedIn and saw a great employment law article – very detailed and interesting, but didn't have the time to read it then. Opening the article, I clicked on the '...' button at the top-right-hand corner of the article and saved it to *Pocket*. I did likewise with several Facebook-posted articles and some interesting reads from *The Irish Times* courts section.

Later on, you simply open *Pocket* and read all of the saved articles at your leisure. It's simply brilliant – a mini online magazine with all of the articles and posts I want to read – and it's one of the easiest-to-use apps I have come across in quite a while.





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 AIB PRIVATE BANKING

Country loses 'legal colossus' in Mr Justice Adrian Hardiman



PIC: COURTHX

The late Mr Justice Adrian Hardiman was commemorated by a special sitting of the Supreme Court on 7 March, when his seat was left vacant

“The State has lost a colossus of the legal world: a good and true friend has been lost by his colleagues on the court.” So said the statement issued by the Supreme Court announcing the passing of Mr Justice Adrian Hardiman, aged 64, on 7 March.

Chief Justice Susan Denham said that she had “received the news with great sadness and shock, and her immediate reaction was to be mindful of the needs of his wife and family”. She described Mr Justice Hardiman as “a man who had made great and courageous efforts on behalf of those who sought justice. He neither favoured nor feared any interest – and went about his work with great integrity, grit and dedication.”

Born in Dublin, he was educated at Belvedere College,

University College Dublin (where he graduated in history), and the King’s Inns. He was called to the Bar in 1974 and practised for the next 26 years, taking silk in 1989. As a barrister, he enjoyed a highly successful career, was a leader at the Bar, and was renowned for his extensive practice and great skill, particularly in cross-examination.

He was appointed directly to the Supreme Court in 2000. In the interim, he had added greatly to the legal jurisprudence of Ireland in many important judgments. He was a Bencher of the King’s Inns, a Master of the Bench of the Middle Temple, London, and a member of the Royal Irish Academy.

He enjoyed an interesting career in court and tribunal, appearing in many of the leading cases of the day. He was

a prolific writer, and broadcast regularly on legal and political topics.

Persons and their dignity

In its statement, the Supreme Court commented that Mr Justice Hardiman had “written expressing the view of a majority of the court, and he has written trenchant dissents.

“This is not the time to analyse the great store of his judgments. However, an illustration may be seen in *DPP v Gormley* and *DPP v White*, where his judgment personifies his concern for the protection of persons and their dignity.

“His profound knowledge of the law, and his fluency in expressing his views have added immensely to the legal jurisprudence of the State.”

The Law Society was among

the first to extend its sympathies to the wife of Mr Justice Adrian Hardiman – retired Circuit Court Judge Yvonne Murphy – their three sons, Eoin, Hugh and Daniel, other family members and friends.

Director general Ken Murphy said: “With the untimely passing of Mr Justice Adrian Hardiman, the Irish people have lost a fierce protector of their rights against any overreaching by the power of the State.

“As one of the most brilliant barristers of his generation, he was a powerful, punchy and highly persuasive advocate. Fearless, fluent and articulate, he could think on his feet to handle with ease whatever was thrown at him.

“As a judge, since his appointment in 2000, he was driven by a deep passion for justice, as is evidenced by his many landmark judgments.”

Lobbying reporting deadline fast approaching

The *Regulation of Lobbying Act 2015*, which commenced on 1 September last, provides that a person within the scope of the act who makes a relevant communication must register and submit returns of their lobbying activity three times a year, writes *Sherry Perreault* (head of lobbying regulation, Standards in Public Office Commission).

As prescribed by the act, the first lobbying returns were due on 21 January 2016. More than 1,100 people and organisations registered by that date, submitting over 2,500 returns to the online Register of Lobbying. As noted by Mr Justice Daniel O’Keeffe (chairman of the Standards in Public Office Commission), “the overall level of compliance is a very positive indicator that there is an acceptance of the need for openness and transparency in lobbying”. It is expected that the number of registrants will continue to rise over the coming year as more people and organisations commence lobbying activities and trigger their compliance obligations under the act.

Practitioner obligations

The new legislation has particular importance for the legal community. Obviously, practitioners may advise a client



Sherry Perreault, head of lobbying regulation

regarding the client’s obligations under the lobbying legislation. However, lawyers may also engage in lobbying activities on behalf of their own organisation or they may communicate with public officials on behalf of a client. Given the strong possibility that members of the legal community may themselves be required to register, there has been a significant amount of interest on the part of the legal community in the act and its application.

A number of opportunities to learn about the act have been organised, including presentations and information sessions hosted by the Law Society, the Bar Council, and individual firms. During these sessions, many interesting questions about the

act’s application have been raised. One frequently asked question is whether complying with the act risks violating solicitor/client privilege. The obligation to preserve client confidentiality should not impede compliance with the act, as the level of information required in a return would not impinge on confidential discussions, any more than would filing court documents on behalf of a client.

While most of the lawyers I have spoken with over the past few months are aware of the intersection between the act’s obligations and their own work, the Standards Commission will continue to raise awareness with practitioners and other sectors as part of its ongoing communications strategy.

For more information on the act, including guidelines, frequently asked questions, instructional videos, sample returns and identifying common pitfalls in completing returns, or to contact the Standards Commission, visit www.lobbying.ie.

Note: The first reporting period of 2016 is 1 January to 30 April. Registrants are obliged to publish their returns through www.lobbying.ie on or before 21 May.

Changes to High Court bail applications

A High Court practice direction has made a number of changes in relation to the days of the week upon which High Court bail applications are heard.

From 15 February 2016, High Court bail applications are no longer heard on a Monday. Instead, bail applications from prisoners who are detained in prisons in the greater Dublin area are being heard on Tuesdays, with the list commencing at 11am. Applications for bail from prisoners who are detained in prisons other than in the greater Dublin area will be heard at 11am on Thursdays. If necessary, cases not reached on Tuesdays will be heard on Wednesdays.

The direction also provides that it will not be permissible to adjourn bail applications from prisoners detained in Dublin prisons to a day other than that dedicated to such applications. The same will apply in respect of adjournments for non-Dublin cases.

The practice direction (see p53) also reminds practitioners of the procedures for bail applications under SI 470/2015 (*Rules of the Superior Courts (Bail Hearings) 2015*).

FOCAL POINT

law society lobbying returns

The Law Society made nine returns to the Lobbying Register in its first period, 1 September to 31 December 2015. The Society advocated for reform and improvement on a wide range of issues directly impacting on the profession and the wider public interest.

In the context of family and child law, the Society provided views on how to improve the processing and effectiveness of legal aid in relation to child care cases before

the courts, in addition to proposals for child welfare reporting. Other matters included conveyancing reform, local property tax issues, family law, and IP litigation.

In addition to giving its views on a number of technical points relating to the then *Legal Services Regulation Bill*, the Society also communicated with Oireachtas members on the content of the then *International Protection Bill*, expressing its dismay on the ineffectiveness of the provisions of

the bill and the manner in which it was passed.

The representational and reform activities of the Society, including those registered with the Standards Commission, represent the valuable contribution our members make to policy formulation.

Lobbying Act resources to members are available at www.lawsociety.ie or by contacting Cormac Ó Cúlain (public affairs executive) at c.oculain@lawsociety.ie.



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Arklow solicitor is Society's nominee for Seanad panel

The Law Society has nominated Deirdre Burke for election to the Cultural and Educational Panel of Seanad Éireann. The Arklow-based solicitor was one of six candidates – all solicitors – seeking the Society's nomination.

The written submissions of the six candidates were carefully considered by the participating members of the Society's Coordination Committee. It applied the criteria for selection as indicated by the Society's Council at its meeting on 4 March 2016.

After considerable agonising, due to the impressive achievements and outstanding qualities of the candidates, Burke was chosen. The committee wished her every success with her campaign.

Running as an independent, Burke says she is honoured to have received the nomination: "I intend to use both my election campaign and – if elected – my Seanad seat as platforms to promote the changes needed in government policy and the law to enhance and protect children's rights and the rights of families."

She added: "I've spent my life as a parent and a solicitor working to support and empower children, families and communities, and promoting the principle of social justice. I am increasingly concerned by the lack of investment in key services – and by the increasing challenges posed to our profession in delivering adequate and effective services to the public."



Deirdre Burke

Her priorities for the Seanad include:

- Further reform of the family and child law system, with more resources being allocated to cut

- court waiting times,
- Better child protection, including greater investment in the Child and Family Agency and in out-of-hours services, as well as secure placement centres,
- Investment in child and youth mental health services,
- Countrywide refuge accommodation and access to adequate counselling for parents and children affected by domestic violence,
- Equality for children with disabilities and full implementation of the *Education of Persons with Special Needs Act*,
- The elimination of child poverty and homelessness,
- A referendum to repeal the Eighth Amendment, with

- respectful, compassionate and informed debate, in tandem with new legislation,
- Countrywide access to courts, with adequate resourcing of the courts system,
- A review of the Legal Aid Board due to concerns about its effectiveness in serving the public to its potential, and the provision of additional resources.

As a candidate on both the NUI Panel and the Cultural and Educational Panel, Burke is asking NUI-graduate practitioners to support her in the NUI Panel election, and she urges members to lobby their local representatives to give her their vote for the Cultural and Educational Panel.

Also running: Linda O'Shea Farren

Solicitor Linda O'Shea Farren is also running for election to the Seanad – on the Industrial and Commercial Panel. "As a solicitor, I will be happy to highlight your issues at a national level, if elected," she says.

The field is particularly crowded on that panel, with 37 candidates running for nine seats. Those allowed to vote consist entirely of elected representatives, including incoming TDs, outgoing senators, and councillors. With so many



candidates competing for an extremely limited pool of voters, this panel has been dubbed the

'panel of death'.

Linda would appreciate all offers of help from practitioners by approaching public representatives they know, of all political hues and none. "In a Seanad election, one single, very low-preference vote transferred in a late count can make the difference between being elected and not. So, if you can approach even one public representative on my behalf, this could prompt that number one or a preference vote."

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It's 'howdy pardners', as firms join forces to fight homelessness



Pictured at the launch (from left) are Julian Yarr (A&L Goodbody), Simon Murphy (Law Society), Kevin Dunne (Hayes Solicitors), Dermot Furey (Gartlan Furey), Barry Andrews (GOAL), Brian O’Gorman (Arthur Cox), Nicholas Butcher (Maples & Calder), Thomas O’Malley (McDowell Purcell), Thomas O’Dwyer (Beauchamps), Declan Black (Mason Hayes & Curran), Tom Hayes (Matheson), Garry Ferguson (Walkers), Stephen Walker (Whitney Moore), Barry Devereux (McCann FitzGerald), Bryan Bourke (William Fry) and Pat Doyle (Peter McVerry Trust)

Given the year that’s in it, it seemed apt that a certain group of earnest leaders should come together to pool their talents and resources – this time to tackle the spectre of homelessness, which has stricken so many families in Ireland in recent times.

The leaders of the largest law firms in the country met on 11 March to support the official launch of the annual Calcutta Run. The gathering was kindly hosted by Brian O’Gorman (managing partner of Arthur Cox). David Barniville (chairman of the Bar of Ireland) also attended, as did representatives from over 30 law firms and the Bar.

Each year, the money raised from the Calcutta Run goes to two worthy causes, the Peter McVerry Trust and GOAL. Pat Doyle (CEO of the Peter McVerry Trust) informed the managing partners that, from the funds raised this year, four new apartments would be built and decorated.

Barry Andrews (CEO of



Fr Peter McVerry and Barry Andrews in conversation at the launch

GOAL) highlighted the reliance of his organisation on the money raised to fund that charity’s projects. He described the Calcutta Run initiative as a unique example of an industry pooling its resources to achieve a significant impact.

Cillian MacDomhnaill (Law Society) emphasised the importance of the ‘Supporter Firm Initiative’: “Donations from firms, as well as firm representatives driving the event

internally, will be the key to achieving the ambitious target of €200,000 in 2016.”

Several firms have already set up online fundraising pages on the Calcutta Run idonate.ie page. They are actively encouraging their clients, staff and suppliers to support the initiative.

For further information on the Supporter Firm Initiative, the DX Firm Team Challenge, or the cycling element, visit www.calcuttarun.com or email Hilary Kavanagh at hilary@calcuttarun.com.

Human Rights Essay Prize

The Law Society’s Human Rights Committee congratulates the winners of the Annual Human Rights Essay Prize, writes **Michelle Lynch (secretary)**. Breifne Muldoon took first prize for his essay on ‘The Impact of the Convention on the Rights of Persons with Disabilities on Irish Mental Health Law’.

James Roddy was placed second for his essay on the impact of the *Victims’ Rights Directive* in Ireland. The committee extends its thanks to all who entered the competition.

For information on the work and events of the Law Society Human Rights Committee, visit the committee’s page at www.lawsociety.ie.

Everything is relative for those who served in 1916

The Law Society is the proud sponsor of *Relative*, a public art exhibition on Benburb Street, Dublin 7, to commemorate the Four Courts Volunteers who participated in the Easter Rising and their living relatives.

The exhibition was curated by The Complex, a multidisciplinary arts movement that is committed to creating art spaces at unoccupied sites. The pictures were commissioned by the Law Society and taken by Steve McCullagh.

On Easter Monday 1916, Cmdt Edward Daly mustered the 1st Battalion of the Irish Volunteers at Blackhall Street. They proceeded to occupy key buildings and erect barricades to control the streets west of O'Connell Street. Their centre of operations was Church Street, and over 300 Irish Volunteers, Irish Citizens' Army, Cumann na mBán and



PICS: CIAN REDMOND PHOTOGRAPHY

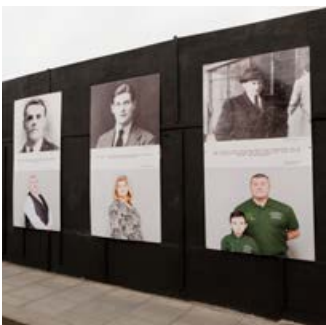
The featured volunteers and their relatives (in brackets) are:

- Peadar McNulty (Una MacNulty)
- Jack Shouldice (Chris Shouldice)
- Robert Oman (Dermot Alford)
- John Dwan (Maria Dwane)
- Eilis Ní Briain, née Elliot (John McCann)
- Barney Murphy (Brid Smith)
- Seán Forde (Seán Forde)
- Matthew Gahan (Nicole and Michelle Madden)
- Daniel Begley (Colm Begley)
- Stephen Pollard (Stephanie Dardis)
- David Kilmartin (Mary 'Mamie' Kilmartin)
- John S O'Connor (Cian and Seán Butterly)
- George Whelan (Rita Forde, née Whelan)
- Patrick Hugh Holahan (Cíaran Holahan)
- John Halpin (Paul Callery)
- Ambrose Byrne (Jeannette Byrne)
- James Kavanagh (Kaylum Ennis Kelly and John Ennis)
- Charles S Bevan (Ann Marie Bevan)
- Éamonn Brennan (Dónal Mac Ionraic)

Fianna Éireann took part.

Some of the fiercest fighting took place along North King Street, with many British, rebel and civilian casualties. The rebels surrendered at the Four Courts on Saturday 29 April on the instructions of Patrick Pearse. A company of men, separated from the main battalion, surrendered on Sunday 30 April.

The exhibition features images of volunteers that took part in the Easter Rising in the Four Courts area. They have been coupled with a living relative, with quotes extracted from witness statements.



Law Society welcomes three ambassadors to Blackhall Place



PIC: LENS MEN

Following a parchment ceremony speech by the US Ambassador to Ireland, Mr Kevin O'Malley, the Society hosted a dinner for him and his fellow ambassadors from Britain and Canada on 25 February 2016. (Front, l to r): Mr Kevin Vickers (Canadian Ambassador to Ireland), Mr Kevin O'Malley (United States Ambassador to Ireland), Simon Murphy (president, Law Society), Mr Dominick Chilcott (British Ambassador to Ireland) and Mr Justice Michael Peart. (Back, l to r): Michele O'Boyle (junior vice-president), Paul Keane (Council member), Teri Kelly (director of representation and member services), Judge Brian O'Callaghan, Kevin O'Higgins (past-president), Stuart Gilhooly (senior vice-president), Mary Keane (deputy director general), James McCourt (past-president), Ken Murphy (director general) and Mr Justice Michael Twomey

Meeting of minds in the Midlands



A well-attended AGM of the Midland Bar Association was held on 24 February at the Mullingar Park Hotel, Mullingar, Co Westmeath. The special guests were Law Society President Simon Murphy and director general Ken Murphy, who were greeted by Edward Tynan (president, Midland Bar Association). Simon and Ken updated the members on the *Legal Services Regulation Act* and with developments on the Setanta case. Pictured are Edward Tynan (president, Midland Bar Association), Simon Murphy (president, Law Society), Ken Murphy (director general) and Aisling Penrose (secretary, Midland Bar Association) with members of the association

Sonia delivers another powerful performance in Sligo



High performance team: partners and solicitors of Callan Tansey pictured with Sonia O'Sullivan and David Matthews at the firm's recent motivational event



Sligo athlete Kieran Elliott with Roger Murray (joint managing partner, Callan Tansey)

Callan Tansey Solicitors hosted a motivational talk, on 4 March 2016 at its offices in Sligo, for members of the business and sporting community from the locality.

Speakers at the 'Critical habits of high-achieving performers' event, Olympians Sonia

O'Sullivan and David Matthews, recounted their experiences as high-performance athletes and how the skills acquired during their sporting careers could be applied to the world of business.

Special guests included Rosaleen O'Grady (cathaoirleach,

Sligo County Council), Des Faul (newly appointed president, Sligo Chamber of Commerce) and guests from local business and sporting communities.

Callan Tansey Solicitors' newly appointed managing partner Roger Murray noted

that "everyone needs a voice of encouragement in life and in business" and proceeded to announce the firm's sponsorship of Sligo athlete Kieran Elliott, who is currently on an athletics scholarship at the University of Limerick.

Diplomas awarded in Aviation Leasing and Finance



Attending the Diploma Centre's conferral ceremony 2015 for the Diploma in Aviation Leasing and Finance were: Simon Murphy (president, Law Society), Judge Petria McDonnell, Ken Murphy (director general), Valerie Peart (chair, Education Committee), Dr Geoffrey Shannon (senior family law lecturer), Catherine Deane (McCann FitzGerald) and Rory O'Boyle (Diploma Centre). Lecturers: Catherine Quinlan and Ken Rush, with conferees: Sharon Brady, Sarah Brophy, Eoghan Connolly, Robert Costello, Malachi Cowley, Ken Delaney, Gemma Dowling, Adrian Dunne, Kieran Finn, Alec Flood, Ian Garvan, Valerie Gorman, Katalin Hetzman, Joseph Hughes, Andrew Jennings, Maria Kelly, Simon Kennedy, Kevin Kilduff, Nadia Kinsella, Richard McDonnell, Niamh McKenna, Amy Mizzoni, Neil Murphy, Anne Nolan, Simon A Nolan, Conor O'Briain, Eoin O'Carroll, Rebecca O'Donovan, Robert O'Reilly, Kevin O'Siochain, Alan Phelan, James Phelan, Brian Seymour, Warwick Shaw, Conor Sheehan, Martin Smith, Keith Tubridy and Camille Voisin



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Dr Elisabeth Svendsen MBE
Founder of The Donkey Sanctuary

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Joint Law Society/DSBA seminar on implications of LSRA



ALL PICS: MICHAEL FINN PHOTOGRAPHY

Pictured at the event are John Sludds, Keith Walsh, Ken Murphy, Eamonn Shannon, Simon Murphy, John Elliot, Niall Cawley and Robert Ryan



Ruairi O'Brien (John C Walsh), Mary Griffin (John C Walsh), Sharon Scally (Amory's) and Paddy Dawson (HG Donnelly)



Ann Spaine and Billy Fogarty (both Chief State Solicitors Office) with Ann Fox (Lawplus)



At the Law Society/DSBA event were John Glynn (John Glynn & Co) and Greg Ryan (DSBA)



Niall McCabe (Bowman McCabe) and Kalanne O'Leary (O'Leary Arnold)



Niamh Fahey (Bryan F Fox & Co) and Bryan F Fox (Bryan F Fox & Co)

Recent recipients of the Diploma in Law parchment



At the conferral ceremony for the Diploma in Law 2015 were Mr Justice Peter Kelly (Court of Appeal), Judge Susan Ryan (specialist judge of the Circuit Court), Ger Deering (Financial Services Ombudsman), William Aylmer (Law Society Council member), Cillian MacDomhnaill (director, finance and administration), and Deirdre Flynn (Diploma Centre), with lecturers Victoria Cummins BL, John Darby, Nora O'Mahony, Judge Patrick McMahon (retired), John Lunney (course leader, Diploma Centre) and conferees Declan Carey, Dionne Dixon, Anna Giles, Mary Keevans, Avril McCrann, Brian Murphy and Donna Phelan



At the recent conferral ceremony for the Diploma in Law were William Aylmer (Law Society Council member) and Cillian MacDomhnaill (director, Finance and Administration), with three of the Diploma in Law prize-winners: Dionne Dixon, Donna Phelan and Brian Murphy



President of the High Court Mr Justice Peter Kelly presents Mary Keevans with her Diploma in Law parchment



Orla McKnight was the prize-winner in the Diploma in Investment Funds and Compliance, seen here with William Aylmer (Council member) and Cillian MacDomhnaill

RDJ and JM Burke in tax practice merger



At the signing of the merger agreement between Ronan Daly Jermyn (RDJ) and Dublin-based law firm JM Burke are (*front*) Julie Burke (tax partner) and Richard Martin (managing partner, RDJ) with (*back*) Mark Barrett (chartered tax adviser) and John Cuddigan (head of RDJ's tax practice). The merger comes into effect on 4 April 2016. "We are delighted to be joined by JM Burke," says Richard Martin. "It's a unique practice offering specialist tax litigation advice and brings with it a depth of experience dealing with a full range of contentious tax issues. Julie Burke (managing partner of JM Burke) and Clare McGuinness become partners in RDJ's tax group, while Caitriona Moran is assistant solicitor. All three will be based in RDJ's Dublin office at 3 Harbourmaster Place

On the move

Orpen Franks appoints two new partners and associate solicitor



Claire Morgan, (partner, Commercial and Intellectual Property Department), Peter Walsh (managing partner), and Daragh O'Donovan (partner, Commercial Litigation Department)



Managing partner Peter Walsh with Kathrina Bray, associate solicitor, Medical and Professional Negligence Department

Bar associations gather to learn about LSRA changes



PHOTO: LENSEMEN

The presidents and secretaries of bar associations around the country were invited by the Law Society to Blackhall Place on 8 March for a briefing on the *Legal Services Regulation Act 2015*, which was signed into law on 22 January 2016 but has not yet been commenced. In addition, an update was provided on the Setanta case. Chaired by Simon Murphy, the session addressed various aspects of the new legislation. The president pointed out that the bar associations would play a key role in explaining the impact of the new legislation to practitioners. The presidents and secretaries are seen here with President Murphy, senior vice-president Stuart Gilhooly, members of the Law Society's LSRA Task Force and director general Ken Murphy



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Sonia O’Sullivan, Olympic, European and World Athletics Champion: ‘The Olympics, business and sport –before, after and now!’

