



**Hole in my bucket**

The High Court has clarified the narrow scope for conditional appearances



**Pulling a bank job**

Will banks' terms regarding variable interest be the new tracker mortgage scandal?



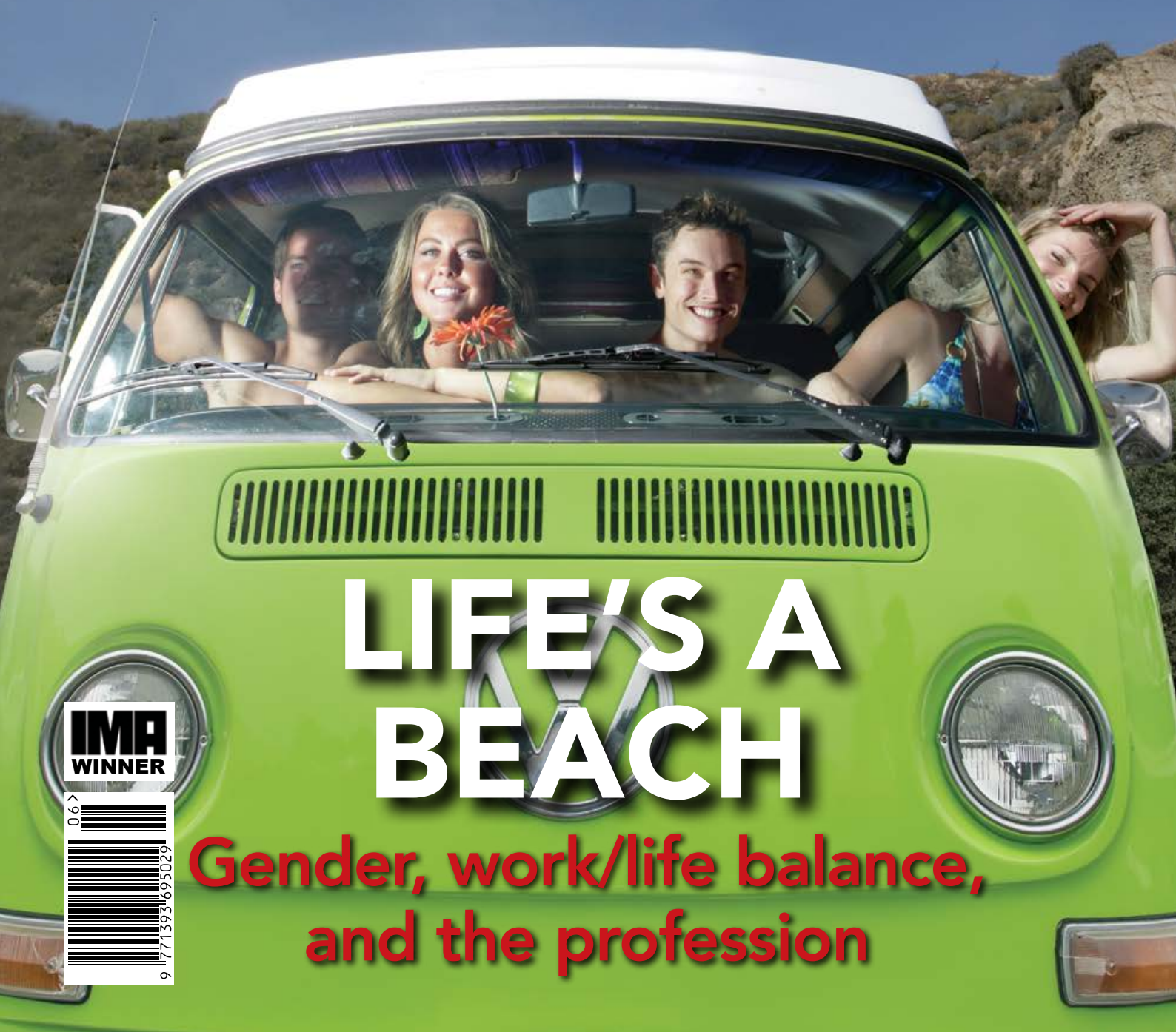
**The road goes ever on**

Don't be afraid to challenge Revenue's misinterpretation of a correctly drafted will

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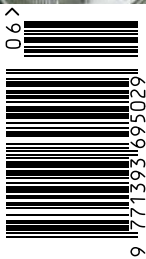
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# LIFE'S A BEACH

**Gender, work/life balance, and the profession**

**IMA  
WINNER**

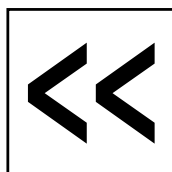
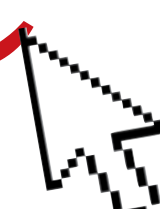




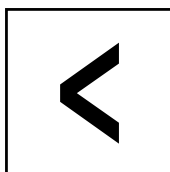
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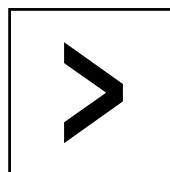
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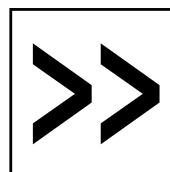
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# Does your client have a claim eligible for ASR Hip ADR?

**The ADR Process gives claimants a neutral non-binding evaluation of eligible claims**

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## How it works

To apply, submit a completed Form B to McCann FitzGerald solicitors. Form Bs are available from McCann FitzGerald and from [www.hipadr.ie](http://www.hipadr.ie). On receipt of Form B McCann FitzGerald may ask for additional information or documents, such as necessary medical records or details of any special damages claimed. If the claimant's case is eligible, Form B will be endorsed and returned to the claimant's solicitor. Both parties prepare written submissions which are submitted to an independent Evaluator who issues a written evaluation stating the amount of any damages assessed. The parties have 45 days to accept or reject the evaluation.

- Claimants in the ADR Process do not have to prove liability; only causation and quantum are relevant
- There is no fee to submit a claim to the ADR Process
- If necessary, McCann FitzGerald will collect the claimant's medical records where written authorisation has been provided
- Evaluators are senior counsel or retired Superior Court judges
- A €25,000 payment in respect of the claimant's legal costs, outlay and VAT will be paid within 28 days of settlement of claims within the ADR Process. This is without prejudice to a claimant's right in the circumstances of a case to seek higher costs and outlay through negotiation or taxation

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## Eligible claims

**Claimants may avail of the ADR Process if:**

- Proceedings have issued
- The index surgery of the ASR product took place in Ireland
- Revision surgery took place in Ireland not earlier than 180 days and not later than 10 years after the index surgery
- Injuries Board authorisation has been obtained
- The claim is not statute barred
- Revision surgery was not exclusively due to dislocation; trauma; infection; fracture of the femoral head; or any issue related to the femoral stem

**For further information, or to discuss settlement of any eligible claim, please contact McCann FitzGerald (DFH/RJB) on 01 829 0000 or email [hipadr@mccannfitzgerald.com](mailto:hipadr@mccannfitzgerald.com)**



# RISING TO THE CHALLENGE

**A**t long last, a report has now issued from the working group established to review the provision of probate services in Ireland. This review, which involved an assessment of the current probate service and a wide consultation process involving internal and external stakeholders, makes a number of recommendations for the future effective and efficient delivery of an accessible probate service, including the development of technological solutions incorporating online filing in the delivery of the issue of grants of probate and letters of administration.

I'm glad to report that the Courts Service board has approved the plan, and the implementation of the recommendations has begun on a phased basis. As you are aware, I have raised a number of issues with the Courts Service in this regard, so I do understand that budget and personnel issues have placed great strain on, in particular, the Dublin office. The Courts Service has made strides to improve the service and, while it is not perfect, it is understood from the report of the working group that, by the end of June, the backlog in Dublin will have reduced considerably.

The report highlights a number of interesting statistics, including the fact that, in Cork for example, for the year 2016, there were 1,722 applications and 1,513 grants issued. In Dublin, for the same period, there were 8,705 applications for grants and 8,054 grants issued. At any reasonable consideration, this consists of a huge volume of paper transactions, all of which are crying for a paperless system, which will hopefully be implemented as a result of the working group report. It needs to be welcomed.

The Law Society will continue to monitor and engage with the Courts Service in relation to the delays. A word of caution: this is predicated on the investment of the Courts Service in technological solutions, and also the proper resourcing of the Probate Office.

One of the objectives for my term of office as president has been to undertake a

comprehensive review of the challenges and opportunities for sole practitioners and smaller practices. The aim is to examine their operating environments, the challenges they experience, and the opportunities that exist to ensure their ongoing sustainability and growth.

It is intended that such firms will benefit from an independent strategic assessment of the changes that can be made to better position themselves and to plan for the future. The Law Society has appointed Crowe Horwath to undertake this review. It will conduct a survey and run focus groups with practitioners, as well as engaging with relevant third parties. We look forward to a number of practical recommendations coming back to the profession in autumn of this year.

I would strongly urge all practices contacted by Crowe Horwath to participate in the survey, as these findings will be of key importance to the review, and assist them in conducting their analysis and making meaningful



## THE SURVEY'S FINDINGS WILL BE OF KEY IMPORTANCE TO SOLE PRACTITIONERS AND SMALLER PRACTICES

recommendations for everyone's benefit.

For smaller practices and sole practitioners, their future survival is dependent on a number of factors. We need to analyse and support the future of such practices, looking at matters like succession – which, no doubt, causes great concern to these practitioners.

Finally, I am continuing to visit the local bar associations. The cluster events continue to be a great success – a very simple and reasonably cost-effective way of completing CPD requirements. It is also a very good way for colleagues to meet outside of work, de-stress, and enjoy the social aspects of being a solicitor. [g](#)

MICHAEL QUINLAN,  
PRESIDENT



# gazette

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# THE BIG PICTURE

## TEARS FOR FEARS

A photojournalist goes to the aid of a female protester after Israeli forces fired tear-gas at Palestinian protestors near the border with Israel and the Gaza Strip on 15 May 2018. At least 62 Palestinians were killed and more than 2,500 others injured during protests against the US embassy's move to Jerusalem, as well as marking the 70<sup>th</sup> anniversary of Nakba Day – or 'day of the disaster' – when more than 700,000 Palestinians were forcefully expelled during the war that led to the creation of the state of Israel on 15 May 1948

EPA-EFEM/MOHAMMED SABER







# SPRING GALA AT THE SHELBOURNE

ALL PICS: ALBHE O'DONNELL



Garrett O'Donohoe, Teri Kelly, Michael Quinlan, Miriam O'Callaghan, Ken Murphy and Brian Buckley at the Spring Gala on 27 April



Geraldine Kelly, Martin Sills, Sharon McElligott and Kevin O'Higgins



Deirdre Corcoran, Will Corcoran and Claire Callanan



Setanta Landers, Mary Hegarty, Michael Hegarty and Niamh Gibney



Caoilfhionn Ní Chuanacháin, David Heneghan and Deirdre Walsh



Colette Crotty



A Donald Trump moment for Oliver Callan



Damian McKelvey, Mandy Dixon, Olwyn Griffith, Nicola O'Loan and Ross McDonald



Sinéad Kearney and Mary Keane



Eugene O'Sullivan, Thomas O'Dwyer, Brian O'Driscoll, Claire Callanan, Stephen McLoughlin, Lisa Doyle, Lyndon MacCann, William Corcoran and Deirdre Corcoran



Minister Josepha Madigan and Michael Quinlan (president, Law Society)



Michelle Ryan and Lisa Mansfield



Chelsea McGrane and Glen Bond



Brian Malone and Deirdre Malone



Michelle Daly and Jim Trueick



Anne Harkin and Laura Lee O'Driscoll



Lorraine Norry, Jean Casey, Aisling Blake and Yvonne Hudson



Aoife Clifford and Michael Moroney



Ken Murphy (director general), Minister Charlie Flanagan, Michael Quinlan (president, Law Society) and Miriam O'Callaghan



Andrew Thorne and Paula Quinn



Michael Lanigan, Shirley Lanigan, Bernadette Lawlor and Martin Lawlor



Rachel O'Connor, Liz Bree and Yvonne Tyndall



James Somerville, Hannah Shaw, Liam Kennedy, Don Collins, Paula Mullyooly, Marcus Walsh, Brendan Hayes and Eamonn Conlon



# IRISH LAW AWARDS 2018



ALL PICS: PAUL SHERWOOD

Mrs Justice Susan Denham (centre) is congratulated on her 'Lifetime Achievement' award by Minister for Justice Charlie Flanagan and award sponsor Julie Brennan (Institute of Legal Research and Standards) at the 2018 Clinch Wealth Management Irish Law Awards on 11 May



Stuart Gilhooly (HJ Ward & Co) receives the 'Solicitor of the Year' award from Sean O'Carroll (MedLaw), with Miriam O'Callaghan (MC of the Irish Law Awards)



The 'Service Provider to the Legal Profession' award was presented to the Law Society of Ireland's Diploma Centre. Pictured are: Rory O'Boyle, Freda Grealley and Brendan Twomey (representing the Diploma Centre), with award sponsor representative Aisling Murphy (3M)



John White (managing partner, Beauchamps) receives the 'Law Firm of the Year' award from sponsor Tom Clinch (Clinch Wealth Management)



Michael Irvine, recipient of the 'Special Merit' award



Deirdre Burke (DM Burke & Co) – winner of the 'Sole Practitioner/Sole Principal of the Year' award



Law Society director general Ken Murphy pays tribute to Mrs Justice Susan Denham's achievements at the Irish Law Awards



George Maloney of RSM Ireland (award sponsor) presents the 'Banking, Finance/ Restructuring and Insolvency Law Firm/Lawyer of the Year' award to ByrneWallace, represented by Sean Rooney and John Fitzgerald



## DLA PIPER MAKES DUBLIN MOVE



David Carthy

DLA Piper is opening a Dublin office, which will be headed up by former William Fry partner David Carthy.

The launch has been in the pipeline for 18 months, with many existing clients either already in Dublin or contemplating a move here, co-chief executive Simon Levine confirmed. The firm has 40 global offices and boasted revenue of \$2.6 billion last year.

Simmons and Simmons has also opened its doors in Dublin, hiring Fionán Breathnach (formerly of MHC) as partner. Elaine Keane and Niamh Ryan have come on board from A&L Goodbody to handle regulated funds, at a Fitzwilliam Place office.

Meanwhile, food and life-sciences law specialist Maree Gallagher is working with Covington and Burling, which is also establishing in Dublin, confirming the capital's growing importance as a global legal hub.

## HOGAN HEADS FOR CJEU

Mr Justice Gerard Hogan has been nominated by the Government as Advocate General to the Court of Justice of the EU. He will serve from October 2018 until 2024.

The Luxembourg-based CJEU ensures that EU law is interpreted and applied correctly and consistently in every member state. It consists of 28 judges and 11 advocates general.



## LAW AND ART IN PARTNERSHIP



Nicholas Butcher (managing partner, Maples and Calder), Joanne Drum (education officer, National Gallery of Ireland) and Sean Rainbird (chairman, National Gallery) at the partnership announcement

**Maples and Calder has launched a significant cultural initiative, in partnership with the National Gallery of Ireland.**

**The firm is supporting a new 'creative space' in the refurbished gallery's atrium that will be open to all visitors as a spot in which to linger, relax and imagine.**

**The firm's support will enable**

**the gallery to improve and enhance the space, with a rotation of welcoming and inclusive experiences and art-making materials on offer.**

**Gallery director Sean Rainbird said he was delighted to have the first law firm come on board, as the National Gallery builds its corporate partnership programme.**

## CHILDREN NOT 'MINI- PEOPLE', LAWYERS ARE TOLD

There is a growing understanding of the importance of listening to the children involved in legal cases, attendees at a Law Society TRACHILD training day heard.

The 13 April seminar for legal counsel representing children in criminal, civil law, and administrative proceedings before the courts heard that it is the child, more than anyone else, who will have to live with what the court decides.

Speakers, including Dr Geoffrey Shannon and solicitor Dara Robinson, discussed the rights of minors in the legal system in Ireland, including the matter of separate legal representation.

"Children are not mini-people," Greek lawyer Nina Aggelopoulou told the seminar. "They have rights, not mini-rights."

## WRC USERS SATISFIED

A Workplace Relations Commission customer survey has shown high levels of satisfaction among those who engaged with its conciliation service.

A full 90% of users were happy with the service. The inspection service drew an approval rating of 91%, with 85% viewing it as impartial.

A total of 83% of users claimed a better understanding of employment legislation, post inspection.

In all, 56% of users were satisfied with the adjudication.



## FURTHER TWIST IN 'SETANTA' SAGA

The Setanta saga, which finally looked to have come to an end with the Government confirmation of full compensation for all victims, has taken a further twist, *writes Stuart Gilbooly*. Upon finalisation of the litigation last May in the Supreme Court, the liquidator set about applying for payment of all settled claims from the Insurance Compensation Fund. This process is handled by the [Office of the Accountant of the Courts of Justice](#), which brings an application to the President of the High Court no more than twice a year.

The first such application was last July and, so far as we are aware, several hundred payments were authorised, many of which were compensation payments for personal injuries by claimants represented by solicitors. This application was made without any notice to those solicitors or to the Law Society.

The Accountant's Office then proceeded to send the cheques for compensation directly to claimants, bypassing the solicitors in the process. We are aware of at least one case where the claimant had moved address and the cheque had to be re-issued.

The Law Society first became aware of this unprecedented policy of payment only when contacted by shocked colleagues who, in turn, had been informed by mystified clients. As president at the time, I was alarmed at this development, which would have repercussions for claimants and their solicitor.

### Dangers

We sought a meeting with the Accountant's Office, which took place in September last year, and we made submis-



The Society applied to the President of the High Court seeking to be heard on the issue of payment of settled claims from the ICF

sions on the dangers of this policy. We explained that, in every other case, including cases where lodgements are made to the same Accountant's Office, cheques are made payable to the claimants and sent to their solicitor's office. This is done for a number of reasons, among them:

- To ensure that the cheque arrives safely and securely to an address where it will be handled in a confidential manner,
- To safeguard undertakings given by the solicitor, and
- To arrange payment of outlays such as those due to hospitals, or already discharged by the solicitor.