David Walsh, multi award-winning journalist and sports writer with the *Sunday Times*: ‘The Lance Armstrong case – how I uncovered the most controversial doping case in sporting history.’

Judy Khan QC, represents 77 of the bereaved families of the Hillsborough disaster in the UK: ‘The Hillsborough Tragedy – lessons learned?’

Valerie Mulcahy, Senior Cork GAA Football Champion 2015: ‘Let’s level the playing field – challenges for equality in Irish sport’.

Edward Evans, Partner and Head of Beauchamps Sports Law Unit: ‘Dublin sport and the law – practice opportunities for solicitors’.

Julie O’Mahony, Senior In-house Counsel, Rugby World Cup: ‘A day in the life of the Rugby World Cup legal team – Rugby World Cup 2015, broadcast, sponsorship and licensing, brand and rights protection, anti-doping, discipline, rugby investment and bids to host Rugby World Cup 2023.’



Sonia O’Sullivan



David Walsh



Judy Khan QC



Valerie Mulcahy



Edward Evans



Julie O’Mahony

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viewpoint

CYBERBULLYING – THE NEW CHILD PROTECTION FRONTIER

Children are especially susceptible to cyberbullying. The law on harassment must unequivocally provide for the offence of bullying and cyberbullying, argues **Geoffrey Shannon**



Dr Geoffrey Shannon is a solicitor and the Special Rapporteur on Child Protection

The impact and effect of bullying on children has been tragically thrown into the media spotlight over the last number of years. While bullying has always been an unfortunate aspect of our society, the growth of cyberbullying has, almost overnight, created a readily accessible forum for bullies to target children, with little or no regulation or sanction.

Recent studies and published reports highlight the prevalence of this growing phenomenon. In November 2012, a report was published by the Ombudsman for Children's office on the issue of bullying in schools. The report presents the views of 300 children aged from 10 to 17 from across the country who participated in the consultation. The report, *Dealing with Bullying in Schools: A Consultation with Children and Young People*, revealed that cyberbullying and homophobic bullying were two of the most prevalent forms of bullying raised by those who took part in the report.

At a time when schools and their students are embracing the opportunities for collaborative learning that online tools allow, the misuse of the internet among pupils and the difficulties facing schools are rapidly emerging.

Social networking sites or individual blogs allow people, including young people, without the need for web programming skills, to effortlessly publish online. This public space allows them to exchange information, often of a very candid nature, with their

peers on a wide range of issues. Social networking sites are being used as online collaborative diaries, where the amount of information and its type is limited only by the teenager's self-restraint or by reason of parental intervention.

Cyberbullying is a term first used by Canadian Bill Belsey to describe "the use of information and communication technologies to support deliberate, repeated, and hostile behaviour by an individual or group that is intended

to harm others". In cyberbullying, the perpetrator's anonymity and their unrestricted access to the victim represent a significant power imbalance.

Focused response

The Irish legal system has been somewhat taken unawares as to the manner and means through which children have fallen victim to cyberbullying. While there are some legislative

provisions in being that might be interpreted in such a manner as to tackle this growing problem, a focused response is required. However, in order for a system of legal recourse to be effective, victims of such bullying need to be able to feel that they can come forward and express their concerns without fear of retribution. Thus, provision also needs to be made for the protection of child victims of such behaviour, for example, the means of retaining their anonymity when making a complaint of such bullying.

Cyberbullying is a form of harassment and should be treated as such. Responding to calls for new criminal legislation to tackle cyberbullying, it has been suggested that existing laws

to tackle harassment are suitable. However, it would appear that difficulties exist in prosecuting cyberbullying under the *Non-Fatal Offences Against the Person Act 1997* and, in particular, the requirement that the harassment is persistent. A clear system of legal recourse is required to provide for an offence of cyberbullying and to encourage victims to come forward, anonymously if needs be, without fear of retribution.

Anonymity is often the greatest obstacle in bringing perpetrators of cyberbullying to justice. It represents an obstacle not only for those seeking to identify perpetrators, but may also prevent victims from pursuing justice. Cognisance should be taken of the Canadian position, where the Supreme Court of Canada has ruled that, while the principle of open justice is of critical importance, it can be outweighed in certain cases by the need to protect children's privacy and the need to protect them from cyberbullying.

Steps must be taken to ensure that victims of cyberbullying can identify their perpetrators. An ideal situation would be an agreement of cooperation between internet service providers and other entities such as Facebook and the gardaí to provide IP addresses (unique identifiers of devices connected to the internet) where complaints of cyberbullying have been received.

Liability of schools

The extent of the liability of schools must be examined in order to tackle the problem of cyberbullying. The most effective means of preventing bullying may be to adopt a whole-school approach. This would encompass school policies in areas such as anti-bullying initiatives, codes of behaviour,

Difficulties exist in prosecuting cyberbullying under the *Non-Fatal Offences Against the Person Act 1997*, and in particular the requirement that the harassment is persistent

In cyber-bullying, the perpetrator's anonymity and their unrestricted access to the victim represent a significant power imbalance

and the use of social media as an educational tool, as well as the involvement of parents. Legislation should be introduced compelling schools to have a strong disciplinary code.

The law on harassment under the *Non-Fatal Offences Against the Person Act 1997* must unequivocally provide for the offence of bullying and cyberbullying. At present, there appear to be very few criminal prosecutions under the 1997 act, despite the apparent suitability of that act.

Existing laws regarding harassment can be used to incorporate cyberbullying. For example, a review of the *Post Office (Amendment) Acts* should be undertaken with a view to incorporating emerging means of cyberbullying. Prosecutions have been brought under section 13(1) of the *Post Office (Amendment) Act 1951*. That act refers to messages

sent by telephone and, while it specifically includes text messages, it does not include any reference to email or other internet messages. An offence relating to this form of communication would be welcomed.

Clarity required

While issues relating to cyberbullying may potentially be captured within existing legislative provisions, the fact that there is, at the very least, uncertainty as to whether prosecutions would be successful under these statutes is reason enough to bring clarity to the area and unequivocally provide for an offence of cyberbullying. Accordingly, a review of other jurisdictions that have enacted legislation specifically outlawing cyberbullying should be undertaken. For example, New South Wales is one Australian jurisdiction to enact legislation specifically directed at bullying in schools (including cyberbullying).

Cyberbullying may easily be conceived of in terms of well-known criminal offences such as assault, threats, extortion, stalking, harassment and indecent conduct. In addition, an increasing array of new offences, such as torture, voyeurism, cyber-stalking, and telecommunications offences may be relevant. The New South Wales' provisions – and some of these other offences as they apply to cyberbullying – merit examination.

As a result of bullying in schools in Massachusetts, Governor Deval Patrick signed an anti-bullying bill into law on 3 May 2010, making Massachusetts the 42nd state to pass such a law. Both the State Senate and House of Representatives unanimously passed the bill – and it is considered one of the strictest anti-bullying laws in the US. The law applies to school districts, charter schools, non-public schools, approved private day or residential

schools, and collaborative schools.

All school districts in Massachusetts were required to adopt and implement a bullying prevention and intervention plan in their schools by 31 December 2010. Shortly after the law was passed, the Department of Elementary and Secondary Education provided a model plan for school districts, state-wide, to use as a guideline and serve as a resource for schools. School districts, with input from teachers, school staff, professional support personnel, volunteers, administrators, students, parents, guardians, law enforcement, and community representatives, must create a plan to be implemented in each respective school.

The law must keep pace with technology in protecting vulnerable young children and must exist as an accessible recourse for those who are victims of abuses such as cyberbullying.

viewpoint

POVERTY IS THE ROOT OF THE 'OLDEST PROFESSION'

Legislation that criminalises the purchase of sexual services may seem an attractive policy, but it could have dangerous side effects for those who feel compelled to work in the trade, argues **Frank Armstrong**



Frank Armstrong is a barrister. He currently teaches property law at Anglo-American University in Prague, where he is now based

The *Criminal Law (Sexual Offences) Bill 2015* had a second reading before the Oireachtas on 28 January this year. Alongside more stringent measures against trafficking and underage participation in prostitution and pornography, the bill proposes that the purchase of a sexual service should be a crime, with a maximum penalty of one year in prison. I argue that this measure is not appropriate in the present context of income inequality and poverty. Instead, I propose a more compassionate approach towards the sex worker in particular.

It may come as a surprise to some that prostitution itself is not illegal in Ireland, although most activities around it are. The *Criminal Law (Sexual Offences) Act 1993* prohibits soliciting or importuning another person in a street or public place for the sole purpose of prostitution. This applies equally to prostitute and client. It also prohibits living off the earnings of the prostitution of another person, and keeping a brothel or other premises for the purpose of prostitution. Furthermore, the *Criminal Law (Human Trafficking) Act 2008* criminalises the trafficking of persons for sexual exploitation.

It seems very likely that the *Criminal Law (Sexual Offences) Bill 2015* will enjoy overwhelming support in the Oireachtas, considering the endorsement of the two former government parties, as well as the support that Sinn Féin and Fianna Fáil gave to a private member's bill (the *Criminal Justice (Sexual Services) (Amendment) Bill*) introduced by Thomas Pringle in 2013, which purported to create a similar offence. Interestingly, independent TDs Clare Daly and Mick Wallace opposed that bill on grounds of efficacy, increased stigmatisation, and with the argument that it unfairly infringed on an

individual's right to make a living.

Both bills are based on the so-called Swedish model, whose parliament passed a *Kvinnofrid (Violence Against Women Act)* in 1999 that, for the first time, criminalised the purchase but not the sale of sexual services, treating the sex worker as the victim of an inherently violent act. This legislative course has been followed in a number of other jurisdictions, including Norway and recently Northern Ireland.

The model

Support for the measure, unusually, might align traditional conservatives and many feminists. Both would agree with Plato's assertion that "the excess of liberty, whether in states or individuals, seems only to pass into excess of slavery". Freedom to sell sexual services is seen as a form of bondage damaging to the sex worker, or prostitute, and the wider society.

The terminology itself causes difficulties, as it has been argued that the term 'sex worker' legitimates this form of employment. However, it is employed in international literature on the subject and is preferred for that reason. The term 'prostitution' is retained in relation to the profession itself.

Advocates of alternative approaches might refer to the ideas on liberty espoused by John Stuart Mill, who wrote that "mankind are greater gainers by suffering each to live as seems good to themselves, than compelling each to live as seems good to the rest". It is thus argued that the right of an individual, who has reached maturity before the law, to freely sell sexual services should not be impeded by the criminalisation of his clients.

In Ireland, it is estimated that around 1,000 individuals (overwhelmingly women) are available or made available

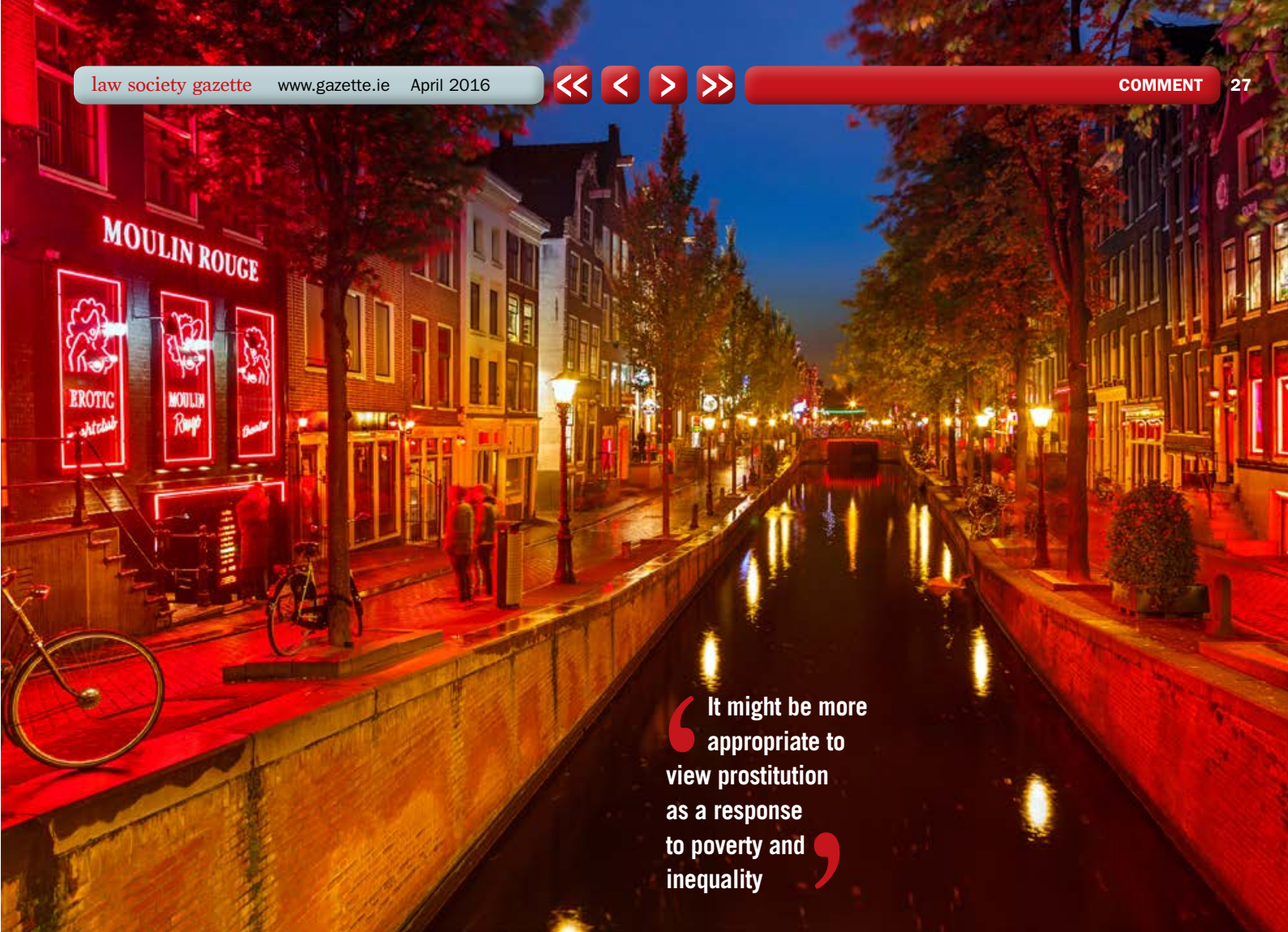
for sexual services each day. Most services are advertised online. Gone are the days when an entire street in Dublin was identified with prostitution. 'Monto' or Montgomery Street (now Foley Street) was immortalised in James Joyce's *Ulysses* and in the ribald folk song 'Take her up to Monto'. In the 1920s, most of the brothels there were shut down.

Since introducing the legislation, the number of sex workers in Sweden has declined significantly, but opponents, particularly sex-worker advocacy groups, say that the law has increased the stigmatisation of a sex worker, with occasionally grave repercussions.

Going underground

There is also a strong suspicion that draconian laws drive the trade underground, as sex workers try to ensure their clients avoid prosecution. One sex worker and campaigner Laura Lee has even taken a legal challenge to Northern Ireland's legislation to the European Court of Human Rights. She claims it has created problems, as clients now refuse to use an online screening process, thereby putting sex workers in danger. Apart from the threat of increased violence against sex workers, this could have implications for the spread of STDs.

Other countries have experienced serious problems after liberalisation. A 2012 paper in the journal *World Development* found that "countries with legalised prostitution have a statistically significant larger reported incidence of human trafficking inflows". Since full legalisation in 2000 (including pimping and brothel keeping) in the Netherlands, prices for sex have fallen and sex workers' "emotional well-being is now lower than in 2001 on all measured aspects, and the use of sedatives has increased", according to a



It might be more appropriate to view prostitution as a response to poverty and inequality

2007 evaluation by a Dutch justice ministry.

Michelle Goldberg, who wrote an incisive article for *The Guardian* (8 August 2014) on the subject, makes the good point that: "Deciding which model works better is as much an ideological as an empirical question, ultimately depending on whether one believes that prostitution can ever be simply a job like any other."

But even if we accept that prostitution is inherently violent and exploitative, what if the effect of the legislation is to drive a reduced level of trade further underground? Similarly, we may regard drug use as a social ill, but has criminalisation not allowed criminal networks to thrive off illegality?

Moreover, we should be aware of the damaging effects of criminalisation in terms of recidivism. Imprisoning more people is surely a course to be avoided where possible. There is

no provision in the legislation for educating, rather than shaming, individuals as to the exploitative relationship involved or curing what may be compulsive behaviour.

It might be more appropriate to view prostitution as a response to poverty and inequality. Certainly, history bears this out. In Naples in 1944, the British intelligence officer Norman Lewis discovered an intelligence report indicating that 42,000 out of a 'nubile' female population of 150,000 had turned to prostitution due to the extreme poverty experienced in the city after the Allied invasion. All this in a traditional Catholic society.

Song of choice

There are now huge disparities of wealth and poverty in Europe, especially with the presence of migrant populations, many of whom do not have employment visas. Individuals may not be forced into prostitution, but their circumstances


may leave them little option. Further criminalisation could make some of them less safe.

Moreover, it is apparent that prostitution is increasingly migrating into the ever-expanding transnational pornographic industry, estimated to be worth approximately \$100 billion. In the absence of a more generalised shift in attitudes towards exploitation, is a potential user of a sex worker not likely to migrate into this sphere, where there may be even greater scope for slavery, including underage participation?

As an alternative, an approach that falls short of legalisation but that includes some form of official registration would reduce the level of trafficking and underage participation. If an individual chooses to transact with an unregistered sex worker, then he might be prosecuted for purchase. Prohibitions against brothel-keeping, pimping and other

exploitative relationships would remain. Police resources could be devoted to tackling the worst excesses of the trade and protecting sex workers.

The state might also assist sex workers who wish to end their participation, with specialist programmes that could include counselling services.

On its face, legislation that criminalises the purchase of a sexual service may seem an attractive policy, but it may have dangerous side effects for those who feel compelled, or sometimes choose, to work in the trade. Besides outright slavery, it is poverty and inequality that drives participation, alongside a failure to address, through education, the exploitative relations that permeate our societies. This legislation will do nothing to alter these factors, and potential users are likely to gravitate to the internet for satisfaction. 

news in depth

THEY THINK IT'S ALL OVER...