The Accountant's Office was unable to proffer any real reason for this new policy, other than that it had received legal advice to do so. Protracted legal correspondence over the course of a number of months involving myself, current president

Michael Quinlan, and our legal advisors with both the Accountant's Office and, subsequently, its legal advisors, failed to break the impasse.

In the circumstances, with the next tranche of payments due to be approved in April, we made an application to the President of the High Court that we wished to be heard on the issue,

and he agreed to approve the payments, but delay the distribution of the cheques until he had heard both parties' submissions on 11 May.

In the interim, following negotiations between the Society's solicitors and the Accountant's Office solicitors, it was agreed that, where the claimant was represented by a solicitor, cheques would be made payable to the claimant, but sent to the solicitor's office. In other words, precisely what we had sought last September. It is disappointing that so much effort and time had to be expended on what should have been a simple matter.

In the meantime, the next tranche of payments are due to be approved in October.

The [Insurance Amendment Bill 2017](#), which will allow for 100% compensation to be payable (and we believe will end the dispute as to whether 100% costs are payable under the current scheme), is due for publication very soon and, we hope, will commence the legislative process before the summer recess.

## STRATEGIC REVIEW OF SOLE PRACTITIONERS

**The challenges facing sole practitioners and smaller practices are to come under the spotlight in a review ordered by the Law Society.**

**Management consultancy Crowe Horwath has been commissioned to examine the operating environment for sole practitioners and smaller practices. The report will outline the steps necessary to plan for the future of this sector.**

**Law Society President Michael Quinlan said that this independent strategic assessment will enable small firms to better position themselves for the future. He urged all those invited to participate in a forthcoming survey to engage fully with the process in order to gather meaningful data for analysis.**

**Crowe Horwath will report with practical recommendations by the autumn.**





## 'TIMELY' TO REVERSE CUTS IN CRIMINAL LEGAL AID – FLANAGAN

Swingeing cuts to criminal legal aid should be reversed as soon as possible, the Minister for Justice has said.

Reversing the cuts will be dealt with shortly at Cabinet, Charlie Flanagan told the assembled guests at a parchment ceremony for new solicitors on 3 May.

He said he had instructed his department officials to engage actively with the Law Society on the matter. "I think it's timely that we would have an opportunity of dealing with these issues now as we enter into the summer months," he said.

"I will be very much engaged with the estimate process with my colleague, the Minister for Public Expenditure and Finance, Pascal Donohue. I would be very keen to engage with the Society in order to ensure we make progress in that regard."

Law Society President Michael Quinlan had earlier said that those criminal practitioners who had 'worn the green jersey' during the recession were looking for some return to the previous norm, now that the financial crisis has passed and the economy approaches full employment.

"Unlike the gardai and prison officers, the payments to criminal legal-aid practitioners do not include any pension provision, and so are very cost-effective," the president pointed out.

Minister Flanagan also described as "exciting" the Legal Services Regulatory Authority's (LSRA) strategic plan for 2018-20, which had just been submitted to him.

He commended the Law Society for its ongoing constructive engagement on the matter, and said he looked forward to the



Flanagan: 'I would be very keen to engage with the Society in order to ensure we make progress'

LSRA coming into "substantive regulatory mode" shortly.

He said that he very much appreciated the contribution of the Law Society in its frequent submissions on matters of legal reform.

Meanwhile, a loyal brother flew half-way around the world to see his sister receive her parchment on the night. In a surprise visit, Daniel Nevins flew in from Sydney to see his sister Nicola enter the profession on 3 May. An emotional Nicola, who practises at Anthony Joyce Solicitors in Dublin 8, said she hadn't seen her brother in over a year.

And a third generation member of one family entered the profession, when Jennifer Murphy of Eugene F Collins received her parchment. Jennifer's mother Catherine Murphy is a retired District and Circuit Court judge, having initially practised as a solicitor with JG O'Connor in Clare Street, Dublin 2. Jennifer's grandfather was Captain Kelly, also a District Court judge based in Dublin.

## 'ON DEADLY GROUND' RAISES €10k FOR HEADWAY

A fund-raising conference (titled 'On deadly ground: the standard of care and head injuries in rugby') was held in the Presidents' Hall at the Law Society of Ireland on 16 May. In total, €10,000 was raised for the charity Headway, which provides services and support to those living with brain injuries in Ireland.

Organised by barrister Doireann O'Mahony, the event was chaired by Mr Justice Anthony Barr of the High Court and was attended by lawyers, medical professionals, and representatives from some of the leading rugby schools. The keynote speaker was the former Ireland rugby international and Heineken Cup winner Bernard Jackman.



At the Headway charity conference were speakers James Peckitt, Judge Anthony Barr (chair), Doireann O'Mahony BL, Bernard Jackman, Prof Michael Molloy and Dr Michael Turner

The first responder's view was presented by James Peckitt (head physiotherapist of Cork City Football Club and former head physiotherapist at London Irish Rugby Club).

Prof Michael Molloy (consultant physician and rheumatologist, as well as being former chief medical officer of both the Irish Rugby Football Union and of World Rugby) spoke about prevention and management of concussion injuries.

Doireann O'Mahony discussed the legal perspectives, while Dr Michael Turner (medical director of the International Concussion and Head Injury Research Foundation) addressed the long-term implications of contact sports.



## MRS JUSTICE DENHAM RECEIVES LIFETIME ACHIEVEMENT AWARD

Law Society past-presidents swept the boards at this year's Irish Law Awards, hosted by Miriam O'Callaghan at the Clayton Burlington Hotel in Dublin.

A lively audience on 11 May saw Stuart Gilhooly (past-president, 2017) take the 'Solicitor of the Year' accolade, while 2004 president Michael Irvine received a special merit award for his long-standing endeavours with Irish Rule of Law International, a non-profit organisation established in 2007 by the Law Society and the Bar of Ireland to promote access to justice in developing countries.

In his acceptance speech, Michael (a consultant with Matheson) said that it was a great privilege and honour to receive the prize. "There's no present like the present you get from your colleagues!" he said.

The 'Law Firm of the Year' award went to Dublin-based Beauchamps, while 'Criminal Law Firm of the Year' was won by Shalom Binchy and Co.

The Lifetime Achievement Award honoured former Chief Justice Susan Denham, who retired from the Supreme Court in July 2017.



Susan Denham – described by director general Ken Murphy as 'the most transformational figure in the history of the courts system in Ireland'

Introducing her, Law Society director general Ken Murphy recounted her "extraordinary achievements", including the establishment of the modernising Courts Service in 1998.

He paid tribute to her vision and drive on the working group

that had led to the establishment of the Court of Appeal.

He commented: "Mrs Justice Susan Denham was the first woman Supreme Court judge, and also the first woman Chief Justice of Ireland. Her judgments contributed greatly to the

liberalisation and modernisation of Irish jurisprudence."

Addressing her directly, he said: "The two monuments to your reforming vision are the Courts Service and the Court of Appeal. Two working groups, a decade apart, recommended their creation. You brilliantly chaired both and, as the only other individual to have had the honour of serving on both, I am personally delighted to have been asked to present this award to you.

"In my view, Susan Denham is the most transformational figure in the history of the courts system in Ireland," he said, before presenting her with the award.

Expressing her delight at receiving the award, Mrs Justice Denham commented that the most significant change in the legal profession over the span of her career had been in the participation of women. The law had been "a gentlemen's club" at the beginning of her career, she said.

For a full list of winners of the Clinch Wealth Management-sponsored Irish Law Awards, visit [www.irishlawawards.ie](http://www.irishlawawards.ie).

## GETTING INTO PRACTICE?

The Law Society's Support Services section has published two leaflets that should be of interest to solicitors – whether recently or longer qualified – who are thinking of buying a legal practice or into a partnership.

Both leaflets, *Buying a Legal Practice* and *Buying into a Partnership* can be found at [www.lawsociety.ie](http://www.lawsociety.ie) in the 'careers' section (see the 'self-employed' page under 'advice and supports').

Solicitors can sometimes be offered the chance to become a partner in, or buy outright, the firm in which they're employed. Such opportunities are often a natural progression within a solicitor's career, and also facilitate planned succession within the firm. Others may decide to buy a law firm in which they have had no previous involvement.

While setting up a new firm may appear an attractive option

for recently qualified solicitors, practitioners choose to buy into partnerships and existing practices for many reasons. It can fast-track economic viability for self-employed solicitors. It can also minimise many of the risks inherent in setting up a business from scratch.

Currently, there's great value in the market for anyone considering buying into existing practices, with all sorts of opportuni-

ties opening up for prospective purchasers.

Support Services staff are available to answer any queries solicitors might have about these opportunities. The Law Society provides a number of useful facilities in this area, such as the online 'Buy Sell Merge' forum and the small-practice mentor initiative. Members can call the helpline at 01 672 4937 or email [supportservices@lawsociety.ie](mailto:supportservices@lawsociety.ie).