It's late in the *Setanta* contest and, so far, it's 2-0 to the Law Society against MIBI. But could this game go to extra time? Our analyst **Stuart Gilhooly** checks his watch



Stuart Gilhooly is senior vice-president of the Law Society

There was a time when the name *Setanta* was a byword for Gaelic strength, or symbolised all that was great about Irish mythology. Nowadays, it's a word associated with the Europa League on Thursday nights, or another in an impressive array of excuses for insurers to increase premiums.

Inevitably, the average car insurance customer takes little or no interest in the rather mundane and overly complex machinations of a court case to determine liability for the defunct insurer's claims and instead – in as much as they care at all – takes the insurance industry's disingenuous protestations at face value.

Indeed, such has been the dissembling by the powerful and far-reaching insurance lobby since the decision in the Court of Appeal that it is almost appropriate that *Setanta* was originally named for a fictional and entirely incredible character whose feats made no sense on closer examination.

It is time now to set the record straight. The Law Society has always stood on the side of the victim throughout this debacle but, predictably, despite several attempts, there has been no media coverage of the trials and traumas of those personal injury victims who have had to wait two years (and counting) for compensation. This is the true story of what happened.

Who and what?

Setanta Insurance was a company set up in Malta that traded in Ireland selling, exclusively, car insurance. It would appear that they ran into some

trouble in 2013 and, by 16 April 2014, were in a position where they could no longer trade and went into liquidation. It was unprecedented in Ireland, in the sense that no company that traded only in car insurance had gone bust before.

There is little doubt that the regulators took their collective eyes off the ball, but we were advised that there was no recourse against them in situations such as this.

Who picks up the tab?

So who was liable for their outstanding claims? This is where the problem

“The Law Society, very shortly after the liquidation, advised that solicitors should consider joining the MIBI to any proceedings or Injuries Board applications, and it is expected that most will have taken up this advice”

lies. The Law Society immediately identified the Motor Insurers' Bureau of Ireland (MIBI) as the appropriate entity and advised its members accordingly. Indeed, the Minister for Finance initially told the Dáil that he agreed with this, before withdrawing this comment sometime later following legal advice.

The “unequivocal” legal advice received by the MIBI – by a person who to this day remains anonymous – stated that the Insurance

Compensation Fund (ICF) should pick up the tab and that the MIBI had no liability.

The Law Society obtained its own legal advice, which confirmed that the position was anything but unequivocal and that a strong case could be made that the MIBI would be liable. It subsequently engaged in considerable correspondence with the MIBI and the Department of Transport in efforts to see their legal advice, or at least identify its author, and to attempt

to mediate what had become an impasse.

All such efforts were stonewalled, and a position of implacability built up, which is still in place over a year later.

Spot the difference

What is the difference between the MIBI and the ICF? The essential difference is 35% of the damages. If the MIBI are liable, then they must pay all damages. If not, then the ICF will discharge the liabilities – but only up to 65% of the claim, to a ceiling of €825,000. The remaining 35% would have to be sought directly from the policyholder or from whatever sum, if any, remained when the liquidation was completed several years from now. All legal costs would be payable in either scenario.

How did the dispute come to be litigated? The President of the High Court is the guardian of the ICF, which may only pay out if it is the fund of last resort. Given the uncertainty with the MIBI position, he brought an application to the High Court whereby the Accountants Office of the High Court asked the Law Society to prosecute an action that would decide overall liability for the claims.

The case commenced last April and was heard in the High Court in July 2015. The [decision of Mr Justice Hedigan](#) was delivered on 4 September 2015 and emphatically debunked all of the MIBI arguments. It essentially confirmed that clause 4.1.1 of the 2009 *MIBI Agreement* meant what it appeared to mean – that where any judgment for damages arising from a road traffic accident remains unsatisfied for a period of 28 days, the MIBI must discharge it.

They argued that this did not apply to insolvency, whereas the Law Society produced considerable evidence that it did. This included, among many

Colleagues need to be vigilant with their files to ensure, insofar as possible, compliance with conditions precedent

other submissions, the fact that the MIBI paid out in the only other remotely comparable case, when the Equitable Insurance Company went bust in 1964 (although that liquidation was not confined to car insurance claims only).

Court of Appeal

The MIBI appealed, and it was expedited into the hearing list of the Court of Appeal by the judiciary, who recognised the urgency of the situation. It was heard in January 2016 by President Ryan, Ms Justice Finlay Geoghegan and Mr Justice Hogan. A unanimous judgment was given on 2 March, affirming the order of the High Court finding the MIBI liable for all claims, but expressly stating that they were subject to proof of liability in each individual case.

So what does this mean? It is clear that where liability of the MIBI can be proven, they now must pay all claims. However, the extent of such liability is still somewhat nebulous. There are many cases in which judgment has been obtained and the MIBI are not parties to the proceedings, as their involvement could not have been anticipated. The Court of Appeal has made reference to the difficulty that some claimants would have had in complying with conditions precedent in the agreement and this, *obiter dicta*, is likely to be of importance.

The Law Society, very shortly after the liquidation, advised that solicitors should consider joining the MIBI to any proceedings or Injuries Board applications, and it is expected that most will have

taken up this advice. If not, it is worth considering whether it should now be done, given the verdicts of four superior court judges and the contents of the 2009 agreement. Of some relevance may be the fact that the second anniversary of the liquidation of Setanta is fast approaching, and that is the day on which the policyholders became uninsured.

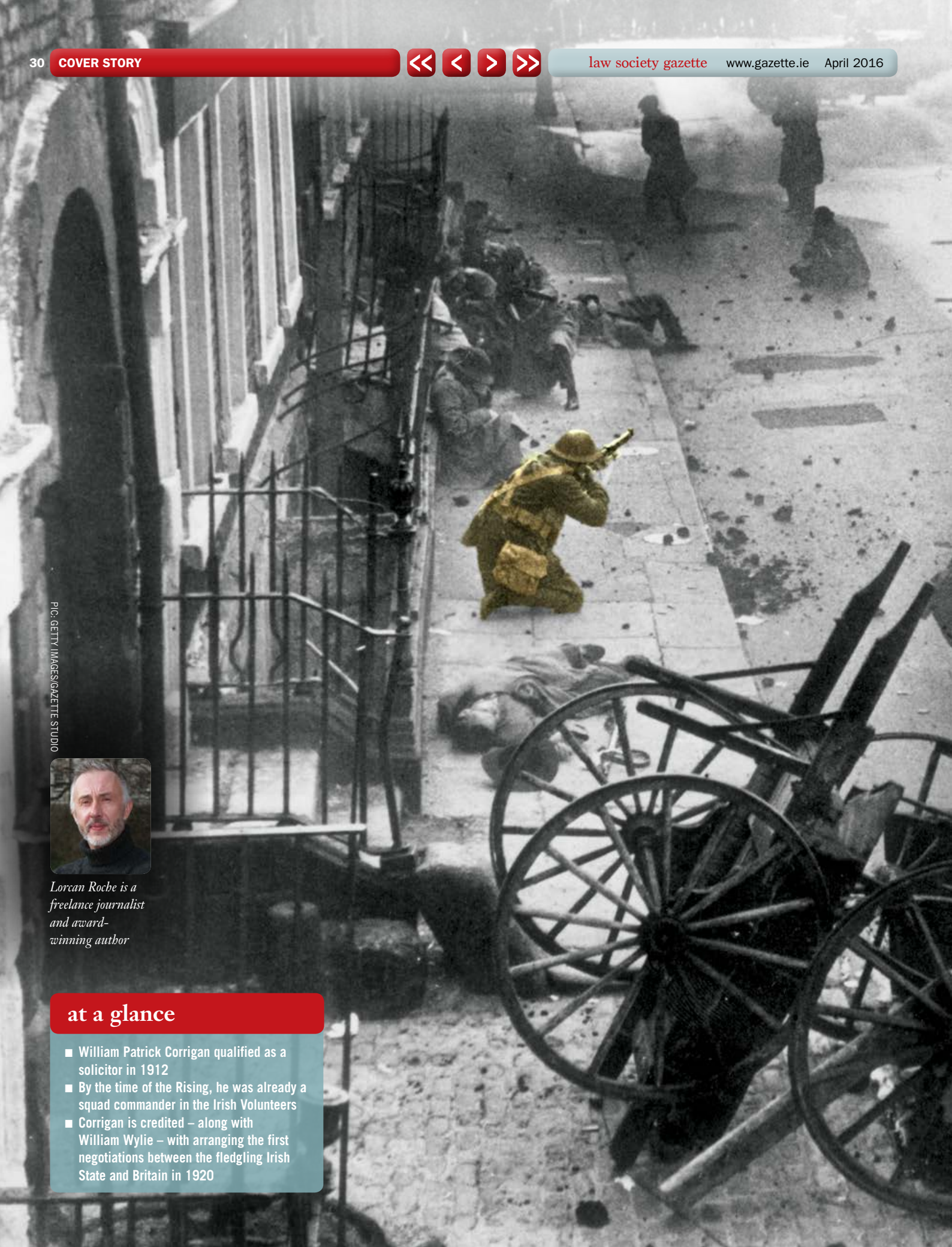
What of the policyholders?

In the Court of Appeal, the judges made reference to what would be unfairness if anyone who, acting appropriately by obtaining insurance, was subsequently punished by the MIBI seeking recompense under their agreement, but this statement by the judges is not binding, given that it was not germane to the decision made.

Is this the end at last? Sadly, it would appear not. The MIBI have publicly indicated an intention to make a further appeal to the Supreme Court, although at time of going to press, they had not yet done so. It does appear, though, that they will ask the Supreme Court to hear an appeal and, in order to succeed in having the matter heard, they will need to persuade the Supreme Court that it is a matter of general public importance or in the interests of justice.

So, it would appear that the wait goes on for the 1,700 claimants who have still received no compensation. In the meantime, though, colleagues need to be vigilant with their files to ensure, insofar as possible, compliance with conditions precedent.

The fight goes on.



PIC: GETTY IMAGES/GAZETTE STUDIO



Lorcan Roche is a freelance journalist and award-winning author

at a glance

- William Patrick Corrigan qualified as a solicitor in 1912
- By the time of the Rising, he was already a squad commander in the Irish Volunteers
- Corrigan is credited – along with William Wylie – with arranging the first negotiations between the fledgling Irish State and Britain in 1920

The quiet **MAN**

Dublin solicitor William Corrigan fought in the 1916 Rising and played an active and instrumental role in the independence struggle from 1914 to 1919. **Lorcan Roche** profiles this modest man

The 1916 Rising required that men and women, at least on the outgunned, outnumbered insurgent side, were enormously idealistic, committed and determined. The aftermath of the conflict, in which death sentences were handed down by an outraged empire, required that survivors maintain silence and, in some cases, withstand privation, intimidation, brutality and torture. History, however, is not best served by such strong, stoic types: they tend to talk down their deeds, minimise their involvement, and avoid detailed discussion of events for years, even among their own, even when legitimately applying for State pensions or after being proposed by their peers for medals of valour. History, if it is to breathe fully and deeply, requires participants who are not afraid to add detail, colour, pride – even ego. Sometimes, we have to wait till hard-boiled revolutionaries grow older and soften (or at least until some of their comrades do) in order to move beyond fact into feeling.

The commitments

Facts tell us that William Patrick Corrigan was born in 1888, the youngest son of an undertaker and Irish Parliamentary Party member. That he went to Blackrock College and was a talented rugby player. That he attended Trinity College and qualified as a solicitor in 1912. That he immediately went to work at his older brother Michael's firm, founded six years earlier, which then became Corrigan & Corrigan and is still located on St Andrew's Street. Facts tell us that William joined the Volunteers "very early in 1913" and that when the Redmond split in that organisation occurred in 1914, he was offered an officership – which he declined.

What facts don't reveal is how quickly Corrigan's intelligence and leadership abilities were noted, and not just by the Redmond faction. By the time of the Rising, the 28-year-old solicitor was already a squad commander in B Company, 4th Battalion, Dublin Brigade – a man whose opinion was sought by Volunteer leaders (Ceannt and Boylan) on who should be promoted and who should not. The facts don't immediately tell us how well thought of he was by the men he fought beside around the Blackpitts area and, shortly after, by the men he was variously imprisoned with in Mountjoy, Portland, Lewes and Pentonville. Nor do facts tell us, at least not directly, that Corrigan was tough as old teak. Or that he seemed, somehow, to combine the poise of a Trinity grad with the street-smarts of a regular Dub. That he could get up people's noses, especially the noses of policemen who faced him in the witness box. That he elicited envy as well as admiration, and that he was extraordinarily lucky (see panel).

Testimonies from fellow prisoners reveal that, when put on bread and water rations in solitary confinement in Pentonville (there were concerted attempts to 'break'

the perceived ringleaders at Pentonville), Corrigan emerged "with a big grin on his face" and was threatened with another round of rationing. Corrigan seemed to have a devil-may-care attitude to life, and death, which inspired his men, and incensed his captors. Certainly, he had bottle. And brains. If you encountered him on the playing field, battle field, in college, court, prison, or across the desk of a solicitor's office, you'd remember him. Even if he said very little.

Home is the hero

Corrigan's 1934 testimony to the Military Advisory Committee reveals the man's initially refreshing but ultimately infuriating lack of ego: "On Easter Monday morning, I mobilised my men; I got as many as I could. I went out to Kimmage myself. We left there and went down by the back of the pipes to Emerald Square, and from that to the back of the gate of the Union. We did not put up much of a show there. We were riddled out of it in no time. I was slightly wounded on the right side of the face."

Slightly wounded? A statement to the Military Service Pensions Collection

Committee by one Capt George Irvine – himself promoted upon Corrigan's recommendation to Eamonn Ceannt – was less circumspect: "Willie Corrigan was nearly done in ... a bullet glanced off a window, shattering the glass, which got into his eye."

Corrigan describes his activity at the South Dublin Union thus: "There was very little fighting in the South Dublin Union. We were in a wooden hut at the back of it, and it was a regular sieve. There were three or four of us knocked out, out of nine or ten."

But a statement made by one Gerard 'Ger' Doyle of Mount Merrion to the Bureau of Military History goes much further. Doyle, thankfully, was one of those who allowed history to breathe deeply. He details the mayhem around the Union when George Irvine, William Corrigan and their men (one of whom had been grievously wounded) were trapped in a wooden hut, outnumbered and entirely outgunned: "They [the British] got a machine gun into position and opened fire on the hut. At the same time, the gateway from the South Circular Road was burst open and troops started to make short dashes through. A sergeant came around in front

FOCAL POINT

circle of friends

William Wylie was seven years older than Corrigan. He was also educated at TCD and was called to the Bar in 1906. The budding legal eagles and dedicated sports fans would have been aware of one another at Trinity and of their respective burgeoning reputations. Wylie was a first-rate scholar and noted cyclist (he is referenced in *Ulysses*, racing on his bike against his fellow law students).

Corrigan had also briefed Wylie several times in 1912 and 1913. Wylie took silk in 1914, before joining a programme for British officers at the outbreak of WWI. After Easter Week, Wylie was given the task of prosecuting the dozens of rebels selected for trial, 15 of whom would be executed. The staggeringly arrogant, poorly informed General John Maxwell, 'Military Commander of Ireland', indicated that these trials would take the form of **field general courts martial** – Maxwell had stated the rebels were to be allowed defence lawyers; typically, the Crown did not provide any. To his credit, Wylie recognised the deficiency – and most probably the illegality – of the proceedings and assisted many of the rebels in their defence. He is remembered fondly by many Volunteers and described several times in military archives as "a gentleman".



The staggeringly arrogant General John Maxwell

As Sean Enright writes in his excellent *Easter 1916: The Trials*, Corrigan and Wylie met in a corridor of Richmond Barracks. Corrigan was bandaged and bloodied.

"My God, Corrigan, what are you doing here?" asked Wylie. Corrigan said he was next to be tried and wondered if he had any chance? Wylie responded that the three previous defendants had been sentenced to death, but that he would do his best for his colleague. Wylie gave a speech in favour of Corrigan and also examined Corrigan in his own defence.

After the trial (according to Wylie's biographer, Leon Ó Brion*), the presiding officer, Brig Gen Charles Blackader (yes!) commented to Wylie that he "seemed in earnest about that man". To

which Wylie famously replied: "In earnest? I should think I was! He is a solicitor and, before this show started, I got a case from him to advise one of his clients. There was a cheque for five guineas with it and I haven't cashed it yet and, if you execute, the cheque might not be met, so yes, I was very much in earnest."

A stunned silence ensued. Then the court officers broke down in laughter, after which Blackader is reported to have said: "All right Wylie, your five guineas is safe. We will recommend a reprieve!"

The incident reveals the cavalier attitude that prevailed among the British military, legal and political establishment to the lives of the rebels, as well as the canny Wylie's ability to see through their haughty prejudice. Corrigan was sentenced to death with a recommendation of mercy. His sentence was commuted to five years' penal servitude. Before departing, he told his brother Michael to make sure to thank Wylie for saving his life.

Wylie was appointed to the High Court of the Irish Free State. He served there, with distinction, until 1936. He died in 1964.

(*Ó Brion's very worthwhile *WE Wylie and the Irish Revolution, 1916-1921* is out of print, but the National Library holds a copy).

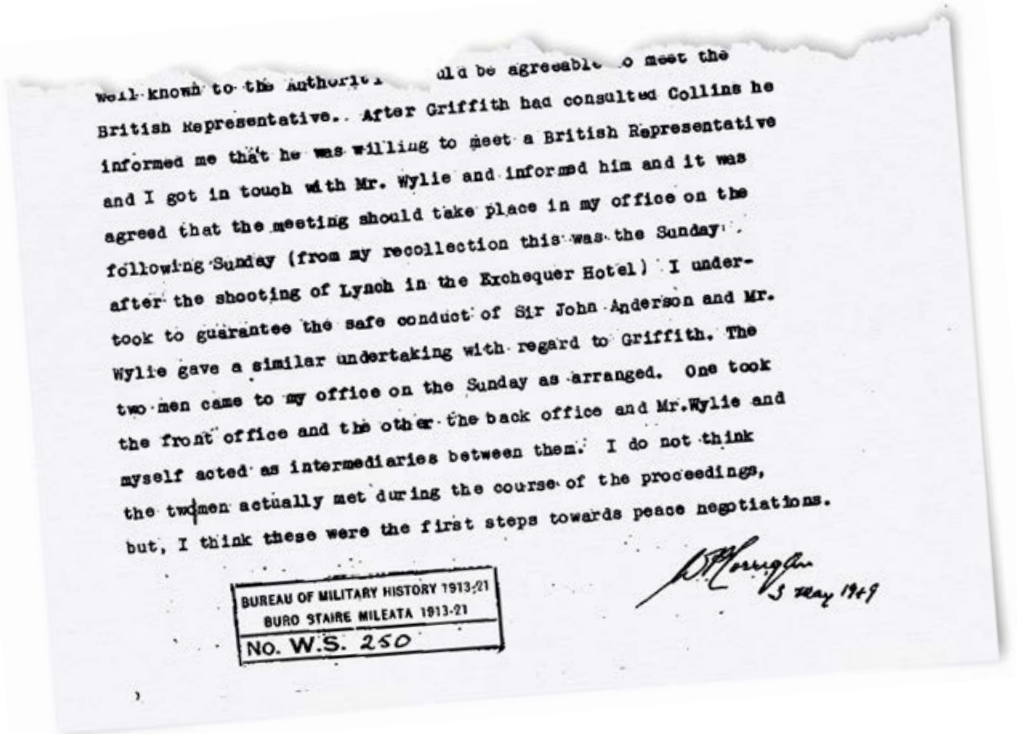
of the hut, and he was at once dealt with. Just then, a British soldier had got in close to the back of the hut under cover. When he came to the window, both himself and William Corrigan fired one at the other – Corrigan was wounded on the forehead and his face was filled with broken glass – the soldier was also wounded ... it really looked like we were in a hopeless position because, at this stage, the British troops were firing through the end door on the north side of the hut. A British officer called on Capt Irvine to surrender or they would blow up the hut. Captain Irvine, having consulted with William Corrigan, agreed to do so ... we were then marched up South Circular Road under heavy escort. I helped William Corrigan, as he was then suffering great pain from his eyes and face.”

I went down

In personal testimony, both to the Military Advisory Committee and later to the Military Service Pensions Committee, Corrigan characteristically downplayed his role in the conflict and his wounds – something that may have gone against him. Bizarrely – given the clear testimony of Capt Irvine, Capt Thomas Boylan, Volunteers such as Ger Doyle, as well as character references from Eamonn de Valera and WT Cosgrave – two periods of Corrigan’s service were discounted, including, most unbelievably, a period from 1 April 1916 to 22 April 1916 (the Rising began on 24 April). Perhaps the Andrew’s Street solicitor was too humble or too circumspect?

In his initial interview, Corrigan declined to mention that he had been present at the landing of arms in Howth in July 1914 by the *Asgard*, or that he was one of a few trusted men detailed to help with the successful Kilcoole gun-running a week later.

Perhaps Corrigan’s unassuming admission to the Advisory Committee – “I was not an *active* Volunteer after 1918” – was seized upon as an excuse for not paying him his due? Perhaps there was bias against the well-got Blackrock and TCD educated solicitor? Certainly, one LM Fitzgerald of the Pensions Committee seems to have taken a personal, possibly prejudicial, interest in Corrigan’s claim. Fitzgerald took it upon himself to alter the




original judgement and to reduce payment considerably.

Corrigan clearly played an active and instrumental role from 1914 to 1919, during which time he was imprisoned, after which he was directed to “step aside” from military operations (by Capt Thomas Boylan) in order to concentrate on election work: Corrigan’s legal mind became a more valuable asset than his military prowess. But, after his release and almost from the first week of his arrival back in Ireland in July 1917, Corrigan was attending and, just as vitally, was seen to attend funerals, marches, rifle practice, drills and parades right up to 1919. Incapable of blandishments or of lies, Corrigan simply expected the Advisory and Pensions Committees to take him on his word. When he said he considered himself “still attached” despite his election work, he meant it. Corrigan, however, was not one to be dismissed by officialdom, even of the nascent State kind.

Shake hands with the devil

Corrigan is credited – along with William Wylie – with arranging the first negotiations between the fledgling State and its soon

to be former colonial master in 1920 (see above), namely a meeting of Arthur Griffith and John Anderson (then general permanent under-secretary in Dublin Castle). Deemed by some observers as “unsuccessful” at the time, the talks on a Sunday at his family firm in Andrew’s Street, were in fact historic and crucial – being the first time the two sides showed any willingness to negotiate, even if both parties sat in separate rooms with Corrigan and Wylie moving between them as intermediaries. When interviewed in 1949, Corrigan opined that the Armstrong/Griffith meeting was “the first step towards peace negotiations”. Interesting to note that Corrigan was more forthcoming in this 1949 interview. Had he mellowed? Or did the fact he was being interviewed by Comdt Barry, and not a bureaucrat or non-combatant, make him feel more relaxed, and more appreciated?

Corrigan & Corrigan acted as advisers to Sinn Féin and the new Dáil government. William Corrigan was appointed solicitor to the attorney general. He died in 1962. He was married to Nan and had one son, Robert, an architect. Two of his grandchildren, Michael P Corrigan and Jean Corrigan-Kilmartin are today working in Andrew’s Street. They did not wish to be interviewed for this article; however, it was stressed by one of the firm’s senior practitioners that this should not be interpreted as anything other than shyness. William Corrigan’s family, said the spokesperson, are inordinately proud of his many achievements and of his distinguished military, legal  and political record.

“ In his initial interview, Corrigan declined to mention that he had been present at the landing of arms in Howth in July 1914 by the *Asgard*, or that he was one of a few trusted men detailed to help with the successful Kilcoole gun-running a week later ”

Crash test DUMMIES



Liam Moloney is principal solicitor of Moloney Solicitors, Dublin and Naas. He specialises in personal injury litigation

The assumption that the risk of injury relates to the amount of external vehicle damage in all types of crashes has little basis in science. **Liam Moloney** tests out Newton's laws of motion

More and more insurance companies are arguing that the risk of personal injury is related to a vehicle's external structural damage and its costs of repair. They have taken this position in many cases as a matter of policy and in an effort to deny compensation to injured victims. An insurance claims adjuster might reject a claim for injuries on the basis that, since there is less than €1,000 worth of damage to the vehicle in a repair estimate, the occupant of the car could not have been hurt.

On the other hand, the same claims adjuster might assume that, since the car was written off, the occupant must have significant injuries and authorise a compensation payment without any dispute. The simple fact is that the assumption that the risk of injury relates to the amount of external vehicle damage in all types of crashes has little scientific basis.

Occupant dynamics

In low-speed rear collisions, the bumper of a striking vehicle typically hits the rear bumper of a stationary vehicle, which frequently is stopped at traffic lights or a stop sign. The striking vehicle's kinetic energy is then transferred into the target vehicle, resulting in acceleration to the target vehicle itself.

In lower velocity impacts, there is often negligible permanent deformation, depending on the age of the vehicle, angle of collision, and structural design characteristics of the bumper system. For example, if the striking vehicle's bumper is higher and the striking car is braking, with the nose of the vehicle diving downward, the car frame and seats of the struck car would be accelerated rapidly forward and downward. This can cause significant physical injury to the occupants of the target vehicle.

Several studies have analysed test subjects in low-velocity rear-end crashes (less than 10mph), finding that as the occupant's body is pushed forward by the seatback, the torso sinks into the cushion. This means that the lumbar lordosis and the thoracic kyphosis become flattened and elongated as the seatback is accelerating against the occupant's body. This is an effect similar to an accordion opening and closing.

Injury mechanisms

In low-velocity rear-end crashes – defined as less than 10mph 'delta-V' (change in velocity) for the target vehicles – there are several injury-producing variables. This explains the risk for common injury mechanisms in low-velocity impacts.

Rear-end collisions can be quite complex, with elastic bumpers, elastic seatbacks, and the cantilever seat system all working to create a situation in which there is a transfer of the striking vehicle's kinetic energy, creating injury potential at low velocity.

at a glance

- Minimum impact defences are becoming more and more common, and it is very important that we are aware of how to deal with them from an evidential standpoint
- When they are pleaded, an engineer with specific experience in dealing with such defences should be engaged. They should be briefed with the repair estimate, photos of the vehicle damage, assessors report, and garda abstract
- In low-velocity rear-end crashes, there are several injury-producing variables



When considering injury causation and any subsequent post-traumatic symptoms, it is important for a doctor and a bio-mechanist to remember that there is no 'typical human' in a crash environment

The likely injury mechanism includes the initial extension in compression/tension of the spine, but then a rebound flexion of the spine that is directly influenced by the lap-belt restraint system holding the pelvis down and inward as the spine lengthens and ramps up the seatback.

There are many types of bumper systems in production, including isolators, foam, fibre-glass and metal beams.

Many modern cars have delta-

Vs of 7-9mph with little if any physical or observable damage. In some cases, when the bumper is taken off the vehicle after a rear-end collision, the damage is often hidden in the bumper structures and, in some instances, cannot be seen from external observation at all.

There is no typical human

When considering injury causation and any subsequent post-traumatic symptoms, it is

important for a doctor and a bio-mechanist to remember that there is no 'typical human' in a crash environment.

There can be several reasons why an individual can be different than what was generally represented in a group of subjects involved in an accident, including:

- Different weight of humans,
- Different human anthropometry – some humans have shorter/longer legs, arms, torso, and so on,

- Different heights may influence the distance between occupants and the interior of the vehicle,
- Women have lower centres of gravity than men,
- Seating locations of occupants,
- Different seatback angles for different occupants, and
- Out of position occupants.

As solicitors, we often receive defences from defendants pleading a 'minimum impact' defence. When this is pleaded,



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an engineer with specific experience in dealing with such defences should be engaged. They should be briefed with the repair estimate, photos of the vehicle damage, assessors report, and garda abstract.

So what should you consider when contesting a minimum impact defence?

- Never assume one size fits all approach,
- Every human being is different,
- Get the age of the occupants,
- Establish the physical shapes of the occupants,
- Establish whether they have suffered prior injuries,
- Establish whether they are prone to suffer injury,
- Get the specific size and shape of the occupants,
- Get the occupant positioning for all body parts,
- Get the occupant's proximity to the interior of the car.

Recent considerations

The High Court recently considered the question of low-velocity impacts in *Thomas Neville v COD Plant and Civil Engineering Ltd* ([2015] IEHC 437).

The case arose out of a road traffic accident on 26 April 2012. The plaintiff's Ford Fiesta was stopped in a line of traffic when it was struck by a number of pallets that were being carried in the bucket of a JCB owned by the first-named defendant and driven by the second-named defendant. The pallets came into contact with the rear windscreen of the plaintiff's car, and the window shattered as a result.

Judge Barr stated that it was an unusual case in that, while the defendants admitted that they were liable for causation of the accident, they defended the case on the basis that the impact between the pallets and the rear windscreen of the plaintiff's car could not have been sufficient to cause the plaintiff to suffer any serious injury. In particular, they asserted that the forces applied to the plaintiff's vehicle ceased once the window broke. They argued, therefore, that no significant forces were applied to the plaintiff's vehicle sufficient to cause the plaintiff to suffer any injury.

The defendants called consulting engineer Anthony Tennyson, who gave evidence that it was his view that whatever forces may have been applied to the windscreen would have

been absorbed by a rubber seal that attached the glass to the car, and not transferred into the body of the car or to the occupant of the car.

Mr Tennyson told the court that he had carried out a review of the literature that was designed to establish a personal injury threshold below which injury is a very low probability. Acceleration was calculated in terms of the change of velocity divided by time, expressed in the formula $\Delta V/\text{time}$. The generally accepted threshold is ΔV of 8km/h, which was roughly equivalent to double the normal walking speed.

In summary, he was of the view that there was a very light impact to the tailgate glass,

which was incapable of transmitting any force to the frame of the vehicle. Consequently, the target occupant did not experience sufficient change in velocity and, in the circumstances, there was no risk of a whiplash injury to the plaintiff.

Different type of collision

Another consulting engineer, Collin Glynn, gave evidence on behalf of the plaintiff. He stated that, in a normal rear-end impact, one can use the amount of car damage to estimate the speed of the offending vehicle. This would be appropriate where there was a normal bumper to bumper collision. However, in this case, it was a different

type of collision: the collision impact was somewhat minor, but the manner in which the vehicle may have been shunted forward was unrelated to the impact damage. The collision mechanism – the manner in which the target vehicle was propelled forward – was separate to the initial impact. After the first contact, the two objects remained in contact, with one pushing the other forward without any further vehicle damage.

Mr Glynn went on to state in his evidence that ΔV cannot be used as a sole indicator of a risk of injury. Bumpers are designed to engage with each other; they are designed to crumple. When they deform, that elongates the collision duration, reducing acceleration forces to the occupant of the vehicle. The bumper will absorb some of the collision energy. Bumpers are designed to deform. The rear bumper will deform forwards and

Rear-end collisions can be quite complex, with elastic bumpers, elastic seatbacks, and the cantilever seat system all working to create a situation in which there is a transfer of the striking vehicle's kinetic energy, creating injury potential at low velocity




Dancing in the disco, bumper to bumper

the front bumper will deform backwards. He stated that a pallet to glass collision has a different collision time to a bumper to bumper collision, and glass does not deform. When one changes the collision time, this has a significant effect on the degree of acceleration experienced by the occupants, which produces the injury.

There clearly was a conflict in this case between the engineering evidence, and the judge decided that conflict in favour of the plaintiff's engineer on that issue.

Judge Barr held that Mr Glynn was correct when he stated that the threshold cannot be used when the points of collision involved other parts of the vehicle. He found that, in this particular case, the points of contact were the pallets coming into contact with the rear windscreen of the car. The glass was toughened glass, and it was designed to withstand significant blows. The judge held that he accepted Mr Glynn's evidence that, prior to shattering, the rear windscreen could withstand and transmit significant loads.

The judge went on to hold that he was satisfied that the forces applied by the pallets on the windscreen were transmitted from the glass into the body of the car. He did not accept that the rubber seal around the window would have had much effect in reducing the forces transmitted to the rear of the car and to its occupant.

The judge also held that it was possible that a lower impact time would produce a higher degree of acceleration and that bumpers were specifically designed to absorb significant loads and to crumple on impact. The judge held that there was a significant collision between the vehicles and, in the circumstances, it was possible for the plaintiff to suffer a whiplash injury as a result of the impact. The judge then went on to assess total damages of €171,633 and made an award to the plaintiff in that sum. 

Don't you FORGET about me



Lorraine Carter is founder and principal of *Persona Branding and Design*, an award-winning multidisciplinary company

Does your firm need a rebrand? Or maybe a refresh? In the first of two articles, Lorraine Carter provides some pointers for law firm brand owners with her guide to maintaining market leadership

The business world is in a constant state of flux. Markets change, new trends emerge, disruptive competitors alter longstanding rules, and customer preferences evolve – and all of this affects your brand. Brands are constantly evolving to ensure future growth and relevance. Even the longest standing and greatest brands in the world need rejuvenation, if not a total rebrand, in order to maintain market leadership.

Like the foundations of a house, a strong brand is essential. When cracks appear in the foundations of a brand, a wise owner or manager must take action to repair, prevent deterioration, and take steps to strengthen the brand for future growth. Experts say that organisations and brands change their corporate identities, on average, once every seven to ten years.

On a regular basis, diligent brand managers need to take a step away from an organisation's day-to-day operations to examine and re-evaluate their position and strength in the market. If a brand isn't achieving its objectives or driving business growth, there's little time to be lost wondering what to do about it.

So what's the difference between a brand refresh and a rebrand, and how do I determine which one is the most suitable choice?

Shake 'n' vac

Rebranding or revitalisation can take many guises. It can involve the wholesale change of a company, service or product, inside and out – including name, culture,

values, vision, mission, proposition, positioning, purpose, behaviours, tone, *visual collateral*, and all that entails, with no connections to the legacy entity. Alternatively, it can be something less dramatic and of a more subtle, evolutionary nature, in the form of a brand refresh.

In each instance – be it a total brand overhaul or a brand refresh – the change affects the target audience's perceptions of the brand. The change gives an organisation, product or service a new meaning and image, both in terms of brand experience and culture and its visual brand collateral.

In determining whether it's time for a refresh or a rebrand, one of the most effective tools is a brand

at a glance

- Both refreshing and rebranding require a process of due diligence
- Engagement with the external market, customers, stakeholders and influencers is hugely important
- Approaching a rebranding or brand refresh process without strategic planning, market insights, and customer engagement can have disastrous consequences
- The strategy requires much more than changes to a logo – it requires an understanding of strategic objectives for the brand



audit health-check to examine external and internal drivers that affect your brand. Like any check-up, a brand audit is best done as a proactive and preventative measure. Aside from determining the health or state of your brand, a brand audit also helps determine the level of potential change required.

Brands are like living entities: they have life cycles. They start with much excitement and promise, grow, and then eventually plateau. A brand audit helps you innovate, reinvent, reinvigorate, and ensure market leadership and continued relevance so you can maximise your commercial return and fend off your competition.

The scale and depth of a brand audit is largely determined by your primary objectives coupled with timelines and resources.

The reasons for rebranding and/or refreshing an organisation, product or service are numerous, and decisions should not be taken lightly without sound strategic reasons before launching into the process.

Once you know why you're considering

either a rebrand or refresh, and what your primary objectives are in making this strategic decision, you should consider the following.

Refreshers

Establishing the reasons behind any brand change is fundamental. Whether your brand audit points to a refresh or a rebrand, both

routes require a process of due diligence to determine the changes required.

Both routes require an inclusive approach, from the boardroom to the newest team member, ensuring that everyone in the organisation sees themselves as an essential part of the brand.

Engagement with the external market, customers, stakeholders, and influencers is also hugely important. There many examples of brands that failed to address

this adequately and consequently suffered at the hands of voluble detractors.

While it may be tempting to jump into the visual brand design aspects, the process of investigation, discovery, analysis, and brand strategy development cannot be

overlooked or rushed.

Broadly speaking, a typical rebrand or refresh process includes:

- Rebrand/refresh planning – timelines, resources, team,
- Brand audit health check and research,
- Brand profiling, architecture, differentiators and positioning statement – update or overhaul,
- Brand strategy development,
- Brand design, messaging development, and application,
- Brand testing, research, and refinement before implementation and rollout,
- Brand induction and training throughout the organisation and external third parties,
- Internal/external communications planning and rollout of rebrand or refresh,
- Brand style guide development for protection and management of the brand,
- Measure of impact and commercial return against previously determined key performance indicators.

Approaching a rebranding or brand refresh process without strategic planning, market insights, and customer engagement can have negative consequences. The strategy leading to a brand refresh or to rebranding requires much more than changes to a logo;

“ The strategy leading to a brand refresh or to rebranding requires much more than changes to a logo; it requires an understanding of strategic objectives for the brand ”



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it requires an understanding of strategic objectives for the brand.

Research involves consultation with staff, with existing, lost and prospective customers, former clients and competitor insights to get a full picture of current brand associations, as well as customer perceptions, wants and needs.

An investment in time for research and assessment is required to flesh out areas of strength and weakness and their impact on the brand to see whether a total rebrand or just a refresh is required. The brand audit will also typically reveal new opportunities and point the way towards what you need to do to maximise impact.

Dominos deliver

Define deliverables to the organisation. These typically include a brand-positioning statement that summarises the pertinent research and brand-profiling outputs regarding the unique selling points and key brand characteristics that set the brand apart and make it different, distinctive and memorable, while also providing the roadmap for the brand moving forward.

Brand messaging delivers some or all of the following:

- Values,
- Vision,

FOCAL POINT

top tips for a rebrand or refresh


- Consult management,
- Conduct a brand audit,
- Determine refresh or rebrand requirement,
- Set objectives,
- Establish a timeline,
- Set budget appropriately,
- Create a balanced project team internally and externally,
- Evaluate all customer touchpoints,
- Redevelop and/or overhaul brand proposition, positioning and differentiators,
- Revisit brand strategy, sales and marketing messages, and channels,
- Develop brand strategy and brand profiling documents to provide the essential brand directions or roadmap,
- Develop brand-design brief,
- Commission brand design agency (with relevant expertise),
- Determine methodology and markers for measuring ROI,
- Plan and execute brand rollout to market.

- Promise and mission statement,
- Brand story,
- Value proposition (for aligning brand product and services to customer communications),
- Identification of target audiences,
- Development of buyer personas and key messages crafted for each.

Deliverables might also include problem statements and problem solutions.

Lastly, the design aspect of visual and/or audio deliverables should be identified – for example, logo and tagline, packaging,

stationery, website, social media platforms, apps, brochures, uniforms, *PowerPoint* or *Keynote* templates, sales supports, vehicle livery, signage, site interiors and exteriors, exhibition stands, and possibly music, video and more.

It's critical that your new or revitalised brand collateral properly reflects your brand, is consistent throughout every **touchpoint** and, most importantly, reflects and amplifies your key brand differentiators and brand personality in a way that's really meaningful to your primary audience. 



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O brave new WORLD



*John Elliot
is director of
regulation at the
Law Society of
Ireland*

Director of regulation **John Elliot** provides an overview of key aspects of the *Legal Services Regulation Act* concerning the new complaints and disciplinary system for solicitors and barristers

Part 6 of the *Legal Services Regulation Act 2015* creates a new complaints and disciplinary system. Part 6 will come into operation when decided by the Minister for Justice. The new Legal Services Regulatory Authority will deal with complaints and will have limited powers of sanction. Informal resolution of complaints about inadequate services and excessive costs will be encouraged. The authority will have a Complaints Committee, which will have the power to make referrals to the new Legal Practitioners Disciplinary Tribunal. The tribunal will refer serious cases to the High Court for decision on sanction.

Being members of a regulated profession, solicitors are exposed to the occupational hazard of complaints being made against them, no matter how well their practice is run. For this reason, the new complaints and disciplinary system should be of interest to all solicitors.

The act introduces a new and extensive definition of misconduct, but does not significantly add to the effective scope of the current definition, except that the following may be considered to be misconduct:

- An act or omission connected with provision of legal services that were to a substantial degree of an inadequate standard, and
- An act or omission occurring otherwise than in connection with the provision of legal services justifying a finding that the legal practitioner is not a fit and proper person to engage in the provision of legal services.