## MIDLANDS' MEETING OF MINDS



Pictured at the Skillnet Cluster event in Laois were (front, l to r): David Soden, Valerie Peart, James McElwee (Laois Solicitors' Association) and Helen Coughlan (Kildare Bar Association); (back, l to r): Katherine Kane (Law Society Finuas Skillnet), John Elliot (Law Society), Nicholas Delaney (Carlow Bar Association), Michael Quinlan (Law Society President), Anne-Marie Kelleher (Midland Bar Association), Louise O'Donovan, Denise Biggins (Midland Bar Association) and Attracta O'Regan (head, Law Society Finuas Skillnet)

The second Skillnet Cluster event of 2018 took place on 18 May in Laois and was a collaboration between Law Society Finuas Skillnet and the Laois Solicitors' Association, Carlow Bar Association, Midland Bar Association and Kildare Bar Association. Practitioners

received updates on:

- Advising the elderly – the Fair Deal Scheme,
- Section 150 costs update,
- GDPR – practice management implications and solutions,
- Commercial leases – drafting and practice essentials,
- How to make the most of your town agents,
- Residential tenancies – law, practice and the Residential Tenancies Board, and
- Civil litigation update – case law developments, practice and procedure.

The event was chaired by Michael Quinlan (president, Law Society of Ireland) and James McElwee (president, Laois Solicitors' Association). Networking took place over lunch and at the evening reception.

## AAJ POWERSCOURT CONFERENCE



PIC: MEREDITH BURNS, AAJ

The American Association for Justice (AAJ) held a conference in Powerscourt on 19 May. Minister for Justice Charlie Flanagan gave the opening address. Judge Anthony Barr of the High Court delivered a paper on the assessment of damages. Pictured are Judge Anthony Barr, Minister Charlie Flanagan, Tobi L Millrood (AAJ secretary), and Liam Moloney (member of the board of AAJ representing Ireland and Britain)

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## A GREAT SEND-OFF

It was standing room only in a packed Court of Appeal on 16 May for the final sitting of Mr Justice Paul Gilligan.

The warmest of tributes were paid by, among others, the President of the High Court and the Attorney General in relation to Mr Justice Gilligan's many years of distinguished service as a judge of the High Court and, subsequently, of the Court of Appeal. The chairman of the Bar of Ireland referred to 'Gillie's' many years as a leading member of the Bar, in the course of which he was "both popular and highly regarded – two things that don't necessarily go together in the Law Library".

Law Society President Michael Quinlan, who has known the retiring judge personally for many decades and who used to brief him, also spoke in the highest terms and added an anecdote he had heard the night before: many decades ago, Gillie used to play soccer on the barristers' team in the UCD super league. It was said of the barristers' team that the quality of their football wasn't



Mr Justice Paul Gilligan

particularly high, but the quality of their dissent to referees was outstanding. In the course of one particular match, Gillie voiced his disagreement with a referee's decision so vehemently that, despite intervention on his behalf by the future Mr Justice Michael Moriarty, he ignored warnings, spoke one or several words too many, and was quite properly red-carded and sent to the sidelines.

And as the president told the packed Court of Appeal, the young whippersnapper of a referee who had dismissed him from the pitch all those years ago was

the future director general of the Law Society, Ken Murphy.

Mr Justice Gilligan, sitting in the Court of Appeal for the last time, acknowledged from the bench that he had not forgotten.

PICTURE: COLLINS PHOTO AGENCY

## GARDA NUMBERS TO RISE

**Garda workforce strength will increase to 15,000 members by 2021, the Minister for Justice has said, pledging to restore the numbers cut during the recession.**

**Almost 1,770 recruits have become fully-fledged members since the training college was reopened in September 2014.**

**Another 600 recruits will graduate later this year, bringing numbers to 14,000. Salaries start at €29,699, rising to a maximum pay scale of €51,963 after 19 years.**

## JUDICIAL APPOINTMENTS

**The Judicial Appointments Advisory Board would like to remind applicants that applications for judicial appointments can be submitted to the board at any stage through-**

**out the calendar year.**

**All valid applications submitted to the board will remain valid for the duration of the calendar year in which they are submitted.**

## NEW MANAGING PARTNER

**ByrneWallace has appointed Feargal Brennan as its new managing partner. Feargal took up the role on 1 June, taking over from Catherine Guy, who has been in the role since June 2012. A senior partner, Feargal has headed up the firm's corporate division comprising an eight-partner team. He has over 20 years' experience, with particular expertise in advising on mergers and acquisitions, private equity, and venture capital transactions.**



## A&L GOODBODY HIRES NEW PARTNER

A&L Goodbody has appointed David Berkery as a new partner in its aviation and transport finance team. David has over 12 years' experience in Dublin, London and New York. He is currently based in the US, advising many of the world's leading financial institutions, airlines, aircraft lessors, investment banks and private investors.

Recent reports forecast that the Irish aviation sector will see growth of over 20% in aircraft assets from 2016 to 2021.

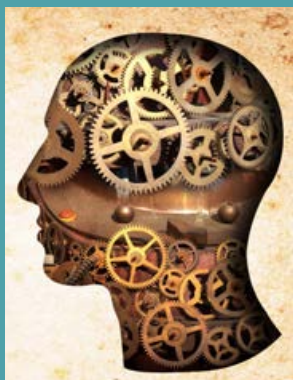




## WORKPLACE WELL-BEING LEADERSHIP GOES BEYOND HOPE

I hope as you read this it is a warm and heady summer's day. I hope your window is open – sounds outside muffled by heat. I hope your tie or suit jacket are abandoned and you close your screen down soon; give in to the pull of a cloudless sky. I hope. We all hope. Hope is a delightful form of time travel, allowing us to believe change is possible, happiness is possible. Of course, the uncomfortable truth about hope is that it has no power of its own. My wish for you is just that. It may or may not come to pass. As tantalising as hope is, if change is what you desire, you will need to draw on something deeper, more active.

Having 'good enough' social (and emotional) supports, coupled with a sense of personal agency, are reliable indicators of how long you will live – as well as how healthily and happily. Personal agency is defined as intentionally influencing your own behaviour, environment, life circumstances, and future. Personal agency is, of course, also the cornerstone of effective leadership – an increasingly valuable skill for professional success. Let's think of a desire you have right now. How you approach this is personal to you. Some of us have ready access to an internal 'leader' that we can mobilise with ease. For others, it is more complex. We clearly want something – and yet we meet our resistance. We self-sabotage, prevaricate, or isolate from the support of people who could help. Or we release doubts, become lost in the 'what ifs' or 'shoulds'.



Meanwhile, the moment of opportunity passes, and we are left with disappointment. Some of us have no difficulty tapping into personal power – releasing an inflated forcefulness and often alienating others. The challenge, then, is that success, if it comes, can feel hollow and go unshared. So we set off again and again, in blind pursuit of a completeness that somehow can never be reached.

How do we become leaders of our own lives? By going beyond hope – going deeper until we really know ourselves and our personal relationship with power, with self-agency. It is journey of self-discovery, but one well worth making. A longer, healthier – and indeed happier – life awaits those who take the risk.

If you would like to know more, the Society's six-month Executive Leadership Programme begins at the National Gallery of Ireland on 12 October. See [www.lawsociety.ie/Leadership](http://www.lawsociety.ie/Leadership) or email: [finus\\_skillnet@lawsociety.ie](mailto:finus_skillnet@lawsociety.ie).

*Antoinette Moriarty is a psychotherapist and head of the Law School's counselling service.*

## 'LEGALLY SOUND' HITS ALL THE RIGHT NOTES



Legally Sound – runner-up in the National Workplace Choir of the Year 2018

'Legally Sound', the ByrneWallace choir founded in late 2016, has taken the runner-up prize in this year's [Workplace Choir of the Year 2018](#). The final took place on 13 May in Clontarf. The overall winner was the Sacred Heart of Jesus National School Staff Choir, which, under the leadership of Eileen Murray, made it two in a row.

Legally Sound competed against 29 other choirs representing organisations including Beaumont Hospital, BNY Mellon, the Central Bank, Citibank, Eirgrid, Irish Life, and the NTMA to secure a coveted place in the final.

Directed by choral director Maria Stanley and accompanied by Roy Holmes, Legally Sound performed *The Pink Panther* by Henry Mancini and *Adiemus* from *Songs of Sanctuary* by Karl Jenkins.

The choir brings together voices from across the firm and held its first performance of Christmas carols for staff in December 2016. They entered the National Workplace Choir of the Year Competition (in associa-

tion with Lyric FM) for the first time in April 2017, progressing to the finals that year.

The choir's performance in that competition brought them to the attention of international charity Aidlink, which invited the choir to perform at the National Concert Hall in November 2017 as part of a national fund-raising concert. Workplace and community choirs were placed with well-known Irish music acts to perform together, with Legally Sound pairing with Irish band The Pale. Following the concert in February 2018, the band invited Legally Sound to appear on stage with them at Whelan's, Dublin, as backing singers.

Commenting on the choir's success, then managing partner Catherine Guy said: "We are very proud of Legally Sound's achievement and success, and extremely impressed by their effort and commitment. They are great ambassadors for us and, having heard them perform, I have no doubt that, with their talent, they will go on to achieve even greater things."



## PROPOSED GAMBLING AUTHORITY WILL LEVY OPERATORS TO FUND ADDICTION TREATMENT

Justice Minister Charlie Flanagan has pledged to beef up “antiquated” laws that fail to tackle the modern betting industry.

The minister told the Dáil on 9 May that a gambling regulatory authority was an absolute necessity to protect the consumer and vulnerable individuals. Gambling addiction risks both liberty and health, he said, and progress had been too slow in protecting the public from the fast-evolving gambling industry.

The Government would insist on ‘fair play’ from the big players, the minister warned, because normal consumer protections must apply in this area.

Gambling operators look set to be levied in order to fund addiction treatment for problem gamblers. The minister said that a social fund, bankrolled by betting profit levies, would be administered by the new independent regulatory authority.

The Government will be insisting on the industry’s big-hitters providing a workable self-exclusion process from online betting



accounts for those with a gambling addiction.

A private members’ bill on gambling control, sponsored by TDs Jim O’Callaghan, Jack Chambers and Anne Rabbitte, is not being opposed by the Government.

Charlie Flanagan told the Dáil that the bill replicates Government attempts in 2013 to reform Ireland’s antiquated gambling legislation, bringing together licensing and regulatory functions in one place. The antiquated *Gaming and Lotteries Act 1956* would also be updated, he said.

However, the rapid evolution of the gambling industry means that significant changes to the 2013 General Scheme of the *Gambling Control Bill* are necessary.

## THE BUSINESS OF ART – SEMINAR FOR LAWYERS

**Businessman John Magnier’s nude Modigliani recently sold for €131.7 million in New York, achieving the art world’s fourth highest-ever price. The Coalmore Stud owner had bought the 1917 oil for €22.7 million in 2003, underscoring the soaring price of investment art.**

The Art Business Summit Ireland at Adare Manor this sum-

mer will examine the whole topic of art investment, art-secured lending, estate planning and risk management.

The 18 June event offers three CPD points for lawyers and will examine the legal, tax, and wealth-management implications of art collecting.

To book, go to [www.artbusiness europe.com](http://www.artbusiness europe.com).

## MARKETING YOUR FIRM YOU’VE GOT PERSONALITY!

The golden rule when it comes to your firm’s newsletter is that it can’t be boring. No-one wants to read an article about why they should make their will, have contracts of employment with staff, or other legal matters. You may care – and there may be good reasons why people should be reminded about these – but people will always only ever buy what they want, not what they should.

Whether your business is business-to-consumer (B2C) or business-to-business (B2B), those who will make the decision about whether to do business with you are people. All business is ‘H2H’: human-to-human.

So, don’t make legal subject matter and your services the central focus of your newsletter. You might find them interesting, but your clients won’t.

Instead, think about what is interesting in your clients’ lives. What are they likely to read about? Think about the features section of a popular magazine or weekend newspaper. Since your newsletter will be going into people’s homes and ending up on their coffee tables, make it something they will read, find interesting, and pass on to a family member or a friend.

The most important thing, then, to put into your newsletter (and all of your marketing efforts) is your personality. The more people get to see the real person behind the ‘lawyer’, the better. As

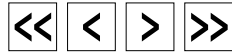


humans, we are comfortable doing business with people we know, like, and trust. When people see you as you really are, they’re no longer thinking about you as a lawyer, but as a person.

Your strongest unique selling proposition is yourself. The relationship of trust that you have with your clients is something they cannot get from anyone else – who you are is central to that.

Therefore, news about the real people behind your business will make it personal and interesting, and will allow you to make it your own. And when you think about this, it actually makes the job of assembling the content a whole lot easier. It’s much easier to pull together some photos from a fun event with a few snappy captions than it is to sit down and write some turgid article about the benefits to be had from registering rights of way!

*Flor McCarthy is the author of the Solicitor’s Guide to Marketing and Growing a Business, available at [www.thesolicitorsguide.com](http://www.thesolicitorsguide.com).*



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## LSRA LAUNCHES FIRST STRATEGIC PLAN

The Legal Services Regulatory Authority (LSRA) has launched its first strategic plan, covering the years 2018-2020, writes *Mark McDermott*.

Dr Don Thornhill, LSRA chairman, said that he was pleased to introduce the plan and expressed his gratitude to his colleagues for their hard work and enthusiastic engagement in meeting the statutory requirements.

The authority was established on 1 October 2016, and its 11 members met for the first time on 26 October 2016. Despite having very few staff and an inadequate premises, it has met on ten occasions, issued five statutory reports, introduced appropriate governance structures, moved into temporary accommodation, and begun the process of recruiting key staff and building the organisation's capacity.

In September 2017, Brian Doherty became its new CEO, taking over from interim CEO Renee Dempsey. Among his key responsibilities was to develop the strategic plan, which sets out the main priorities of the organisation as it builds the capacity to undertake its wide-ranging functions under the *Legal Services Regulation Act 2015*.

### Significant implications

Dr Thornhill says that the authority is "very conscious that the mandate of the LSRA has significant implications for the provision of legal services and the administration of justice, for the public, and for legal practitioners. It is the intention of the authority that the commencement of the operations of the LSRA should be done in a measured and controlled



Brian Doherty: 'The commencement of part 6 can only be properly and carefully managed once the resources and infrastructure are in place'

way, as set out in this three-year plan."

Commenting on the plan, Mr Doherty said that "comprehensive and considered reports on legal partnerships, multidisciplinary practices, and matters relating to the barristers' profession" had all been delivered on or before their statutory deadline.

He added: "I appreciate that much of the external focus on the LSRA has been in relation to the commencement of part 6 of the 2015 act, which relates to complaints and disciplinary hearings in respect of legal practitioners." He said, however, that the commencement of part 6 could only be properly and carefully managed once the resources and infrastructure were in place.

### What's in the plan?

The LSRA has set out a three-pronged approach in order to achieve the strategic aims of its three-year plan, which are:

- To build an independent and effective regulatory authority,



Don Thornhill: 'The mandate of the LSRA has significant implications for the provision of legal services and the administration of justice'

- Innovation in the introduction of new models of legal service delivery and research into legal education, access to justice, and other areas, and
- Increasing awareness through communication and engagement.

In building a fully resourced and operational independent regulatory authority, the LSRA will begin recruiting staff in earnest during the first quarter of 2019. This phase will "effect the transfer of staff from professional bodies, as appropriate".

During the same period, it will build a suitable premises and develop an IT system that is capable of delivering its statutory and strategic objectives.

Before that happens, however, the LSRA will start compiling the Roll of Practising Barristers during the second quarter of 2018, with an expected completion date by the end of the year.

### Legal partnerships

During the third quarter of 2018, the LSRA will introduce

the enabling framework for legal partnerships as a business model for the delivery of legal services in the State. The LSRA will decide on the registration fee and will create a register for legal partnerships.

During the same period, the LSRA will research and review the education and training of legal practitioners and make recommendations as required. It adds, however, that significant research projects into the education of, and admissions to, the legal profession will require resources and significant effort.

During the final quarter of 2018, it will introduce the enabling framework for limited liability partnerships (LLPs), developing the operational, management and PII regulations that will apply to this business model. It will also create a register of LLPs.

During the three-year plan, the LSRA will lay the foundations necessary to undertake other areas of work required by the *Legal Services Regulation Act 2015*, including:

- The development of regulations for the advertising of legal services,
- Establishing an advisory committee on the grant of patents of precedence,
- Research and reporting on the potential creation of a new profession of conveyancer, and
- Consideration of the unification of the solicitors' profession and the barristers' profession.

The first strategic planning period will cover the authority's start-up phase, which will end in October 2019, when a second three-year plan will be introduced.





## JUDGE GRÁINNE O'NEILL 1971 – 2018

Judge Gráinne O'Neill died in office on Thursday, 10 May 2018, at the age of 46. She was appointed as a judge of the District Court in April 2014 and presided in a great many District Courts throughout Ireland.

Her immense contribution to the law as a solicitor and to the judiciary was widely recognised by her colleagues, as evidenced by the large attendance both at her funeral Mass in Athlone and her burial in Fanore, Co Clare. Her death at such a young age is a profound personal loss to us all.

Gráinne grew up in Athlone, the daughter of Colonel Terry O'Neill and the late Dr Ursula O'Neill (née Loughnane). She attended Our Lady's Bower Secondary School, Athlone, and later went to University College Galway, graduating with an LLB. She qualified as a solicitor in 1999 and, as well as working in Athlone and Naas, she spent some time working in the legal system in Australia. In Naas, she was a prominent member of the Kildare Bar Association.

Prior to her judicial appointment, she had returned to Ath-



lone and opened an office with a colleague, where she specialised in criminal, family, civil litigation, and employment law. She was always a passionate advocate for

her clients. In addition, Gráinne had a profound social conscience: she was on the board of the South Westmeath Hospice, as well as the Athlone Rape Crisis Centre.

She also volunteered with the Free Legal Advice Centres.

Her social conscience and commitment to hard work continued as a judge, where her reputation for erudition in the law, empathy, and simple humanity was widely acknowledged by all who appeared before her. She was fiercely determined, as shown by her 'Ironman' triathlon success on two occasions, but also by her determination to carry out her judicial functions while ill – even working at weekends prior to her untimely death.