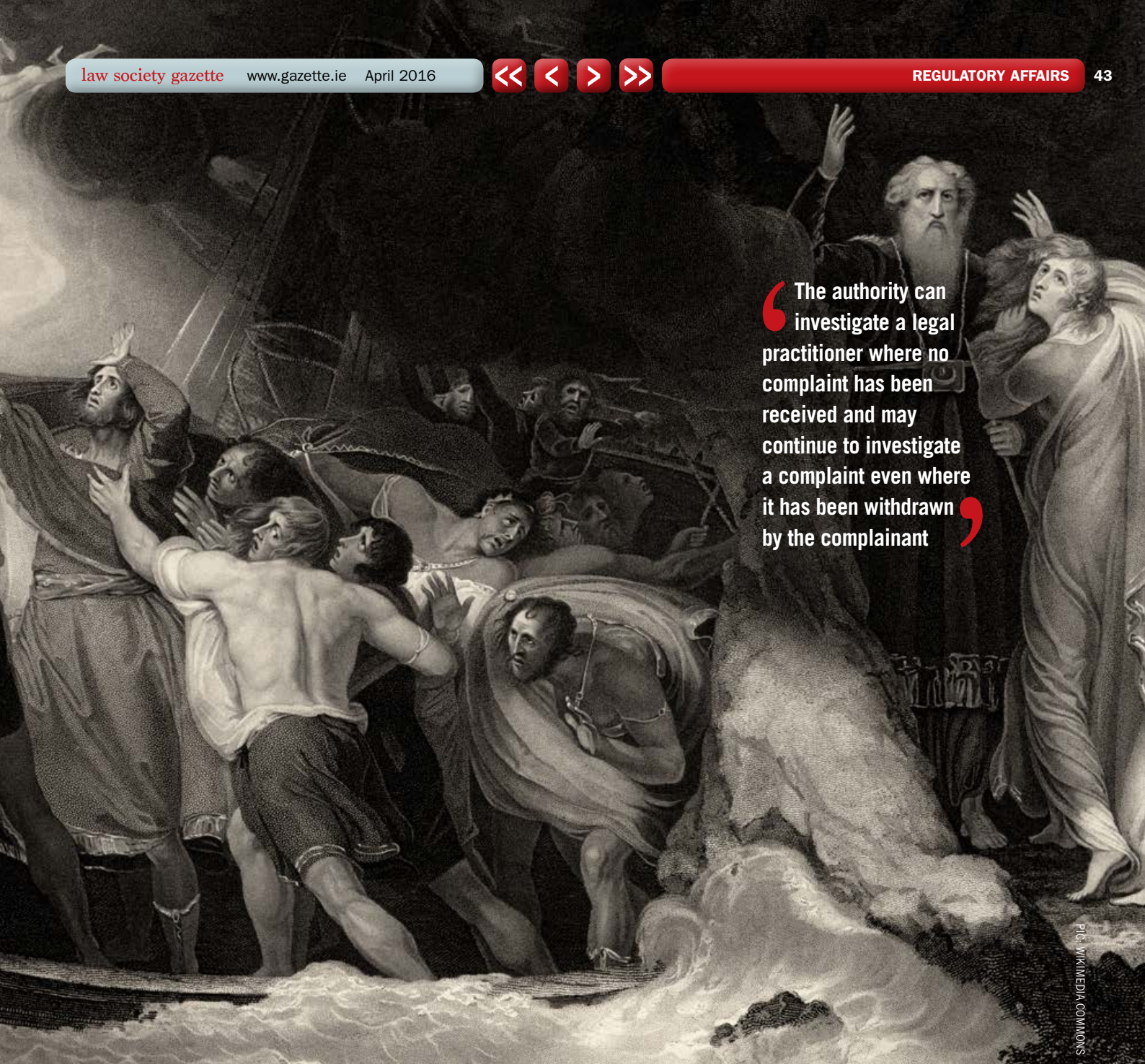
New complaints system

The new complaints and disciplinary system is very similar to the existing system. The most significant differences are the new institutions, with complaints about solicitors being made to the Legal Services Regulatory Authority rather than the Law Society, and with

at a glance

- The new complaints and disciplinary system is very similar to the existing system: the three-tier structure of a complaints committee, a disciplinary tribunal, and the High Court
- Complaints may be made only to the Legal Services Regulatory Authority, and the Law Society must refer any complaints it receives to the authority
- Complaints that have already been dealt with by the Law Society cannot be reopened
- The new system appears to envisage a higher threshold of seriousness having to be reached before a matter is referred for disciplinary proceedings





‘The authority can investigate a legal practitioner where no complaint has been received and may continue to investigate a complaint even where it has been withdrawn by the complainant’

‘This thing of darkness I acknowledge mine’

disciplinary cases being heard by the Legal Practitioners Disciplinary Tribunal rather than the Solicitors Disciplinary Tribunal. The existing three-tier structure of a complaints committee, a disciplinary tribunal, with the High Court at the apex of the system, in essence, remains the same. An administrative filtering and resolution process is also provided for.

A client may make a complaint to the authority about legal services of inadequate standard or excessive costs. There is a three-year time limit for making such complaints, which compares with the existing five-year limit. Any person may make a complaint to the authority about misconduct. There is no

time limit for conduct complaints.

Complaints may be made only to the authority, and the Law Society must refer any complaints it receives to the authority. Where the Law Society, in the exercise of its statutory functions, forms the opinion that an act or omission of a solicitor constitutes misconduct, it must notify the authority, unless the matter constitutes a breach of the *Solicitors Accounts Regulations* or should be investigated in connection with such a breach. The authority may request the Law Society to investigate a complaint. The authority must notify the Law Society of complaints about solicitors and send relevant documentation to the Law Society.

The authority can investigate a legal practitioner where no complaint has been received and may continue to investigate a complaint even where it has been withdrawn by the complainant.

Complaints procedures are to be as informal as is consistent with the principles of fair procedures and so that undue expense is not incurred.

Preliminary review

The authority must conduct a preliminary review of a complaint to determine whether or not it is admissible. It must first notify the legal practitioner of the complaint and request his or her observations. The act allows the



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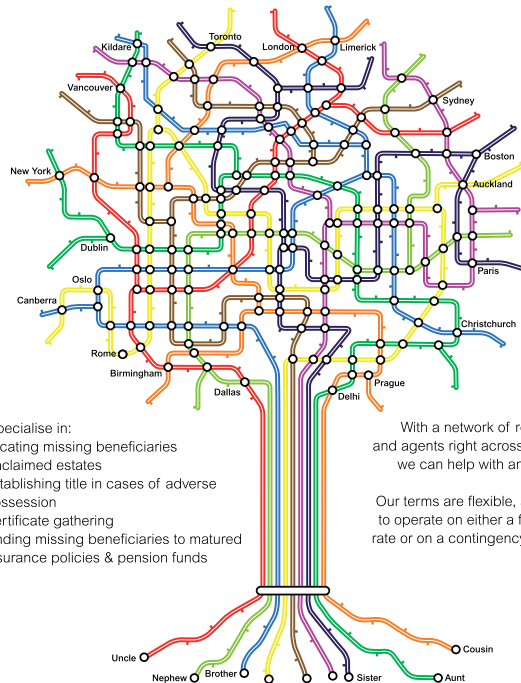
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rejection of complaints that are frivolous or vexatious, without substance or foundation, out of time, or relate to a matter already decided under the act, the *Solicitors Acts*, or in civil or criminal proceedings. One effect of this is that complaints that have already been dealt with by the Law Society cannot be reopened.

The authority is required to facilitate informal resolution of complaints relating to inadequate service or excessive costs, where the client and the legal practitioner agree. Where the parties do not accept the authority's invitation of informal resolution or the attempt to resolve is unsuccessful, a written procedure is commenced. In appropriate cases, the authority may issue directions. The range of directions available at this stage is similar to those available to the Law Society's Complaints and Client Relations Committee.

Both the client and the legal practitioner may seek a review by a Review Committee of the authority's decision. There is a right of appeal against the Review Committee's decision to the High Court.

Statements made in the course of attempting to resolve a complaint by the complainant or the legal practitioner may not be used in disciplinary proceedings. Costs arising from the attempt to resolve a complaint are to be borne equally by the parties, unless the parties agree otherwise.

Complaints Committee

The authority will establish a Complaints Committee. This committee will have a lay majority, and a minimum of eight of its up to 27 members will be nominated by the Law Society. The committee will operate in divisions – referred to as a 'Divisional Committee' – with a lay majority and a lay chair. A Divisional Committee is to investigate complaints referred to the Complaints Committee by the authority.

The Divisional Committee will operate by written procedure. It may require the complainant to provide information and verify information by affidavit. The Divisional Committee may require the complainant and the legal practitioner to appear before the committee.

Where the Divisional Committee considers that a complaint is not one to be referred to the Legal Practitioners Disciplinary Tribunal, but that it warrants the imposition of a sanction, the committee may itself impose a

sanction. At this stage, the range of sanctions available to the Divisional Committee is much wider than are currently available to the Law Society's Complaints and Client Relations Committee. Effectively, this signals a significant shift in the dividing point between what is dealt with by a complaints committee and what is dealt with by a disciplinary tribunal.

The new system appears to envisage a higher threshold of seriousness having to be reached before a matter is referred for disciplinary proceedings. The range of sanctions available to the Divisional Committee includes powers to make directions in relation to completing services, participating in professional competence schemes, waiving and refunding fees, complying with undertakings, withdrawing or amending advertisements, imposing monetary sanctions and, on consent, imposing conditions on the practising certificate.

In issuing directions with financial implications, the Divisional Committee is under statutory obligation to have regard to the means of the legal practitioner.

The legal practitioner (but not the complainant) has a right of appeal to the High Court. In addition, interestingly, the authority may appeal a decision of its own Divisional Committee to the High Court.

Where the Divisional Committee considers that the act or omission is of a kind that is more appropriate for consideration by the Legal Practitioners Disciplinary Tribunal, it may make an application for the holding of an inquiry.

The authority is to publish six-monthly reports on the performance of its functions under part 6. Where the Complaints Committee has decided that the complaint merits the imposition of a sanction, and where the authority considers it appropriate, the name of the legal practitioner may be included in the report.

Disciplinary tribunal

The Legal Practitioners Disciplinary Tribunal will have a lay majority, and a minimum of six of its up to 33 members will be nominated by the Law Society. The chairperson of the tribunal is appointed by the President of the High Court and may be either a lay person or a legal practitioner. The tribunal will act in divisions, chaired by a layperson. Applications to the tribunal may be made by

the Complaints Committee or by the Law Society. This means that the current right of members of the public to make direct disciplinary applications will cease.

The tribunal has a statutory objective that its regulations be as informal as is consistent with the principles of fair procedures and that undue expense is not likely to be incurred by any party who has an interest in the application. The tribunal may deal with cases on the basis of affidavits where the parties consent. It may require submission of a written outline of the evidence expected to be given by witnesses, and there are provisions to discourage irrelevant evidence. Inquiries will generally be in public. There is provision for the tribunal to obtain expert advice or assistance.

The tribunal has available to it a wider range of sanctions compared with the Solicitors Disciplinary Tribunal. The range of sanctions includes powers relating to professional competence schemes, waiving or refunding costs, completing services, transferring documents, imposing conditions on a practising certificate, as well as a range of monetary sanctions. In relation to financial sanctions, the aggregate amount of money that the legal practitioner can be ordered to pay may not exceed €15,000, and the tribunal is to have regard to the means of the legal practitioner.

There are provisions for appeal to the High Court and further appeal to the Court of Appeal.

Where the tribunal decides that the issue of sanction should be dealt with by the High Court, the tribunal is to make a recommendation to the High Court on sanction. The sanction powers of the High Court will be broadly similar to the High Court's existing powers of sanction and will include strike-off and suspension.

The act provides for determinations of the tribunal and orders of the High Court to be furnished to the Registrar of Solicitors and to be published.

Transitional arrangements

Complaints about inadequate services and excessive fees made before the commencement of the new system will continue to be dealt with under the existing system to conclusion. However, if the act or omission giving rise to the complaint occurred before the commencement of the new system, but the complaint is made after commencement, it will be the authority that deals with the complaint, but under the existing definition of misconduct (rather than the new expanded definition).

The current right of members of the public to make direct disciplinary applications will cease

Legal GUARDIAN



Lorcan Roche is a freelance journalist and award-winning author

Arklow-based Deirdre Burke is co-founder of the Guardian Project, which assists children going through separation or bereavement, and is the Law Society's nominee to the Seanad's Cultural and Educational Panel. **Lorcan Roche** meets a solicitor who is determined to humanise the family law experience

Some people have a heightened sense of the other. Such elevated consciousness was part of the reason that, having been called to the bar in 1994, young Deirdre Burke felt, in her gut, she'd taken a "wrong step".

Having worked for a spell with "wonderful" solicitor Frank Murphy in the Legal Aid Board in Wicklow, Burke began to feel – even more keenly than she had during training – that she needed greater engagement with clients. Operating at a remove just didn't suit. She'd begun to question her choices, indeed the entire ethos underpinning her BCL training at UCD. Where was the emphasis on problem-solving for the greater common good? Where was the social conscience? Was the training fundamentally about maintaining the *status quo*?

Burke was then – and remains – a woman unafraid to ask questions, one who needs to be at the heart of matters. She went back to the Law Society and retrained as a solicitor. She went into private practice, gravitating immediately towards family and child law. She had her third child, a boy, in 2002. In 2004, she opened her own practice (DM Burke) in Arklow, where she still works.

Heartbreaking

Burke chalked up a lot of experience – separations, divorces and annulments. She did a lot of work in the District Courts with unmarried couples and in the Circuit with those who had more financial clout. Much of what she saw broke her heart. Especially the hurt in children. She wondered, often and aloud, about the deficits in the family law and child-service systems.


But it wasn't until her boy was diagnosed (aged two) as being "profoundly deaf" that Burke decided to marshal her experience and expertise and step outside the confines of the role of solicitor. In particular, it was the dismissive manner in which the diagnosis was delivered that activated Burke's consciousness.

"I suppose my son's diagnosis reinforced a sense inside me of human-based needs. For information. For support. The way we were told about his diagnosis was horrendous. I remember the words: 'Well, yes, it does appear he is deaf. Here is the date for your next appointment.' We were literally shoved out of the room. No support, no information, nothing. That whole experience influences the way I work and influences my desire to support people and to give them as much information as possible ... so that they are not venturing into the unknown at a really peak, terrible time of their lives."

She explains further: "I had just turned 40 ... it was an idea that had sat with me for a good few years, primarily because of the type of work I did and what I learned doing it. You see, in supporting clients and bringing them through, you

at a glance

- Life as a barrister – and a solicitor
- The foil that spurred her social consciousness
- Human-based needs for information and support
- Setting up the Guardian Project
- The horrendous set-up of family law courts
- Resourcing the system to reduce conflict



“ I was always looking for services that would support the family and, in particular, the children while my clients were going through the legal system. Those services were never there. There was a gap ”



Happy days – supporters of the Guardian Project visit a local school on the Camino fundraising walk

are never doing a proper job unless you deal with the family unit – most especially if you are supporting children. I was always looking for services that would support the family and, in particular, the children while my clients were going through the legal system. Those services were never there. There was a gap.”

In truth, it was more of a gaping hole. In any event, the Guardian Project was born (see panel, p49).

Burke is open, honest, and unafraid to speak her mind, whether discussing ex-*Irish Times* columnist John Waters’ views on fatherhood and separation (“I would not be a fan of his opinions because, obviously, in my work, I see the other side of things, and I do not agree with the theory that men do not get a fair deal in court”) or when describing the grim reality of our family law courts: “Dolphin House is a horrendous set-up. You can feel the tension in the air when you walk in. It is a toxic place”.

She warms to the theme: “The buildings and the set-up inside them foster adversarial attitudes. The very environments and structures need to be changed. Look at Dolphin House – there are no adequate consultation rooms for people to have privacy. You have people thronging the foyer, trying to get up and down stairs ... the mediation service is not adequately presented as an option.

“Look at Arklow District Court. There is a courtroom – and that is it. You don’t even have an indoor foyer in which to wait. Last week, I was outside, under my umbrella, holding a pad

in one hand and a pen in the other, trying to take instructions and negotiate an agreement while everyone was looking on.” She rolls her eyes, and laughs.

You get the feeling Burke doesn’t take herself too seriously, too often. But she has a vision, wrought from years of working at the coalface. This she takes very seriously.

One-stop shop

“What I would love to see in our family-court structure is a one-stop shop, where people can get support, individual counselling, family systems counselling, mediation, collaborative law, child experts who can support the children, who can deal with access and parenting arrangements, and financial people to advise. Within that one-stop-shop, the court and the judges would be the very last option, so that you actually carry the family through a process and see them out the other end, rather than have them at loggerheads from the very beginning. Because as I have said, the very nature of our system is adversarial.”

How would such a system be funded?

We have a serious problem at the moment in that the current, outmoded structure is already under-resourced. As a consequence, the voice of the child is absent.”

Doesn’t the new act take care of that?

“There are wonderful provisions in it for hearing the voice of the child, but there is no funding. So, in effect, it is mere tokenism.

Because without the resources, nothing changes. Technically, yes, we are complying with all of our UN obligations, but we have yet to resource the will to change. What I would like to see is a structure that would turn on its head and take a different approach and adapt an entirely non-adversarial approach. If you resource a system that reduces conflict, then ultimately you will make a saving in the long run.

“You save by reducing the impact of breakdown on the children. You save by reducing the impact on the adults. And the beauty of keeping people outside of courts and away from judges is that they can come up with flexible situations that work for their particular family. Because every family is different. And every child is different. You go into a courtroom and judges have very strict parameters. That is where flexibility is lost, and then, more often than not, on appeal, the whole expensive, time-consuming process starts over.”

Consequences of choices

Both the Australian and Canadian models, she says, are designed to reduce the conflict. Both offer the “softer support mechanisms” within the broader public service. A huge influence on the Australian courts was the Aboriginal family structure and wider culture, which places a premium on the extended family, in particular the entitlements of grandparents.

FOCAL POINT

the guardian project

The Guardian Project – co-founded with Michelle Gaffney and Johanne Kenny – opened its doors in Arklow in October 2010. The project allies itself with, among other initiatives, the **Rainbows** peer support programme, which assists children going through separation or bereavement.

Burke trained as a Rainbows counsellor: “It is, most commonly, feelings of shame and isolation that children of separating families experience. They often believe strongly that they are the only one going through it, and therein lies the beauty of this kind of support network. It allows the children to share the experience, feel less alone, and it equips them to deal with things so much better. To be in the room with children having those ‘light-bulb’

moments – of realising they are not alone – is a privilege.”

The project offers counselling services for children and young adults aged from five to 21, including play therapy. It also offers family law mediation, parenting courses, supervised (if requested) access, and contact facilities.

Almost entirely volunteer-based (there are two administrators on 19-hour-per-week CE schemes), it currently has more than 30 “very active” volunteers. It has an operating budget of approximately €25,000 and receives an annual grant of approximately €2,000 from Tusla. Local fundraising initiatives make up the shortfall.


For more information, see www.facebook.com/guardianproject.

Burke is a pragmatist. As she says, you can’t afford not to be in family law. But she is not afraid to dream: “In an ideal world, I would love to be able to catch people just prior to the point of separation. And to educate and inform them as to the consequences of the choices they may make as they move forward – and of the benefits of choosing the non-confrontational way.”

Burke prizes individuality. She believes people – rich and poor – should be offered choices and that, in order to make those choices, they must be armed with all the necessary information. She instils this philosophy, this belief-system about decision-making processes, into her own children, one of whom is being home-schooled after falling foul of a nun who didn’t believe 17-year-olds had the right to dye their hair. Or to speak up about it at assembly, especially in front of a visiting school inspector.

Like mother, like daughter – the Burke women challenge the received wisdom. Burke is liberal, but not in an affected, trendy way. This is, after all, Arklow – not Greystones! Nor is it the *faux* ‘D4’ liberalism of one born with a silver spoon in her gob. Burke, whose father worked at sea for Irish Lights, is the youngest of six and the only one in her family to attend college.

She has secured the Law Society’s nomination to the Seanad’s **Cultural and Education Panel**. If elected, she says she will work hard, legislatively and practically, to make the voice of the child heard.

Oh, and her son had a cochlear implant, aged four. He is 13 now  and doing very well.



Deirdre Burke, Mary McAleese (then President of Ireland) and Martin McAleese at the opening



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Damages

Tadhg Dorgan and Peter McKenna. Round Hall (2015), www.roundhall.ie. ISBN: 978-0-4140-508-53. Price: €265 (incl VAT).

For many parties to litigation, there are only two sides to two important questions: will I win/lose, and how much will I get/have to pay? Given this, it is surprising that academic and practising lawyers have not spent more time thinking about the principles behind awards.

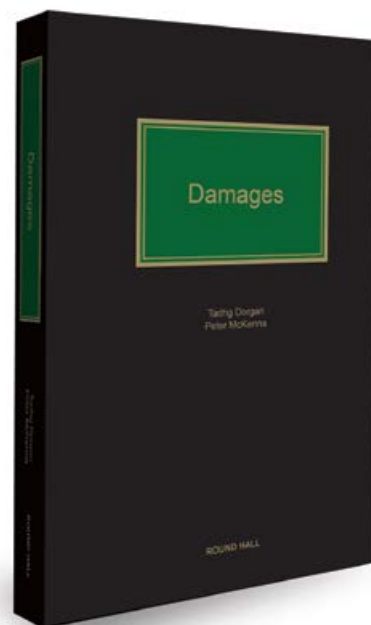
However, I recognised something of myself in the remarks of Judge Marie Baker in the foreword “that many lawyers, and law students, are far less proficient in their understanding of the principles of the law of damages than they are, perhaps, of the principles in the law of torts or contract and land law, as the case may be”. This book admirably seeks to redress the balance.

It is comprehensive. Space is given over to damages for personal injuries and the somewhat mixed judicial reaction to the requirement that the court must have regard to the Book of Quantum. There is a detailed examination of the principles underlying contributory negligence, mitigation, causation, remoteness, and other factors limiting a defendant's exposure. Damages in employment law for professional negligence and under statutory schemes are considered.