Off the bench, Gráinne had a roguish sense of humour that she put to good use among her judicial colleagues. She loved being a judge, and she was loved as a judge. She was simply a warm human being who was very good at what she did.

To her much-loved family, she was a loving daughter, sister, sister-in-law, and a devoted aunt to her beloved nephews Harry and Simon.

*Ní bheidh a leithéid ann arís.*

May she rest in peace.

RH



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## KILDARE ELECTS NEW COMMITTEE

The Kildare Bar Association (KBA) recently elected its new committee. Helen Coughlan (president), who has taken over from David Powderly, thanked him and the outgoing team for their dedication to the work of the association.

In one of his last acts as president, David made a presentation on behalf of the association to Judge Geraldine Carthy (outgoing secretary of the KBA) on her recent appointment as a District Court judge.



PIC: TONY G MURRAY PHOTOGRAPHY

The KBA's newly elected committee: Susan Webster (CPD officer), Elaine Farrell (treasurer), David Gibbons (vice-president), Helen Coughlan (president), Sarah Pierce (social secretary), Catherine Webberley (secretary) and Ross Phillips (PRO)

## WATERFORD WHISPERS – NEWS



Attending the Waterford Law Society CPD seminar at Faithlegg House Hotel on 13 and 14 April were Paul Murrin, Eoin O'Herlihy, Audrey Barry (Waterford Chamber Skillnet), Edel Morrissey (president), Sara Mullally (network manager, Waterford Chamber Skillnet) and Shaun Boylan BL



ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY

Georgina Phelan, Rosie O'Flynn and Aidan Lynch



James Moore, David Keane and Niall King



David O'Connor, Niamh Cullen, Eoin O'Herlihy, Gillian Ormonde, Valerie Farrell, Dan O'Connell, Maeve O'Connor, Brid Cahill and Rosie O'Flynn



# COMPLAINTS AGAINST SOLICITORS HIT HISTORIC LOW

Client complaints against solicitors have fallen to just a third of what they were 20 years ago – and 94% of solicitors had no complaints against them in 2017.

**Sorcha Hayes** reports

SORCHA HAYES IS HEAD OF PRACTICE REGULATION AT THE LAW SOCIETY

COMPLAINTS WERE MADE REGARDING JUST 0.09% OF TRANSACTIONS CARRIED OUT BY SOLICITORS

The Law Society is the statutory regulator with regard to complaints against solicitors. Complainants include clients, other solicitors, financial institutions, and the Registrar of Solicitors. Complaints fall into three main categories – misconduct, excessive fees, and inadequate professional services.

The number and nature of complaints serve as a useful indicator of the quality of service provided by solicitors to their

clients, and any areas of concern. A review of complaints figures for 2017 has shown historic lows across a range of variables:

- Complaints were made regarding just 0.09% of transactions carried out by solicitors,
- The propensity of clients to make a complaint against their solicitor reduced to one-third of what it was 20 years ago,
- Numbers of admissible complaints are two-thirds lower than the peak of 2011, and

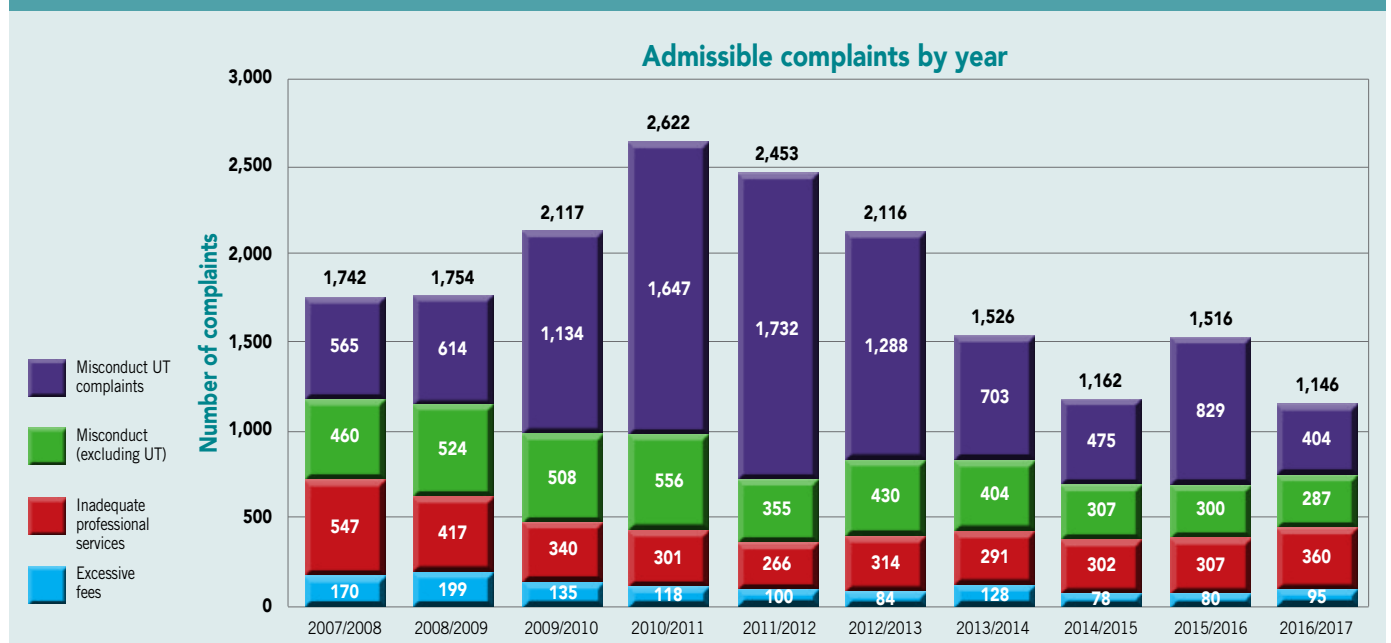
- 94% of all solicitors had no complaints made against them in 2017.

These figures demonstrate the high quality and ongoing improvement in legal services and client care provided by solicitors, and the general high level of client satisfaction.

### Breakdown of complaints

A total of 31,182 admissible complaints have been made in the last 20 years, more than half of which

## BREAKDOWN OF COMPLAINT CATEGORIES



The above table includes the breakdown of admissible complaints (from 1 September to 30 August for each year) into the relevant categories of misconduct, inadequate professional services and excessive fees. As undertaking (UT) complaints comprise a disproportionate amount of complaints, misconduct complaints have been broken into 'misconduct undertaking complaints', and 'misconduct complaints excluding undertakings'.



A significant drop in solicitor complaints – music to our ears...

have been made in the last ten years. While this looks significant, the number of solicitors in the profession and the volume of transactions carried out by solicitors should be kept in mind.

If it is estimated that each practising solicitor carries out an average of 100 instructions (each relating to an individual case or transaction) per year, and each complaint refers to issues with one transaction, complaints are only made with regard to 0.2% of all transactions over the last 20 years, and 0.09% of all transactions for 2017.

As a general rule, complaints are per transaction rather than per solicitor. Admissible complaints are at their lowest level in ten years, at 986 complaints for 2017. This is 63% lower than the peak of complaints in 2011 (2,667) and 34% lower than the average number of admissible complaints over the last 20 years (1,485).

When numbers of practising solicitors are taken into account, the propensity of complainants to make a complaint against a solicitor is half of what it was ten years ago (9% in 2017 as against 18% in 2007) and two-fifths of what it was in 1998 (22.4%).

#### Undertakings

Complaints that a solicitor has failed to comply with undertakings constitute a disproportionate amount of admissible complaints (26% in 2017). Such complaints are predominantly made by financial institutions rather than clients of solicitors. When such complaints are removed from the figures, the propensity of clients to make a complaint against their solicitor drops to 7% in 2017 – one-third as likely as clients were to make a complaint against their solicitor in 1998.

It should be noted that the number of complaints made in a

year does not reflect the number of solicitors against whom complaints are made, as one solicitor can have multiple complaints made against them. For example, in 2013, just under 10% of all complaints were made against just one solicitor. In 2010 and 2011, the number of admissible complaints grew by 32% and 53% compared with 2009, but the corresponding number of solicitors increased by only 1.2% and 4.5%.

As at 31 December 2017, the proportion of solicitors against whom an admissible complaint has been made is at a 20-year-low, at just 6.2% (650 of 10,499 practising solicitors) – from a high of 14.7% (727 of 4,950 solicitors) in 1998. Despite the fluctuations in the number of complaints, the number of solicitors against whom complaints have been made has been decreasing steadily at an average rate of 0.4% per year.