Defamation is given its own chapter. In the interests of full disclosure, I am the in-house solicitor for a news media company.

Dorgan and McKenna detail the shifting tariff for general damages in tort claims – from IR£150,000 in 1984 (equivalent to €212,570) to about €500,000 today. In 2012, Judge MacMenamin noted that €450,000 was a guide to a maximum award for general damages for a plaintiff “whose life has been effectively ruined”.

The book states the law as of 1 January 2015, so the Supreme Court's decision in *Leech v Independent Newspapers* came a little late for the authors. A jury had awarded Mrs Leech €1.872 million over false allegations that she had received government contracts because she had an affair with a minister. While the award



was overturned as excessive, the appellate judges substituted €1.25 million. The court described the defamation as “towards the higher end of the scale”, but not such that “it could be classed as one of the most serious libels to come before the courts”.

An award of well over a million euro sits ill, in my opinion, with the maximum tariff in cases of severe personal injury and with another Supreme Court decision, *MN v SM* [(2005) 4 IR 461], which was not only cited in *Leech* but is referenced in Dorgan and McKenna's text. There, the plaintiff had been subjected to sexual abuse over a period of five years, which culminated in rape. As there had been an early guilty plea and an apology to the plaintiff, the Supreme Court reduced a jury award of €600,000 to €350,000.

While no one could doubt the distress suffered by Mrs Leech and while there have been inflationary pressures since 2005, it is hard to justify defamation damages of more than three-and-a-half times those given to a woman who was raped and subjected to sexual abuse over a long period.

This is perhaps an issue for the second edition of this book. It is certainly one that I look forward to reading.

Michael Kealey is in-house counsel with Associated Newspapers.

LEGAL EZINE FOR MEMBERS

The Law Society's *Legal eZine* for solicitors is now produced monthly and comprises practice-related topics such as legislation changes, practice management and committee updates.

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Injunctions Law and Practice

Brendan Kirwan. Round Hall (2nd edition, 2015), www.roundhall.ie. ISBN: 978-0-4140-506-31. Price: €265 (incl VAT).

This engaging, easily navigated textbook adopts a discerning approach to extracts and quotes, making it an accessible and interesting read. It provides a historical background of equity and is a welcome reminder of the equitable maxims and overarching principles.

Detailed discussion of the common principles underlying the case law surrounding interim, interlocutory, and perpetual injunctions includes consideration of the *Okunade* refinement of the *Campus Oil* principles, the threshold for mandatory and prohibitory injunctions, costs applications at interlocutory application stage, and discussion of when an undertaking of damages might not be required from a State litigant.

This text encapsulates current judicial thinking and recent developments, such as the Court of Appeal, super, hyper and springboard injunctions, the continuing impact of the Commercial Court, and the *European Account Preservation Order*.

Chapter 10 addresses the specific application of the common principles to 17 discrete areas of law. It brings together the particular and the general, dispensing with the need to seek out a specialist book on topics such as publication, family, and planning and development law. At the time of publication, Mr Kirwan was engaged in research in the area of employment law – a fertile ground for injunctive relief – and this book dedicates a full chapter to it, examining doctrines of mutuality of trust and



foreseeability, and how both militate against orders for specific performance. We will have to await a third edition for any consideration of the *Workplace Relations Act 2015*.

Practitioners applying for an injunction will appreciate the author's calm, clear guidance through the application process, with pertinent procedural advice regarding specific documentation, how to get an urgent application before the court, and how a costs exposure can potentially arise for the applicant. We are reminded of the premium on full disclosure at interim stage, and in-house counsel are cautioned to recognise their fundamental duty to the court. In tension with this duty is the concern not to overburden the judge at the interlocutory stage.

This text is considerably practical and also contains a wealth of recent jurisprudence from the Irish courts. I highly recommended it.



Leonora Mullett is senior executive solicitor with Dublin City Council.



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CONVEYANCING COMMITTEE

Online records in conveyancing transactions

In cases where records required for conveyancing transactions are maintained only online, it is the online record that is conclusive and can be accepted by a purchaser's solicitor. A purchaser's solicitor may

accept a photocopy, coloured copy, printout, or review the online record. Examples are BER certificates and LPT online records.

In conveyancing transactions, where a local authority emails documentation to a solicitor

acting in the transaction – such as NPPR certificates of exemption, certificates of exemption or waivers in relation to the household charge, and so on – the emailed soft copy of both the email and the attachment is sufficient for

conveyancing purposes and can be printed off and placed with the title deeds.

There is no need for either a purchaser's or vendor's solicitor to certify a copy as being a copy of an original of any of the above documents.

PRACTICE DIRECTION
CRIMINAL LAW COMMITTEE

Practice direction on High Court bail

The Criminal Law Committee would like to draw the attention of members to a [practice direction](#) in relation to High Court bail issued on 28 January 2016 by the President of the High Court. The practice direction makes a number of changes in relation to the days of the week upon which High Court bail applications are heard and also reminds practitioners of the procedures for bail applications under [SI 470/2015 \(Rules of the Superior Courts \(Bail Hearings\) 2015\)](#).

Since Monday 15 February 2016, High Court bail applications are no longer heard on a Monday. Instead, bail applications from prisoners who are detained in prisons in the greater Dublin area are heard on Tuesdays, with the list commencing at 11am. There is a first and second calling of cases on the list, but no more than that. Applications for bail from prisoners who are detained in prisons other than in the greater Dublin area are heard at 11am on Thursdays. Similarly, there is a

first and second calling of cases in the list, but no more than that. If necessary, cases not reached on Tuesdays will be heard on Wednesdays.

The practice direction also provides that it will not be permissible to adjourn bail applications from prisoners detained in Dublin prisons to other than a day dedicated to such applications, and the same will apply in respect of adjournments for non-Dublin cases.

Practitioners should also be

aware that the practice direction emphasises the implementation of SI 470/2015. Under SI 470/2015, the affidavit grounding an application for bail must be sworn by the applicant and must follow the particular format set out in the statutory instrument. From 8 February 2016 onwards, the Central Office of the High Court will not issue or provide a return date for a notice of motion seeking bail unless the affidavit of the applicant grounding it complies with the these rules.

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Solicitors' Benevolent Association

SBA report and accounts

152nd report, 1 December 2014 to 30 November 2015

This is the 152nd report of the Solicitors' Benevolent Association, which was established in 1863. It is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the solicitors' profession in Ireland and their spouses, widows, widowers, family, and immediate dependants who are in need, and it is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was €611,119, which was collected from members' subscriptions, donations, legacies, and investment income. There are currently 78 beneficiaries in receipt of regular grants, and approximately half of these are themselves supporting spouses and children.

There are 18 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices at Blackhall Place. They meet at the Law Society of Northern Ireland in Belfast every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving of new applications. The directors also make themselves available to those who may need personal or professional advice.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to Kevin O'Higgins (past-president of the Law Society of Ireland), Arleen Elliott (past-president of the Law Society of Northern Ireland), Ken Murphy (director general), Alan Hunter (chief executive) and the personnel of both societies.

I wish to express particular appreciation to all those who contributed to the association when applying for their practising certificates, to those who made individual contributions, and to

RECEIPTS AND PAYMENTS A/C FOR THE YEAR ENDED 30 NOV 2015


	2015	2014
	€	€
RECEIPTS		
Subscriptions	400,394	375,477
Donations	183,692	157,341
Legacies	–	10,000
Investment income	64,907	47,004
Bank interest	958	2,872
Currency gain	1,733	2,127
Repayment of grants	–	52,550
	651,684	647,371
PAYMENTS		
Grants	611,119	500,436
Bank interest and fees	3,072	1,338
Administration expenses	48,536	46,232
	662,727	548,006
OPERATING (DEFICIT)/ SURPLUS FOR THE YEAR	(11,043)	99,365
Profit on disposal of investments	104,859	183
Provision for (decrease)/increase in the value of quoted investments	(4,514)	69,479
SURPLUS FOR THE YEAR	89,302	169,027

the following: Law Society of Ireland, Law Society of Northern Ireland, Ashfield Media Group Ltd, Belfast Solicitors' Association, Dublin Solicitors' Bar Association, Employment Lawyers Group (NI), Limavady Solicitors' Association, Mayo Solicitors' Bar Association, Medico-Legal Society of Ireland, Midland Solicitors Bar Association, Monaghan Bar Association, Roscommon Bar Association, Sheriffs' Association, Southern Law Association, Tipperary Bar Association, Waterford Law Society, and West Cork Bar Association.

I would also appeal to those solicitors who are applying for membership only of the Law Society to pay the subscription to the association, which is only €50 per year.

The demands on our association are rising due to the present economic difficulties and, to cover the greater demands on the associa-

tion, additional fundraising events are necessary. Additional subscriptions are more than welcome, as of course are legacies and the proceeds of any fundraising events. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained, at 73 Park Avenue, Dublin 4. Information can also be obtained from the association's website at www.solicitorsbenevolentassociation.com. I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest at page 34 of the *Law Directory 2015*.

I would like to thank all the directors and the association's secretary, Geraldine Pearse, for their valued hard work, dedication, and assistance during the year. 

Thomas A Menton, chairman

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Law Society of Northern Ireland, Law Society House, 96 Victoria Street, Belfast BT1 3GN

Charity number: CHY892

legislation update

12 January – 11 March 2016

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' areas) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. All recent bills and acts (full text in PDF) are on www.oireachtas.ie, and recent statutory instruments are available at www.irishstatutebook.ie

ACTS

An incorrect summary note for the Assisted Decision-Making (Capacity) Act 2015 was published in the January/February 2016 Gazette. The correct version is below.

Assisted Decision-Making (Capacity) Act 2015

Number: 64/2015

Provides for the reform of the law relating to persons who require or may require assistance in exercising their decision-making capacity, whether immediately or in the future, having regard, among other things, to the protections afforded by the *Convention for the Protection of Human Rights and Fundamental Freedoms*, done at Rome on 4 November 1950, as it applies in the State; provides for the appointment by such persons of other persons to assist them in decision making or to make decisions jointly with such persons; provides for the making of applications to the Circuit Court or High Court in respect of such persons, including seeking the appointment by the Circuit Court of decision-making representatives for such persons; provides for the making of advance healthcare directives by persons of their will and preferences concerning medical treatment decisions should such a person subsequently lack capacity; provides for the appointment, in advance healthcare directives, of designated healthcare representatives with the power to, among other things, ensure that the advance healthcare directives concerned are complied with; provides for the appointment and functions of the director of the Decision Support Service in respect of persons who require

or may shortly require assistance in exercising their decision-making capacity; provides for the amendment of the law relating to enduring powers of attorney; provides for the ratification by the State of the *Convention on the International Protection of Adults*; and provides for related matters.

Commencement: Subject to subsection 3, this act shall come into operation on such day or days as the minister, after consultation with the Minister for Health, may appoint by order; part 8 and the other provisions of this act, insofar as they relate to an advance healthcare directive or designated healthcare representative or both, shall come into operation on such day or days as the Minister for Health, after consultation with the minister, may appoint by order

Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

Number: 4/2016

Makes provision for the limitation of the effect of certain criminal convictions in certain circumstances and after certain periods of time; amends the *National Vetting Bureau (Children and Vulnerable Persons) Act 2012* and the *Garda Síochána Act 2005* and provides for related matters.

Commencement: This act shall come into operation on such day or days as the minister may appoint by order

Public Transport Act 2016

Number: 3/2016

Amends and extends the *Dublin Transport Authority Act 2008*, the *Taxi Regulation Act 2013*, the *Railway Safety Act 2005*, and section 66

of the *Transport (Railway Infrastructure) Act 2001*; amends sections 27 and 27A of the *State Airports Act 2004* and section 106 of the *Road Traffic Act 1961*; gives the force of law to the protocol of 3 June 1999 for the modification of the *Convention Concerning International Carriage by Rail* of 9 May 1980 and changes the name of the Railway Safety Commission.

Commencement: 8/2/2016

Horse Racing Ireland Act 2016

Number: 2/2016

Amends and extends the *Irish Horseracing Industry Act 1994*, the *Greyhound Industry Act 1958*, section 10 of the *Animal Remedies Act 1993*, the *Veterinary Practice Act 2005*, section 2 of the *Forestry Act 2014* and the *Horse and Greyhound Racing Act 2001*; repeals the *Horse Racing Ireland (Membership) Act 2001* and section 2 of the *Horse and Greyhound Racing (Betting Charges and Levies) Act 1999* and provides for related matters.

Commencement: This act comes into operation on such day or days as the minister may appoint by order

Credit Guarantee (Amendment) Act 2016

Number: 1/2016

Amends and extends the *Credit Guarantee Act 2012* to enable the Minister for Jobs, Enterprise and Innovation, pursuant to a counter-guarantee scheme made by that minister, to give counter-guarantees to promotional financial institutions for guarantees given by the institutions to finance providers in respect of finance agreements entered into by the finance providers with qualifying enterprises; places a yearly monetary limit on the potential liability of that minister in respect of all credit guarantee schemes and counter-guarantee schemes taken together; amends the *Employment Equality Act 1998*, the *National Minimum Wage Act 2000*, the *Workplace Relations Act 2015* and the *Companies Act 2014*

and provides for related matters. **Commencement:** This act (other than part 4) shall come into operation on such day or days as the minister may appoint by order

SELECTED STATUTORY INSTRUMENTS

District Court (Form 34.47)

Rules 2016

Number: SI 82/2016

Amend the *District Court Rules* by the substitution of Form 34.47 in Schedule B annexed to the *District Court Rules 1997*.

Commencement: 25/2/2016

Rules of the Superior Courts (Order 15) 2016

Number: SI 83/2016

Amend order 15, rule 16 of the *Rules of the Superior Courts* to simplify the requirements, on an infant attaining full age, for amendment of the title to the proceedings so that the former infant plaintiff can proceed or defend in his or her own name.

Commencement: 25/2/2016

Circuit Court Rules (Gender Recognition Act) 2016

Number: SI 84/2016


Amend order 59 of the *Circuit Court Rules* by the insertion of a new rule 8 and Forms 37P, 37Q, 37R, 37S, 37T, 37U, and 37V to the schedule of forms annexed to those rules to regulate the procedure in applications for an exemption order under section 12 of the *Gender Recognition Act 2015* in respect of a child between 16 and 18 years of age.

Commencement: 25/2/2016

Circuit Court Rules (Local Elections (Petitions and Disqualifications) Act 1974) 2016

Number: SI 85/2016

Amend order 58 of the *Circuit Court Rules* and the schedule of forms annexed to those rules by the substitution of Form 38A and the deletion of Form 38B.

Commencement: 25/2/2016 

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of Michael O'Brien, a solicitor of Michael A O'Brien & Co, Castle Street, Carrick-On-Suir, Co Tipperary, and in the matter of the *Solicitors Acts 1954-2011* [4405/DT12/12] *Named client (applicant)* Michael O'Brien (*respondent solicitor*)

On 29 September 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in respect of the following complaint as set out in the affidavit of the applicant: the respondent solicitor continued to mislead anyone who enquired about this matter on the applicant's behalf.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay to the applicant his costs, measured at €10,000 plus VAT.

In the matter of Michael O'Brien, a solicitor of Michael A O'Brien & Co, Castle Street, Carrick-On-Suir, Co Tipperary, and in the matter of the *Solicitors Acts 1954-2011* [4405/DT165/12]

Named client (applicant) Michael O'Brien (*respondent solicitor*)

On 29 September 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in respect of the following complaints as set out in the affidavit of the applicant:

- 1) The respondent solicitor was unprofessional and negligent in giving a written undertaking to AIB to complete the legal formalities in relation to a contract for sale of property when he failed to get written assurances from the transferor that she would transfer the land and provide full cooperation,

- 2) The respondent solicitor breached his undertaking to AIB to complete the legal formalities of the transfer of land.

The tribunal ordered that the respondent solicitor:

- 1) Do stand admonished and advised,
- 2) Pay the applicant's costs in the sum of €6,000 plus VAT.

In the matter of Aine Feeney McTigue, a solicitor previously practising as Feeney Solicitors, First Floor, Lismoyle House, Merchants Road, Galway and in the matter of the *Solicitors Acts 1954-2011* [10123/DT23/13 and High Court record 2015 no 173 SA]

Law Society of Ireland (applicant) Aine Feeney McTigue (*respondent solicitor*)

On 8 October 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that she:

- 1) Allowed debit balances totalling €3,092 to occur on nine client ledger accounts at her accounting date of 31 September 2011,
- 2) Allowed a minimum deficit of €48,678.18 on the client account as of 30 September 2011, subsequently adjusted to €33,297.78, in breach of the *Solicitors Accounts Regulations*,
- 3) Permitted unauthorised transfers between unrelated accounts to temporarily clear debit balances,
- 4) Took costs from deposits received in a number of conveyancing transactions,
- 5) Failed to pay stamp duty that had been discharged and paid by the client and instead used same to pay costs,
- 6) Failed to ensure that a client

NOTICE

advertising regulations

In the matter of the *Solicitors (Amendment) Act 2002* and in the matter of the *Solicitors (Advertising) Regulations 2002* (SI 518/2002)

Complainant: Registrar of Solicitors John McNamara, solicitor

On 2 December 2015, the Advertising Regulations Division of the Regulation of Practice Committee found that John McNamara, solicitor, of John McNamara & Associates, O'Curry Street, Limerick, was in breach of four regulations under the *Solicitors (Advertising) Regulations 2002* (SI 518/2002) and upheld the complaint of the registrar, in that the solicitor was in breach of section 4(2) of the *Solicitors (Amendment) Act 2002* by publishing an advertisement that was:

- 1) Likely to bring the profession into disrepute (regulation 4(a)(i)),
- 2) Considered to be in bad taste

- (regulation 4(a)(ii),
- 3) Reflected unfavourably on other solicitors (regulation 4(a)(iii)),
- 4) Was false and misleading (regulation 4(a)(v)).

The committee was of the opinion that the complaint, while justified, was not of sufficient seriousness to warrant an application be made to the Solicitors Disciplinary Tribunal under section 7(1) of the *Solicitors (Amendment) Act 1994*. It issued to the solicitor a reprimand in writing and directed that the said reprimand remain on the record of the solicitor for a period of three years from 2 December 2015.

This notice is published at the direction of the committee, pursuant to the provisions of regulation 15(i) of the Solicitors (Advertising) Regulations 2002, which permits the publication of such reprimands.

bank account was correctly designated,

- 7) Failed to ensure that adequate narrative was written on cheques paid to banks or financial institutions.

The tribunal referred the matter forward to the High Court and, on 7 December 2015, the High Court ordered that:

- 1) The name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) The Society recover the costs of the proceedings in the High Court and the tribunal, to be taxed by in default of agreement.

In the matter of Patrick O'Connell, a solicitor previously practising as Patrick O'Connell, Solicitor, 66 Main Street, Castleisland, Co Kerry, and in the matter of the *Solicitors Acts 1954-2011* [3557/DT178/13; 3557/DT76/14; 3557/DT77/14;

3557/DT95/14; and High Court record 2015 no 219 SA]

Law Society of Ireland (applicant) Patrick O'Connell (*respondent solicitor*)

On 21 October 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in four separate referrals from the Society to the disciplinary tribunal, as follows.

3557/DT178/13

Failed to ensure there was furnished to the Society an accountant's report for the year ended 31 December 2012 within six months of that date, in breach of regulation 21(1), of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001).

3557/DT76/14

- 1) Failed to comply with an undertaking dated 28 February 2006, furnished to Bank of Ireland in respect of a named client and property at Newcastlewest,

regulation

- Co Limerick, in a timely manner or at all,
- 2) Failed to comply with an undertaking dated 10 February 2004, furnished to the complainant in respect of his named client and property at Limerick City in a timely manner,
 - 3) Failed to comply with an undertaking dated 11 April 2006, furnished to the complainant in respect of the complainant's bank and in respect of his client and named borrower and property at Castleisland, Co Kerry, in a timely manner,
 - 4) Failed to respond to the Society's letters dated 8 October 2012 and 18 January 2013 in a timely manner, within the time provided in those letters, or at all,
 - 5) Failed to comply with a direction made by the Complaints and Client Relations Committee at its meeting of 30 April 2013 that he pay a contribution of €500 towards the costs of the Society due to his failure to correspond with the Society.
- 3557/DT77/14**
- 1) Failed to comply with an undertaking dated 20 July 2000, furnished to EBS Building Society in respect of his clients and the named borrower and property at Killarney, Co Kerry, in a timely manner or at all,
 - 2) Failed to comply with an undertaking dated 5 January 2006, furnished to EBS Building Society in respect of his named client and the borrower and property at Castleisland, Co Kerry, in a timely manner or at all,
 - 3) Failed to comply with an undertaking dated 31 January 2008, furnished to EBS Building Society in respect of his client and named borrower and property at Castleisland, Co Kerry, in a timely manner or at all,
 - 4) Failed to comply with an undertaking dated 19 December 2003, furnished to EBS Building Society in respect of his clients and named borrowers and property at Ennis, Co Clare, in a timely manner or at all,
 - 5) Failed to comply with an undertaking dated 4 September 2008, furnished to EBS Building Society in respect of his client and named borrowers and property at Farranfore, Co Kerry, in a timely manner or at all,
 - 6) Failed to comply with an undertaking dated 22 April 2008, furnished to EBS Building Society in respect of his client and named borrower and property at Castleisland, Co Kerry, in a timely manner or at all,
 - 7) Failed to comply with an undertaking dated 29 November 2006, furnished to EBS Building Society in respect of his client and named borrower and property at Newcastlewest, Co Limerick, in a timely manner or at all,
 - 8) Failed to reply to the Society's correspondence, in particular, the Society's letters of 1 July 2013, 13 August 2013, and 13 September 2013 in a timely manner or at all,
 - 9) Failed to attend the Complaints and Client Relations Committee meeting of 12 December 2013, despite being required to do so by letters dated 3 October 2013 and 3 December 2013,
 - 10) Failed to pay the sum of €700 levied by the Complaints and Client Relations Committee at its meeting of 12 December 2013 and requested of him by letter dated 18 December 2013 in a timely manner or at all.
- 3557/DT95/14**
- 1) Failed to comply with an undertaking furnished to the complainants on 1 July 2003 in respect of property at Listowel, Co Kerry, and of the borrowers and his named clients in a timely manner or at all,
 - 2) Failed to comply with an undertaking dated 3 April 2004, furnished to the complainants in respect of named property at Tralee, Co Kerry, and the borrowers and his named clients in a timely manner or at all,
 - 3) Failed to comply with an undertaking dated 30 January 2004, furnished to the complainants in respect of property at Tralee, Co Kerry, and in respect of the borrowers and his named clients in a timely manner or at all,
 - 4) Failed to comply with an undertaking furnished to the complainants on 1 July 2003 in respect of property at Listowel, Co Kerry, and his clients, the named borrowers, in a timely manner or at all,
 - 5) Failed to comply with an undertaking furnished to the complainants on 1 July 2003 in respect of named property in Listowel, Co Kerry, and the borrowers and his named clients in a timely manner or at all,
 - 6) Failed to comply with an undertaking dated 4 September 2007, furnished to the complainants in respect of property at Knocknagoshel, Co Kerry, and the named borrower in a timely manner or at all,
 - 7) Failed to comply with an undertaking furnished on 25 November 1998 to the complainants in respect of a named borrower and property at Castleisland, Co Kerry, in a timely manner or at all,
 - 8) Failed to comply with the undertaking furnished on 1 August 2007 to the complainants in respect of named property at Rathmore, Co Kerry, and the named borrower in a timely manner or at all,
 - 9) Failed to comply with the undertaking furnished to the complainants on 30 September 2005 in respect of named property in Castleisland, Co Kerry, and the borrowers and his named clients in a timely manner or at all,
 - 10) Failed to comply with the undertaking furnished on 3 February 2005 to the complainants in respect of the property at Castleisland, Co Kerry, and his clients and the named borrowers in a timely manner or at all,
 - 11) Failed to comply with an undertaking furnished to the complainants on 10 June 1998 in respect of property at Tralee, Co Kerry, in two separate folios, and the named borrowers in a timely manner or at all,
 - 12) Failed to respond to the Society's correspondence dated 7 August 2012, 8 October 2012, and 31 January 2013 within the time provided in that letter, in a timely manner, or at all,
 - 13) Failed to attend the meeting of 3 July 2013, despite being requested to do so by letter dated 8 May 2013 and by letter dated 24 June 2013,
 - 14) Failed to comply with the directions of the Complaints and Client Relations Committee made at its meeting of 30 April 2013 that he make a contribution of €500 towards the costs of the Society due to his failure to correspond with the Society.
- The Solicitors Disciplinary Tribunal ordered that the four matters should go forward to the High Court and, on 11 January 2016, the High Court ordered on consent that the respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland.
- In the matter of Kevin Martin, a solicitor practising as a partner in Malone & Martin Solicitors, Market Street, Trim, Co Meath, and in the matter of the Solicitors Acts 1954-2011 [7034/DT136/14]**
Law Society of Ireland (applicant)
Kevin Martin (respondent solicitor)

On 12 January 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with an undertaking dated 16 November 2007, furnished to Fresh Mortgages Limited (now Mint Fund Limited) in respect of his named clients and borrowers and property in Co Meath in a timely manner,
- 2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 8 February 2010, 23 February 2010, 10 March 2010, 14 April 2010, 9 June 2010, 27 July 2010, 10 November 2010, 7 December 2010, 11 January 2011, 8 February 2011, 10 January 2012, 27 January 2012, 24 July 2012, 31 August 2012,

20 September 2012, 25 October 2012, 20 November 2012, 11 January 2013 and 27 August 2013 within the time provided in those letters, in a timely manner, or at all,

- 3) Failed to respond to three letters sent to him by a named firm of solicitors on behalf of Mint Funding Limited on 1 July 2013, 22 July 2013 and 16 August 2013.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €4,000 to the compensation fund,
- 3) Pay a sum of €2,000 in respect of the costs of the Law Society of Ireland.

In the matter of Peter D Jones, a solicitor practising as Peter D

Jones & Company, Solicitors, Church Lane, Mullingar, Co Westmeath, and in the matter of the Solicitors Acts 1954-2011 [3976/DT16/15]

Law Society of Ireland (applicant) Peter D Jones (respondent solicitor)

On 19 January 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with an undertaking furnished to the complainants, Bank of Ireland Mortgages, on 30 July 2007 in respect of named property at Mullingar, Co Westmeath, and his clients and named borrowers in a timely manner,
- 2) Failed to respond to the Society's correspondence of 13 June 2012, 6 July 2012, 30

July 2012, 2 November 2012, 20 November 2012, 11 July 2013, 25 September 2013, and 25 November 2013 in a timely manner, within the time provided, or at all,

- 3) Failed to comply with the direction made by the Complaints and Client Relations Committee on 28 January 2014 that he furnish certain information in respect of the complaint on or before 13 April 2014 in a timely manner.

The tribunal ordered that the respondent solicitor:

- 1) Do stand advised and admonished,
- 2) Pay a sum of €3,500 to the compensation fund,
- 3) Pay a sum of €2,500 as a contribution towards the whole of the costs of the Society.



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THE FAILING FIRM/DIVISION DEFENCE: RARE, BUT RELEVANT

In October 2015, the Competition and Consumer Protection Commission (CCPC) – formerly the Competition Authority – cleared Baxter Healthcare Limited’s proposed acquisition of the medical compounding business of Fannin Limited.

The CCPC’s decision is the first by an Irish regulator to allow a transaction to proceed on the basis of the failing firm/division defence in over 20 years. It also marks the first successful reliance on this argument under the current Irish merger control regime. Indeed, this decision represents one of the rare global examples of the actual application of this defence.

The target business

Fannin Compounding (part of the DCC Healthcare division of DCC plc) manufactures and supplies aseptically prepared compounded medicines to Irish hospitals and clinics. Medical compounding involves the mixture of pharmaceutical products in the exact form prescribed for a particular patient before being inserted into ‘delivery devices’ such as syringes or infusion bags. Baxter (a subsidiary of US-based healthcare company Baxter International Inc) also supplies compounded medicines to customers in Ireland and Britain from its facility in Deansgrange, Co Dublin. The Sandyford, Co Dublin-based Fannin Compounding had suffered continuing financial losses in recent years. Therefore, in early 2015, DCC began a process of finding a suitable purchaser for the business. This process ultimately led to the proposed sale to Baxter. The parties notified the transaction to the CCPC in June 2015.

Compounded medicines

Compounded medicines may be used for a variety of treatments, in-

cluding chemotherapy and antimicrobials, for example, antibiotics. Many Irish hospitals compound medicines in their respective in-house pharmacies. However, due to their toxic nature, the commercial preparation of these products is subject to strict health and safety regulations. In addition, due to licensing regulations, hospitals with their own in-house compounding capacity cannot supply compounded medicines to other hospitals. Therefore, hospitals with no in-house compounding ability must purchase chemotherapy products from commercial suppliers (such as Baxter and Fannin Compounding).

Baxter and Fannin are the sole commercial suppliers of chemotherapy products to Irish customers. From 2011 to 2014, Baxter’s share of this relevant market ranged from 60-70%, with Fannin Compounding representing the remainder. The latter’s turnover and market share have both decreased over this period. This is because some public hospitals have sourced product increasingly from their own pharmacies, while others have purchased additional chemotherapy products from Baxter.

Merger to monopoly

The CCPC was concerned that Baxter, as the only supplier in the sector, would have the incentive and the ability to raise prices for chemotherapy products post-completion. As part of its investigation, the CCPC surveyed 17 hospitals. Each of these hospitals argued that the price of compounded medicines would increase post-transaction, since the competition that currently exists between

Baxter and Fannin Compounding would disappear. In addition, these hospitals also expressed concern about security of supply in the event that Baxter decided to close either the Deansgrange or Sandyford compounding facilities. In its review, the CCPC found that hospitals with their own in-house pharmacies could threaten to increase their own production of compounded medicines, deterring any post-transaction price increase by Baxter. However, other hospitals, with no in-house pharmacy, would obviously be unable to do likewise.

The CCPC considered that the sourcing of compounded chemotherapy products from Britain was unlikely to be a viable alternative: it is not feasible to import medicines with a shelf life of less than 48 hours. Baxter/Fannin Compounding also argued that the relevant hospitals would have the ability to resist any price increase post-transaction. However, the CCPC found that hospitals with their own compounding facilities are unlikely to supply the non-compounding hospitals, given rising demand for cancer treatment (partly as a result of an aging population) from their own patients, allied to the requirement to seek the relevant licence. Given the costs and difficulties of constructing and staffing a compounding unit, the CCPC also found that new entry was unlikely to be timely, likely and sufficient.

Based on the evidence, the CCPC was concerned that Baxter would, post-acquisition of Fannin Compounding, have both the incentive and the ability to increase the price of compounded chemotherapy products, resulting

in a substantial lessening of competition in Ireland. That said, the CCPC continued, in accordance with its 2013 *Guidelines for Merger Analysis*, to examine the relevant ‘counterfactual’, that is, the situation that would prevail in the absence of the proposed acquisition. Often, this is the situation prior to the proposed merger. However, the pre-transaction situation is not relevant where the target business would exit the market if the proposed acquisition does not proceed.

Failing firm/division defence

The failing firm/division defence allows the CCPC to clear a merger that would otherwise lead to a substantial lessening of competition. However, the burden of proof lies on the merging parties to demonstrate that the target meets the failing firm/division test by providing the necessary evidence.

Under the guidelines, there are four cumulative elements to the CCPC’s failing firm/division test.

1. *The division must be unable to meet its financial obligations in the near future.*

A strict interpretation of this criterion would focus solely on whether DCC has the ability to maintain its support of Fannin Compounding without endangering its own financial situation. However, the CCPC instead adopted a more nuanced approach, assessing whether DCC had both the ability and incentive to meet the target’s ongoing and future financial obligations. (This interpretation is consistent with the European Commission’s approach in its September 2013 decision in *Nynas/Shell/Harburg Refinery*).

At the CCPC’s request, Grant Thornton examined Fannin

‘Potential reliance on a failing firm/division defence will inevitably be a last resort’

PIC: ISTOCK



Compounding's records and found that it has been loss-making since 2013. The accountancy firm also considered that Fannin Compounding faces various operational risks, most notably ensuring the safety of its products. Accordingly, the CCPC accepted DCC's argument that there was no prospect of Fannin Compounding returning to profitability in the near future. Without the proposed sale to Baxter Healthcare, the CCPC thus found that DCC has no economic incentive to continue its support of Fannin Compounding.

2. There must be no viable prospect of reorganising the business through the process of receivership, examinership or otherwise.

Grant Thornton stated that the target's difficulties were not related to its balance sheet (or indebtedness), but rather stem from its inability to generate sufficient

income to cover its fixed costs. Accordingly, neither receivership nor examinership will remedy its financial issues. Therefore, the CCPC agreed that there is no real prospect of using any available insolvency mechanism to reorganise Fannin Compounding.

3. The assets of the failing firm would exit the relevant market in the absence of a merger transaction.

The CCPC concluded (after reviewing various DCC internal documents) that it was highly likely that, without the sale to Baxter Healthcare, Fannin Compounding would be closed and that the relevant assets would inevitably exit the relevant market.

4. There is no credible less anti-competitive alternative outcome than the notified merger.

PWC was appointed to find a buyer for Fannin Compounding.

Apart from Baxter, two alternative potential purchasers were identified. One declined the opportunity to bid due to the high cost of investment required to revitalise the target. The other stated that recent financial difficulties made Fannin Compounding an unattractive acquisition target. The CCPC thus found that Baxter is most likely to be the only company seriously interested in acquiring Fannin Compounding. Accordingly, it concluded that there is no credible alternative less anti-competitive outcome to the proposed sale.

Clearance

The CCPC therefore found that each of the four elements of the failing division test is met. In addition, it considered that there would be a significant reduction in manufacturing capacity in Ireland for chemotherapy products, which

is likely to lead to an increase in prices (particularly given the difficulties of importing such products from Great Britain). The CCPC was thus satisfied that the proposed acquisition would not give rise to a substantial lessening of competition.

Other examples of the defence

Although it is rarely used, the failing firm defence has previously been successfully argued in Ireland and elsewhere.

Prior to the entry into force of the current Irish merger control regime in January 2003, qualifying mergers were the subject of mandatory notification to what is currently known as the Department for Jobs, Enterprise and Innovation. The parties also had the option, but not the obligation, of notifying any transaction to the then Competition Authority under ordinary Irish competition rules. In

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13 May	ESSENTIAL SOLICITOR UPDATE 2016 PART II Landmark Hotel, Carrick-on-Shannon, Co Leitrim – Workplace Relations Act 2015 – Conveyancing update – Technology update for the small practice – Legal Services Regulation Act 2015: general overview and impact – Probate Practice: drafting, taxation and will trusts – Regulation Compliance - anti-money laundering – Legal costs: the current and future regimes		€105 Hot lunch and networking drinks included in price Attendance on Day 1 & 2 - €160	2 Regulatory Matters (including anti-money laundering compliance) & 2 General & 2 M & PD Skills by Group Study 6 CPD Hours
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26 May	ENERGY LAW SEMINAR: EU ENERGY UNION Ireland's role in partnership with the EU and International Affairs Committee		€105	2 General – by Group Study
17 June	ESSENTIAL SOLICITOR UPDATE 2016 Shannon Suite, Strand Hotel, Limerick – in partnership with Clare and Limerick Bar Associations – Workplace Relations Act 2015 – Legal Services Regulation Act 2015: general overview and impact – Regulation Compliance - anti-money laundering – Assisted Decision Making (Capacity) Act 2015: an overview – Companies Act 2014: Pitfalls and Practicalities		€105 Hot lunch and networking drinks included in price	2 Regulatory Matters (including anti-money laundering & financial compliance) & 2 General & 2 M & PD Skills by Group Study 6 CPD Hours
10 & 11 June	WILLS, PROBATE & ESTATES MASTER CLASS 10 & 11 June - Module 1: Wills, Trusts, Probate & Estates Lectures and workshops providing an update on will drafting, probate and administration dealing with advising the LPR on capacity and other issues, non-contentious and contentious applications to the Probate Officer and the Courts when necessary, administering trusts on death either by will or otherwise.	€850	€750	CPD Hours Per Module: 10 General (by Group Study) Delegates are required to attend both Modules
24 & 25 June 2016	24 & 25 June - Module 2: Taxation Issues Building on Module 1 with lectures and workshops on taxation of estates dealing with CAT and other taxes arising including Discretionary Trust Tax and taxation issues (CAT and CGT) on the break up / dissolution of Trusts, wrap-up lecture and Module, incorporating all issues arising.			

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1994, the Competition Authority reviewed *Barlo Group plc/Kingspan Group plc*. This transaction concerned the proposed sale of the Veba radiator factory in Wicklow Town to Barlo. In its assessment, the Competition Authority noted the acceptance of the failing firm defence in US merger control decisions since the 1930s. It also considered that the target was facing a likely imminent closure and that the relevant assets were likely to exit the market in the absence of the proposed sale to Barlo. Accordingly, the authority found that the proposed transaction would not infringe Irish competition rules.

In its 2013 decision, *Aegean/Olympic II*, the European Commission cleared a proposed acquisition

involving two Greek airlines. In its investigation, the commission established that Olympic Air would have been forced to exit the Greek domestic air transport sector due to financial difficulties but for its acquisition by Aegean Airlines. This was despite the fact that the two parties were each other's closest competitors on various domestic air routes in Greece.

In 2009, the US Federal Trade Commission examined the proposed merger of two Texas hospital groups, *Scott & White and King's Daughters*. Under this transaction, the owner of a hospital in Bell County, Texas, planned to acquire its only competitor in that county. In clearing the transaction, the FTC concluded that there was no viable alternative

purchaser of the relevant hospital and that the target could not remain a viable competitor on its own.

Broader relevance

While the failing firm defence is unlikely to be available to the vast majority of notifications, time will tell whether the CCPC's clearance of *Baxter/Fannin Compounding* heralds an increased reliance on it. Parties seeking to invoke this argument should be buoyed by the *Baxter/Fannin* decision. That said, the CCPC will require very detailed corroborative evidence to support any potential reliance on this defence.

Of course, the failing firm defence is unlikely to be relevant each time a transaction gives rise

to significant competition concerns. In such cases, the parties' advisors should first consider whether any entry, countervailing buyer power, or efficiencies arguments are relevant. If not, they should then evaluate whether any suitable structural or behavioural remedies are available. Potential reliance on a failing firm/division defence will inevitably be a last resort – above all, since businesses are, understandably, reluctant to admit they face financial difficulty.

Cormac Little is a partner and head of the competition and regulation unit at William Fry. He led the team advising DCC plc on the merger control aspects of the sale of Fannin Compounding.

New framework for transatlantic data flows – the EU-US Privacy Shield

Following on from the important CJEU ruling in Case C-362/14, *Maximilian Schrems v Data Protection Commissioner* (6 October 2015), in which the Luxembourg court ruled that the *Safe Harbour Agreement* was invalid, the European Commission and the USA reached a political agreement on transatlantic data transfers on 2 February 2016. This new framework, termed the *EU-US Privacy Shield*, will protect the fundamental rights of Europeans where their data is transferred to the USA and will also create legal certainty for businesses.

Greater protection

The new arrangement will impose stronger obligations on companies in the US to protect the personal data of Europeans and stronger monitoring and enforcement by the US Department of Commerce and Federal Trade Commission. There will also be stronger cooperation between the aforementioned entities and the European data protection authorities. The new framework includes commitments by the

US that possibilities under US law for public authorities to access personal data transferred under the new arrangement will be subject to clear conditions, limitations and oversights, thereby preventing generalised access. In addition, Europeans will have the possibility to direct enquiries or complaints to a new ombudsman (within the US Department of State) who will be independent from the national security services.

The new *EU-US Privacy Shield* will include the following elements:

- Strong obligations on US companies handling Europeans' personal data and robust enforcement.
- Clear safeguards and transparency obligations on US government access. Under the new arrangements, the US has ruled out indiscriminate mass surveillance on the personal data transferred to the USA. Interestingly, an annual joint review will be conducted to monitor the functioning of the new framework. This joint review will be carried out

by the European Commission and the US Department of Commerce. National intelligence experts from the USA and representatives from the European data protection authorities will also be invited to participate in the joint review.

- Effective protection of EU citizens' rights, with several redress possibilities.

The first step in the implementation of the *Privacy Shield* is the drafting of an 'adequacy decision' by the European Commission. This adequacy decision must then be vetted and approved by both the consulting committee of the EU member states and the *Article 29 Working Party*. This whole process may take another three months to complete.

Not everyone is convinced

Some privacy activists remain unconvinced by the *Privacy Shield*, as they argue that the ultimate fate of the shield lies not with the European Commission or the US Department of Commerce, but with the

national data protection authorities and the courts of the EU. It is likely that the framework will come under close scrutiny and potentially legal challenge if it is not considered to provide sufficient protections. And if it does come before the CJEU in Luxembourg again, it will be up to that court to decide if this new framework is merely old wine in new bottles or something that actually provides sufficient protection for EU data subjects.

Recent developments

On 29 February 2016, the European Commission issued the legal texts that will put in place the *EU-US Privacy Shield*. These texts include the principles that companies have to abide by, as well as written commitments by the US Government (to be published in the US Federal Register). On the same date, the European Commission also made public its draft adequacy decision.