THE NUMBER AND NATURE OF COMPLAINTS SERVE AS A USEFUL INDICATOR OF THE QUALITY OF SERVICE PROVIDED BY SOLICITORS TO THEIR CLIENTS, AND ANY AREAS OF CONCERN



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LLM Advanced Legal Practice	29 September 2018	€3,400
Certificate in Company Secretarial Law & Practice	2 October 2018	€1,550
Certificate in Data Protection Practice	4 October 2018	€1,550
Certificate in Writing and Drafting Skills (new)	5 October 2018	€1,550
Diploma in Finance Law	9 October 2018	€2,500
Diploma in Healthcare Law	11 October 2018	€2,500
Diploma in Construction Law	13 October 2017	€2,500
Certificate in Conveyancing	16 October 2018	€1,550
Diploma in Judicial Skills & Decision-Making	17 October 2018	€2800
Diploma in Insurance Law	18 October 2018	€2,500
Certificate in Agriculture & Food Law (new)	20 October 2018	€1,550
Certificate in Commercial Contracts	20 October 2018	€1,550
Certificate in Construction Dispute Mediation (new)	23 October 2018	€1,550
Diploma in Sports Law	24 October 2018	€2,500
Diploma in Education Law	2 November 2018	€2,500
Certificate in Trade Mark Law	8 November 2018	€1,550
Certificate in Immigration Law and Practice (new)	8 November 2018	€1,550
Diploma in Mediator Training	9 November 2018	€3,000
Diploma in Advocacy Skills (new)	15 November 2018	€2,500

### CONTACT DETAILS

E: [diploameteam@lawsociety.ie](mailto:diploameteam@lawsociety.ie) T: 01 672 4802 W: [www.lawsociety.ie/diplomacentre](http://www.lawsociety.ie/diplomacentre)

All lectures are webcast, allowing participants to catch up on course work at a time suitable to their own needs. Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.



It should be kept in mind that the vast majority of solicitors have not had a complaint made against them. In 2017, 94% of solicitors had no complaints made against them in that year.

The table on the previous page includes the breakdown of admissible complaints (from 1 September to 30 August in each year) into the relevant categories of misconduct, inadequate professional services, and excessive fees. As undertaking complaints comprise a disproportionate amount of complaints, misconduct complaints have been broken into 'misconduct undertakings complaints', and 'misconduct complaints excluding undertakings'.

### Misconduct

The majority of complaints made against solicitors relate to failure to comply with undertakings, from a high of 71% of all admissible complaints in 2011/12 to 35% in 2016/17. Just over half of all complaints made in the last ten years have been complaints regarding undertakings.

There has been a substantial fall in undertakings complaints in 2016/17, with the number of such complaints more than halved from 2015/16 to 2016/17.

The number of undertakings complaints by the end of 2017 was at its lowest level since 2008, and 86% lower than the peak figure of 1,792 complaints in 2011.

The number of undertakings complaints has been steadily decreasing since 2011, with the exception of 2015, where figures grew by 22% compared with 2014. This was due to delays on the part of some banks in bringing forward historic cases, rather than indicating any new deterioration in standards in the profession.

Non-undertakings misconduct complaints constitute 23%

of all admissible complaints over the last decade. Reasons for such misconduct complaints include:

- Delay,
- Failure to communicate,
- Failure to hand over files,
- Failure to account,
- Conflict of interest,
- Dishonesty or deception,
- Witness expenses,
- Advertising, and
- Counsel's fees.

Of these, the most common over the last ten years have been failure to hand over files (26%) and failure to account (20%). Dishonesty or deception accounts for just 2.5% of misconduct complaints. The number of admissible complaints in these categories in 2017 was at its lowest level in ten years.

### Excessive fees

Excessive-fees complaints constitute only 7% of all complaints made in the past decade and 8% of complaints made in 2016/17. This contrasts with the popular (but erroneous) belief that excessive fees are a major source of complaint.

The number of excessive-fee complaints in 2016/17 is nearly half of those made ten years ago. The majority of excessive-fees complaints in the last ten years have related to fees arising on litigation work (33%), followed closely by matrimonial work (25%).

### Professional services

Inadequate professional services complaints constitute 19% of all complaints over the last ten years and 31% of complaints in 2016/17.

Reasons for inadequate professional services complaints include delay, failure to communicate, and poor-quality work. At 38%, the most common category of such complaints in



PICTURE: SHUTTERSTOCK

the past decade relates to delays in dealing with client matters. While the number of inadequate professional services complaints has been increasing since 2011/12, the levels in 2016/17 were still 38% lower than the peak of 2007/08.

### Reasons for reductions

The low levels of complaints can be attributed to a number of factors, including:

- Increasing effectiveness and robustness of the Law Society's regulatory system,
- Improved education of students and practitioners regarding client care,
- Increased focus through professional indemnity insurance on firm risk-management procedures,
- Decline in economic activity since the boom, particularly in relation to property transactions, and
- Competitive pressures, with clients more likely to change allegiances if they get poor-quality service.

The Law Society will continue its focus on regulation and education of the profession in 2018, with a view to improving client care and risk management in the provision of legal services by solicitors, which should, hopefully, maintain the downward trend in complaints in 2018. [g](#)

IT SHOULD BE KEPT IN MIND THAT THE VAST MAJORITY OF SOLICITORS HAVE NOT HAD A COMPLAINT MADE AGAINST THEM



# BREXIT BURDEN WILL WEIGH HEAVILY ON IRELAND – NEUBERGER

Ireland needs to prepare for the ‘enormous financial burden’ involved in preserving the common law, post-Brexit, according to one of the recipients of the inaugural Hibernian Law Medals. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE



THE COMMON LAW HAS A GREAT DEAL TO OFFER, AND I THINK MOST SENSIBLE CIVIL LAW LAWYERS AND JUDGES ACCEPT THAT, EVEN IN EUROPE

**"A**n enormous financial burden now lies ahead for the Irish State as the only common law jurisdiction remaining in the EU, post-Brexit." So said the former president of the British Supreme Court, David Neuberger, who was speaking at an event to mark the presentation of inaugural Hibernian Law Medals to three of the common law world's most eminent judges.

Addressing the topic of Brexit and its potential impact on the common law in the EU, Neuberger said: "The common law has a great deal to offer, and I think most sensible civil law lawyers and judges accept that, even in Europe. My experience of Irish lawyers and Irish judges is that the common law will be in very good hands."

The awards are an initiative of the *Hibernian Law Journal*. The first three recipients of the medals – Neuberger, Beverley McLachlin (former chief justice of Canada), and former Irish Chief Justice Susan Denham – received their awards at a ceremony at the Law Society's headquarters at Blackhall Place on 11 May.

Current Chief Justice Frank Clarke, who succeeded Mrs Justice Susan Denham last July, paid tribute to his predecessor and

spoke of his huge admiration for all three recipients. They were honoured for their lifelong commitment to justice, to the rule of law, and for their exceptional contribution to the development of jurisprudence.

## Common law's adaptability

Speaking to the *Gazette*, Neuberger expanded on his comments about Ireland's financial burden in relation to Brexit's impact on the common law in Europe.

"Checking on legislation, putting forward the common law concerns, particularly in the Court of Justice ... obviously costs money, because it involves people, work and research."

He urged members of the Irish judiciary "to reach out to their judicial counterparts in Britain for help". He spoke warmly of the "current excellent relations" between Ireland and Britain, adding that senior judges in Britain would be very sympathetic to Ireland's dilemma, including Jonathan Mance (deputy president of the British Supreme Court) and John Thomas (recently retired chief justice of England and Wales) – both of whom have been very involved at EU level.

In his speech, he said that lawyers prided themselves on the

common law's adaptability, and judges were ready to develop it in the light of changing social standards, commercial practices or new technology.

The consistency of common law, combined with its mutability, had helped maintain the rule of law and had played a vital part in underpinning economic success, he pointed out. He urged close communication between the two countries prior to exit day.

On the inherently demanding nature of the judge's job, Neuberger said there were often intellectually difficult problems to resolve, frequently with a moral, ethical or political aspect. While scientific thought processes have much in common with legal ones, there are fundamental differences. In maths and science, there is a demonstrably right answer.

"That's not true when it comes to the judge's job of resolving issues of law," he observed: resolving issues of fact normally involves deciding which of two conflicting witnesses to believe. Judges who believe they can 'spot' a liar are deceiving themselves, he said. Humans are fallible, and it is inevitable that some issues of fact will be influenced by the identity of the judge.

He reiterated his firm belief in the importance of judges recognis-



PCS: PAUL SHERWOOD

Frank Clarke, Beverly McLachlin, Susan Denham, David Neuberger and Glen Rogers

ing their own subconscious biases, recalling a case where he found a witness's testimony believable, although it stood in opposition to some hard evidence presented to the court. He afterwards concluded that he was inclined to take the witness at face value because he had similar mannerisms to his own late father.

#### 'Vocational witnesses'

In her award acceptance speech, Ms Justice Beverley McLachlin commented: "Judges are vocational witnesses to the entire gamut of human behaviour, from

the most noble to the most horrible. They may admire some of the people parading before them, while detesting others.

"He or she mustn't stop at the quick instinctual reaction," she said, "although that can be valuable, but has to go on and examine whether that reaction is grounded and fair."

She added that she had always tried, by an act of imagination, to put herself in each of the party's shoes and try to see the case from their perspective – stressing the importance of "conscious objectivity".

Active listening in a curious, open way, with deep engagement, was a key skill of a good judge. A judge who didn't listen didn't have the basic information required to build a just decision. "A judge must listen in order to learn."