Dr Mark Hyland is lecturer in law at Bangor University Law School, Wales.

professional notices

WILLS

Broderick, Roger (deceased), late of Ross na Narna, Lis-carroll, Mallow, Co Cork, and formerly of Rockspring, Lis-carroll, Mallow, Co Cork, who died on 20 November 2015. Would any person having any knowledge of a will made by the above-named deceased please contact Fiona O'Sullivan, David J O'Meara & Sons, Solicitors, Bank Place, Mallow, Co Cork; tel: 022 21539, email: fiona.osullivan@djomeara.ie

Campbell, Patrick Joseph (deceased), late of 56 Elm Mount Park, Dublin 9; 19 Stoneybatter, Dublin 7; and 16 Rosapenna Parade, Belfast, who died on 18 April 2001. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please reply to **box no 01/03/16**

Cunningham, PJ (Patrick Joseph) (deceased), late of Corcreigha, Middle Chapel Road, Cootehill, in the county of Cavan, who died on 1 February 2016. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Richard

RATES

professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €147 (incl VAT at 23%)
- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for May 2016 *Gazette*: 20 April. For further information, contact the *Gazette* office on tel: 01 672 4828.

No recruitment advertisements will be published that include references to years of post-qualification experience (PQE). The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

Hammond, Hammond Good, Solicitors, HG Legal Chambers, Main Street, Mallow, Co Cork; DX 31011; tel: 022 22201, email: richard@hgs.ie

Doherty, Martin (deceased), late of 30 Hampstead Court, Albert College, Dublin 9, who died on 3 December 2015. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Lydon Solicitor, Teeling Street, Ballina, Co Mayo; tel: 096 71752, email: stephen@lydonsolicitor.ie

Halpin, Arthur (deceased), late of 35 Fernhill, Arklow, Co Wick-

low, and formerly of Gurteen, Coolgreaney, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 10 December 2015, please contact Cooke & Kinsella, Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928, fax: 0402 32272; email: fergus@cookekinsella.ie

Kelly, Patrick (deceased), late of Carrownacluane, Drumnacool, Co Sligo, who died on 13 November 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact William Henry, William G Henry

& Co, Solicitors, Emmett Street, Ballymote, Co Sligo; tel: 071 918 9962, fax: 071 918 9970, email: wghreception@gmail.com

Lenahan, Brian (deceased), late of 13 Dollymount Grove, Clontarf, Dublin 3. Would any person having knowledge of the whereabouts of the original will, dated 2 May 1977, executed by the above-named deceased, who died on 26 November 1985, please contact Anthony T Hanahoe, ME Hanahoe Solicitors, Sunlight Chambers, 21 Parliament Street, Dublin 2; DX 1011; tel: 01 677 2353, fax: 01 671 2660, email: info@hanahoe.ie

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Murphy, James (deceased), late of 63 Willow Park Grove, Glasnevin, Dublin. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 22 February 2016, please contact Paul Devlin; tel: 087 278 0650, email: pauld@outlook.ie

O'Donoghue, Margaret Mary (or se Margaret) (deceased), late of 11 Peter O'Donovan Crescent, Ballincollig, Co Cork, who died on 12 April 2015. Would any person having any knowledge of the whereabouts of any will executed by the above-named deceased, or if any firm is holding same, please contact Paula Desmond, Irwin Kilcullen & Co, Solicitors, 56 Grand Parade, Cork; tel: 021 427 1361, email: paula@acelegal.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Rory O'Ferrall and Roy Willoughby on behalf of the trustees of the Methodist Centenary Church and School, and in the matter of the property known as Kingsland Park Church and School, Victoria Street, off South Circular Road, Dublin 8

Any person having any interest in the freehold estate or any intermediate interest in all that the hereditaments and premises known as Kingsland Park Methodist Church and School, situate at the junction of Victoria Street (formerly Kingsland Park) and St Kevin's Road, off South Circular Road, being part of the former Portobello Estate, in the parish of St Peter and city of Dublin, held under an (unmerged) lease dated 11 June 1873 from Frederick Stokes to Robert Kerr and others, trustees of the Primitive Wesleyan Methodist Society of

Ireland, for a term of 800 years from 11 June 1873, subject to the yearly rent of £4.7.6 (€5.55) (and as to an expired superior interest lately held under and being part of a lease dated 22 February 1866 from the Reverend Francis Richard Maunsell and Daniel Maunsell to Frederick Stokes for the term and subject to the rent as therein).

Take notice that Rory O'Ferrall and Roy Willoughby, on behalf of the trustees of the Methodist Centenary Church, intend to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and all intermediate interests in the said property, and any party asserting that they hold the freehold interest or any intermediate interests in the said property are called upon to furnish evidence of their title to the said property to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Rory O'Ferrall and Roy Willoughby intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to any intermediate interest or interests including the freehold interest in the said property are unknown or unascertained.

Date: 1 April 2016

Signed: Orpen Franks (solicitors for the said Rory O'Ferrall and Roy Willoughby), 28-30 Burlington Road, Dublin 4

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) Number 2 Act 1978* and in the matter of the premises at Kilmaine in the county of Mayo

Take notice that any person having an interest in the freehold es-

tate or any superior interest in the property situate at Kilmaine, in the county of Mayo, comprising 40 perches or thereabouts statute measure and more particularly set out and annexed to a lease dated 16 December 1929 and made between the Reverend Thomas Ormsby of Milford, Cloghans in the county of Mayo, clerk in holy orders, William E Rutledge of Hollymount in the said county, esquire, and the Reverend JC Matthews of Kilmaine in the county of Mayo, clerk in holy orders, being the select vestry of the parish of Kilmaine and county of Mayo of the one part, and Martin Walsh of Kilmaine in the county of Mayo, farmer, of the other part, being the subject matter of the said lease for term of 99 years from 1 December 1929 at a rent of £6 per annum.

Take notice that the applicant intends submitting an application to the county registrar of the county of Mayo for the acquisition of the freehold interest of the said property, and any party asserting that they hold a superior interest in such property are called upon to furnish evidence of title of same to the below signed within 21 days from the date of this notice.

In default of any notice as referred to the above being received, the applicant intends to proceed with the application before the county registrar at the expiry of the said period of 21 days and will then apply to the county registrar of the county of Mayo for such directions as may be appropriate on the basis that the person or persons beneficially entitled to superior interests including the freehold in the said premises or unknown or unascertained.

Date: 2 April 2016

Signed: Edward Fitzgerald & Son (solicitors for the applicant), Main Street, Ballinrobe, Co Mayo

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No*

2) *Act 1978: notice of intention to acquire a fee simple (section 4) – an application by John Lewis and Miriam Lewis ('the applicants')*

Notice to any person having an interest in the freehold interest of the following property: all that the premises at the rear at 20 John Street, Kilkenny, held under a lease of 20 John Street, Kilkenny, dated 1 November 1922, between Edward Healy, John A Healy, Kate Kennedy, Maria O'Mahony and Richard Walshe of the one part, and John Francis Lewis of the other part for a term of 99 years, subject to payment of the yearly rent of £32.10.0 per annum thereby reserved unto the covenants and conditions on the part of the lessee therein contained.

Take notice that Miriam Lewis and John Lewis, being the persons currently entitled the lessees' interest in the lease, intend to apply to the county registrar of the county of Kilkenny for the acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their entitlement to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Miriam Lewis and John Lewis intend to proceed with an application before the Kilkenny county registrar at the end of the 21 days from the date of this notice and will

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STAGE IN PARIS 2016

OCTOBER–NOVEMBER 2016



The Paris Bar organises every year an International Stage in Paris and invites a limited number of lawyers from each jurisdiction to participate. The stage is a fantastic opportunity for lawyers to discover and practice French law in the heart of Paris.

The stage takes place during the months of October and November and entails: one month attending classes at the l'Ecole de Formation du Barreau and one month of work experience in a law firm in Paris. The programme also includes a visit to Brussels to know the European Institutions.

The Irish participant will be selected by the EU & International Affairs Committee of the Law Society of Ireland.

Candidates must:

- Be qualified in Ireland and registered in the Law Society.
- Have a good knowledge of French.
- Be under 40 years old.
- Have insurance cover (for accidents and damages).

Tuition is fully covered by the Paris Bar; candidates must be willing to cover other expenses (travel, accommodation, meals)

If you are interested, please email Eva Massa (e.massa@lawsociety.ie) with your CV and a letter explaining your interest in the stage (both documents in French and English)

DEADLINE FOR APPLICATIONS: Friday, 13 May 2016.

¹The EU & IA Committee will sponsor the participant with €2,000; applications for a grant can be made to the French Embassy in Dublin.

apply for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown and unascertained.

Date: 1 April 2016

Signed: WA Smithwick & Son (solicitors for the applicants), 43 Parliament Street, Kilkenny

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of 58A Homefarm Road, Drumcondra, Dublin 9: an application by Paul Brooks

Take notice that any person having any interest in the freehold estate or any intermediate interest in all that and those 58A Homefarm Road, Drumcondra, Dublin 9, being currently held by Paul Brooks under indenture of lease dated 31 August 1935 and made between Grace O'Dowd, Frances Butterly, Eileen Joyce, Emily Hickey, Nora Farley and Finola Hammond of the first part, Thomas Coghlan of the second part, and Rose Jordan of the third part, for the term of 150 years

from 1 January 1935, subject to the yearly rent of £5.

Please take notice that Paul Brooks, as lessee under the said lease, intends to submit an application to the county registrar for the county of Dublin for acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Paul Brooks intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion, in the property are unknown or unascertained.

Date: 1 April 2016.

Signed: O'Callaghan Kelly (solicitors for the applicant), 51 Mulgrave Street, Dun Laoghaire, Co Dublin

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) 1978: notice of intention to acquire fee simple (section 4) – an application by Sean O'Neill ('the applicant')

Notice to any person having an interest in the freehold interest of the following property: all that and those the property known as no 10 Old Golf Links Road, Newpark, Kilkenny, held under a lease made on 16 April 1915 between Henry McCreery and John Murphy for a term of 99 years from 29 September 1914, subject to the payment of the yearly rent of £7 sterling, thereby reserved unto the covenants and conditions on the part of the lessee therein contained.

Take notice that Sean O'Neill, being the person currently entitled to the lessee's interest in the lease, intends to apply to the county registrar of the county of Kilkenny for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their

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title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Sean O'Neill intends to proceed with an application before the Kilkenny county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid premises are unknown and unascertained.

Date: 1 April 2016

Signed: WA Smithwick & Son (solicitors for the applicant), 43 Parliament Street, Kilkenny



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cogito ergo doleo

Self-driving car crashes

A self-driving Google car has learned a lesson straight out of the Conor McGregor school of mixed martial arts – don't mess with the big guy! The car tangled with a public bus and came off worst, *The Guardian* reports. Surprisingly, video footage shows that the Google car seems to have been at fault.

The collision happened on 14 February 2016, when the Google vehicle struck the side of the bus in the Silicon Valley city of Mountain View. Footage recorded by cameras on the bus shows a Lexus SUV edging into the path of the bus that was rolling by at about 15mph. Google's cars have been hit nearly a dozen times since road testing began in spring 2014, with Google blaming other drivers. In a first, Google has accepted at least partial responsibility for this crash, in which no one was hurt.



Where eagles dare, the Met may follow

Scotland Yard may start using eagles (yep – real eagles) to take down drones, according to *The Guardian*. Metropolitan commissioner Bernard Hogan-Howe has been impressed by a Dutch programme that has trained the birds to hunt and bring down drones. There are concerns that the use of drones to commit crime is on the increase.

Police have warned that they can be used to case homes for burglary, and there have been reports of drones found in the grounds of prisons with drugs attached.

According to Guard From Above, the Hague-based firm that trains the birds of prey, the approach is “a low-tech solution for a high-tech problem”.

A spokesman for the US conservation organisation, the National Audubon Society, said that eagles were capable of avoiding the drones' rotors: “They seem to be whacking the drone right in the centre so they don't get hit – they have incredible visual acuity and they can probably actually see the rotors.”

‘Dead’ wife spotted on TV

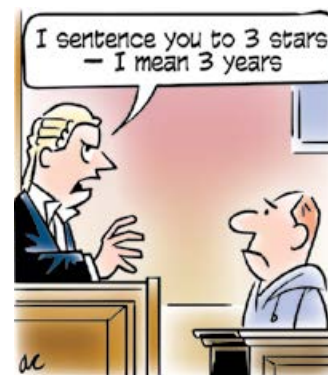
A Moroccan man who believed his wife was dead found out she was in fact still alive, after she was spotted on a television programme, *The Independent* reports. Abragh Mohamed thought his spouse had died in a car crash two years ago. She had been taken to the Ibn Rochd hospital in Casablanca, where doctors said she would probably not survive.

Mr Mohamed travelled four hours to his home in a small mountain village and back to the hospital, but was told on his return that she had died. “I had to receive her body, apparently wrapped in a shroud and already inside a coffin,” Mr Mohamed said. The body was buried in their hometown in 2014.

Recently, however, friends watching a show that sets out to reunite ‘lost’ families heard a woman they were sure was Mrs Mohamed appealing to find her husband. She called in to TV programme *Al Mokhtafoun* (“The Disappeared”) and gave his name and address, saying they had “lost touch” two years ago. It sparked a social media furore, as it was revealed that Mr Mohamed had, in fact, buried a different woman at the funeral.

“I did not know it was a different body that we buried and my wife was still alive,” Mr Mohamed said. The exact circumstances of what happened following the crash are as yet unknown. Medical or administrative incompetence have been blamed for the error.

Comes with a butler



“Ideal place for winding down after a hard day. I'd definitely come back.” A four-star review of a “minimalistic” room with *en suite* “and butler” went viral when it became apparent that the room in question was an English jail cell, reports *ABC*, Australia.

Christian Willoughby was placed

in a cell at Grimsby police station. To raise his spirits, he took some photos and wrote a TripAdvisor-style review, which was shared thousands of times on Facebook.

“The staff are pleasant enough,” he wrote. “Had my own *en suite* room and butler ... who would come with tea and newspapers.”

He was not such a fan of the “all-day breakfast” of beans and sausage with gravy. “It's missing a few items, such as bacon, hash brown, toast, egg, etc.”

He later commented that he had received “hardly any negative feedback whatsoever” – however, he acknowledged that the police were taking it more seriously. “There is going to be an independent investigation as to how it happened ... I don't think they see the humour in it,” he said.



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*Pictured Left to right are Rory McCormick, Director,
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Ref: 905915

CHILD CARE LAW SOLICITOR

€40,000 - €50,000 / Specialised Practice / Leinster

Our client, a busy Public Family Law practice is seeking to recruit a Solicitor with strong advocacy skills to join its team. The role will involve managing a large caseload of child care and public family law files, running these files in the District and Circuit Court and acting on behalf of advising a large government agency. The ideal candidate will have strong advocacy experience as well as attention to detail. Candidates with child care law experience are preferred but is not essential.
Ref: 905652

IN-HOUSE

Senior Legal Director

€130,000 - €150,000
Pharmaceutical / Dublin
Ref: 905099

EMEA Senior Legal Counsel

€100,000 - €120,000
Insurance / Dublin
Ref: 906143

Senior Legal Counsel

€80,000 - €100,000
Funds / Dublin
Ref: 904739

Commercial Contracts Lawyer

€65,000 - €85,000
Pharmaceutical / Dublin
Ref: 905054

Legal and Tax Advisor

€65,000 - €75,000
Insurance / Dublin
Ref: 906330

Featured Jobs

SENIOR LEGAL DIRECTOR

€130,000 - €150,000 / Pharmaceutical / Dublin

Our client, a pharmaceutical company is seeking to recruit a Senior Legal Director. Reporting directly to the Head of Legal, this appointment will be a key business partner to the Senior Commercial and Operations Management team, drafting and negotiating commercial contracts for corporate clients. They will support strategic growth initiatives for the EMEA and US team. This is a client-facing position which demands the Senior Counsel, Legal Director to establish effective relationships with internal and external clients and business partners. A proven record in such a role within practice and / or pharmaceutical, telco or technology industries.
Ref: 905099

EMEA SENIOR LEGAL COUNSEL

€100,000 - €120,000 / Insurance / Dublin

Our client, an international insurance company, is seeking to recruit a Senior Legal Counsel to join its advisory team. The company's business jurisdiction spans pan-European with expansion into US / South America & Asia imminent. This role reports into Group GC and will support the business lines within the group on insurance compliance, policies & product agreements, commercial agreements and related legal issues. Initially a standalone role with support from GGC and external counsel, the successful candidate will have experience in the insurance industry or servicing insurance clients' from within practice.
Ref: 906143

LEGAL AND TAX ADVISOR

€65,000 - €75,000 / Insurance / Dublin

Our client, a multinational involved in the provision of FS products to high net worth clients is seeking to recruit a Legal and Tax Advisor to join its team. The role will involve monitoring legal & tax developments in terms of new legislation and case law, advising and supporting the business on legal and tax matters regarding all aspects of the products; features, distribution, servicing, future changes, AML and data protection, reviewing partners' standard agreements and assessing conditions. The role will sit within a team of legal and tax specialists as well as specialists in sales and marketing. The ideal candidate will be a qualified solicitor with exposure to Irish and UK tax law.
Ref: 906330

Should you require further information about any of these roles, please contact Michael Minogue, Senior Consultant, in strictest confidence on 01 662 1000 or email m.minogue@brightwater.ie

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IN TUNE

CORPORATE ASSOCIATE

The corporate department of one of Ireland's Big 6 law firms seeks to recruit an ambitious associate to its high profile team. The firm has acted on the majority of the headline domestic and global transactions in Ireland over the last five years and enjoys an unrivalled position in the Dublin market. In joining the team, you will advise a broad range of blue chip clients on big-ticket public and private M&A in addition to providing high level strategic advice. Suitable candidates will have gained a minimum of 2 years' corporate M&A experience with a Big 6, mid-tier or international firm in Dublin or with a City of London firm. Basic salary and bonus will be at the upper end of the Irish market.

FUNDS ASSOCIATE

The funds department of this leading Big 6 Irish law firm seeks to appoint a talented associate to its reputable team. The firm has successfully grown its share of the funds market in Ireland over the last five years and advises major institutional clients across the spectrum of UCITs and alternative products. In addition to advising on a broad range of fund structures, the successful candidate will also be exposed to high level client activity and marketing initiatives. Suitable candidates will have gained a minimum of 2 years' Irish funds experience with a Big 6, mid-tier or international firm in Dublin. A robust and compelling financial package will be on offer for the successful appointee into the role.

Over the last 12 months, we have acted successfully for 6 of the 7 largest law firms in Ireland. We also work with the leading mid-tier, international and boutique law firms in Dublin and Cork. If you are an ambitious lawyer considering a move to another firm, we are in an excellent position to advise you on your options and guide you into the perfect role.

For an exploratory conversation in strict confidence on these or other non-advertised opportunities, please submit your CV to Bryan.Durkan@hrmrecruit.com or contact me by phone on +353 1 632 1852.



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fit is another

Talk to the Irish Legal Recruitment Specialists

We have significant new opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the roles our clients are seeking to fill. Please make sure to visit our website for other positions.

Commercial Litigation – Associate to Senior Associate

Our client is a highly successful mid-tier practice seeking to recruit a solicitor with strong exposure to Circuit and High Court litigation. You will have worked with a well-respected firm and be keen to deal with high calibre clients and challenging cases.

Commercial Property – Associate to Senior Associate

Our Client is a long established mid-tier practice seeking an Associate Solicitor to join their growing commercial property department. You will have a proven track record in the property arena dealing with:

- Sales and Acquisitions;
- Commercial Lettings;
- Landlord and Tenant Issues;
- Property Development;
- Real Estate Finance.

Debt Recovery – Experienced Professional Support Lawyer

Our Client, a highly successful Dublin law firm, is looking to recruit a Professional Support Lawyer to join its long established debt collection team. You will be a qualified Solicitor or Barrister with experience of all requisite procedures from taking initial instructions to securing judgements.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7. T +353 (0) 1 670 3997 E mbenson@benasso.com www.benasso.com

Litigation Defence Insurance (EL/PL) – Senior Associate

Our Client is an international law firm with expertise in litigation/dispute resolution, particularly in the insurance/reinsurance and liability industries and is seeking to recruit a Senior Associate to assist with general defence insurance matters, in particular el/pl. You will have more than five years' experience in defendant litigation including small-track and fast-track claims.

Litigation/Defence Personal Injury – Associate

Our Client, an Insurance and Risk law firm, is seeking to recruit a Litigation/Personal Injury Solicitor to assist in dealing with all aspects of personal injury litigation including defending catastrophic injury cases, fraudulent claims and disease cases.

Projects/Construction – Partner

Our Client is a full-service international law firm seeking to recruit a Projects/Construction Partner to assist in the expansion of its Dublin office. You will possess strong technical drafting skills and the ability to deliver a well-focused client service, giving clear, timely and practical legal advice coupled with the pre-requisite enthusiasm for and experience in, business development.

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