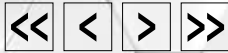
#### Life after law

The third recipient, Mrs Justice Susan Denham, spoke on the growing participation of women in the legal profession during the course of her career in the law.

She observed that, in 1983, there were only 183 women on

ACTIVE LISTENING IN A CURIOUS, OPEN WAY, WITH DEEP ENGAGEMENT, IS A KEY SKILL OF A GOOD JUDGE





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David Neuberger



Beverly McLachlin



Susan Denham

the Roll of Solicitors in Ireland. Today, women were in the majority.

Denham recalled that she was often the only women in the court in the early days of her career. In contrast, 37% of the Bar today was made up of women.

She told the *Gazette* that, since retiring last July, she and her husband have moved from their family home of 37 years. She now relishes the outdoor life in Co Wicklow, and is developing a small Connemara Pony stud. “I’ve been enjoying fresh air and friends and family in a way I haven’t been able to for 45 years.

So, it’s been wonderful,” she beamed.

Another project close to her heart is the Denham Fellowship, in association with the Bar of Ireland, which gives a funding opportunity to two young aspiring barristers.

“Also, I’ve been doing some mentoring with schoolchildren,” she said.

Balancing having a family with a career in the legal profession is “always a complicated matter, but I think it’s much better than it ever was before”. Having a good and supportive husband or partner was essential for a

woman who wanted to combine work and family, she said.

And her last word of advice to women in the law: “For all young barristers and solicitors, it’s extremely hard work. And, if they don’t really enjoy it, they shouldn’t stay, because their lives will involve incredibly hard work, all through their profession.

“Even when they achieve a senior position ... there are extremely long hours, so it’s something that you have to like doing. And if you don’t like doing it, then I wouldn’t advise you to be a lawyer.”

Sound advice.

BALANCING  
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WITH A CAREER  
IN THE LEGAL  
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# ORDER ON THE COURT

Irish legal intelligence platform Courtsdesk makes courts data easier to find – and offers some powerful research tools for lawyers. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE



SOLICITORS  
WANT TO KNOW  
WHETHER  
THEIR CLIENT  
IS BEING SUED  
BY A COUNTER-  
PARTY WHO HAS  
HAD NUMEROUS  
CIRCUIT  
COURT CASES  
ON SIMILAR  
OR RELATED  
MATTERS THAT  
NEVER MADE  
IT TO THE HIGH  
COURT

**H**igh and Circuit Court lists are now searchable online under a new service being offered by Irish company Courtsdesk. The platform also offers case tracking and relationship mapping for legal professionals.

Companies Registration Office (CRO) data is integrated into the service, with a first shareholder name search facility. The CRO search will cross-reference with potential litigation listed for the High Court.

Courtsdesk recently landed A&L Goodbody as a client, with users in multiple departments of Ireland's largest law firm. McCann FitzGerald also signed up, while half of the top ten law firms are using the platform on a trial basis. Banks, audit firms, and some stage agencies are also testing it.

Founders Enda Leahy and software engineer Alan Larkin are in talks with Lucy Frazer, the British junior justice minister with responsibility for courts, about how to use technology to improve access to justice.

Leahy is a former investigative journalist used to searching through datasets for relevant information. He realised there was a gap in the market for a platform that integrated litigation information with data from the CRO. Data from the national insolvency register will be eventually integrated on the site.

"On the CRO company pro-

file page, you can access directors, financials and documents, such as annual returns. You also have an immediate cross-referenced litigation search of that company," says Leahy.

## One-stop shop

The site also offers fully interactive, clickable, 'visual relationship mapping', with colour-coded lines denoting links between case protagonists. Leahy describes it as "gamified due diligence".

"I was news editor and deputy editor at the *Mail on Sunday* and, in that role, I was managing teams doing investigative work, so I became *au fait* with the limits of all the different types of searches. The one that always struck me as ridiculous was the courts. The High Court search was okay, but the Circuit Court was literally non-existent. You could barely search the Circuit Court at all, and there was no archive.

"Chief Justice Frank Clarke and Mr Justice Peter Kelly of the High Court both have separate initiatives under way, and I think we're going to see a lot of change, but they have been limited by a lack of resources.

"This platform makes data easier to find and makes it available for a broader number of research types. There are many different-use cases for what goes on in the courts," says Leahy. "Documents that are 'opened in court' become public documents. But, at the moment, you actually have to be

in court to view those documents. This should be publicly accessible information," he says.

Court records can also be downloaded as a spreadsheet from the Courtsdesk site.

## User alerts

The site offers a user-alert service that monitors new court mentions of tracked names.

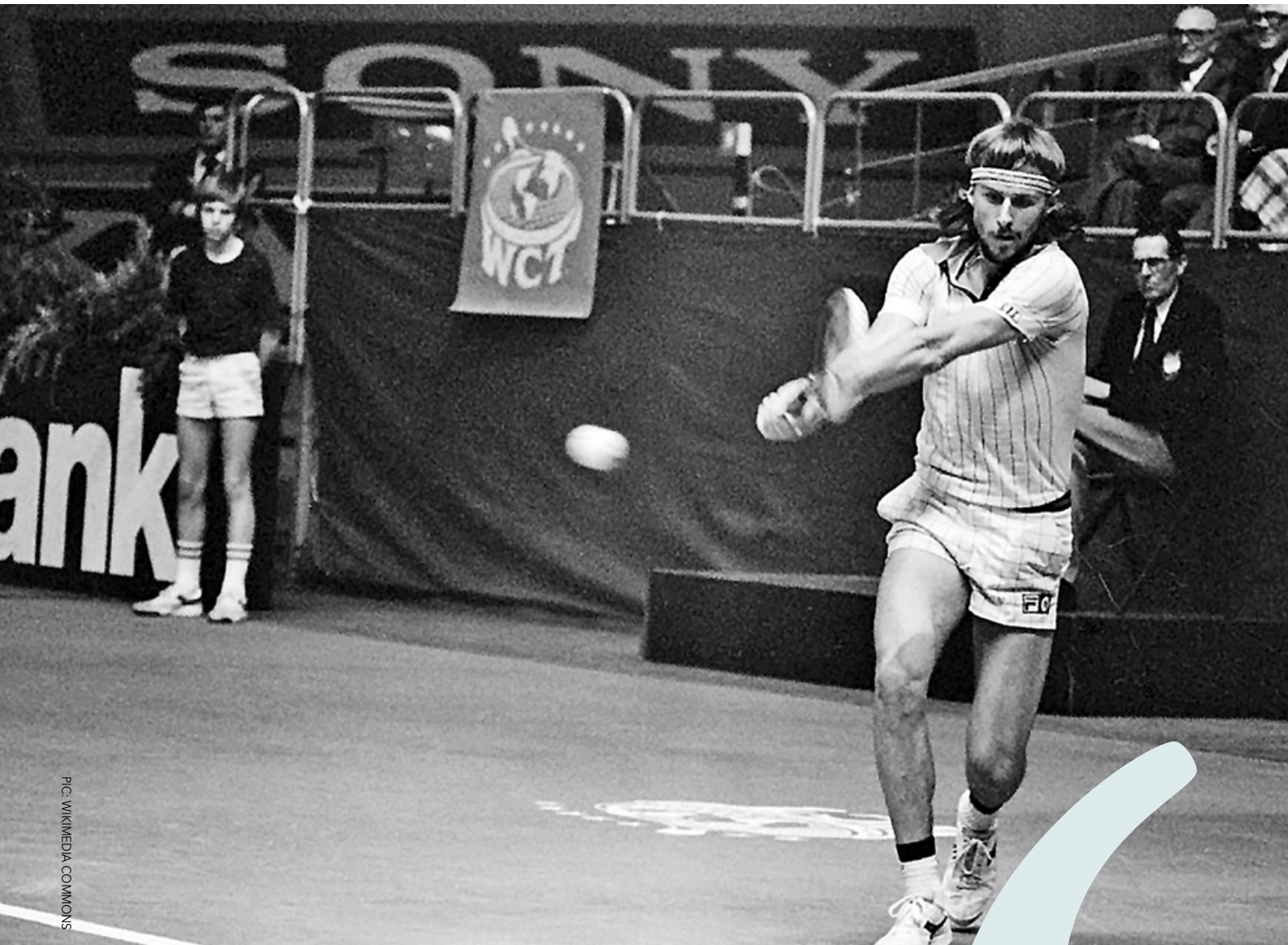
"For any law firm that has multiple clients, there can be a time lag of up to a year between when a case is initiated and when that summons is actually served. We are able to tell people they are being sued, even before they know themselves," says Leahy.

Courtsdesk is modelled on traditional media business taxonomy, and its very first navigation tool is a newsfeed. Every subscriber gets a 'daily brief' of new High Court cases lodged the day before, which number about 90 each day.

The names from each new case are extracted to provide a daily news service to users.

"In the legal profession, there's been a huge amount of focus on precedent and legal argument. I started from the premise that I was much more interested in the protagonists than in the precedent," says Leahy. "We extract all the information that the Courts Service publishes and index it ourselves to make it more searchable."

To solicitors considering using the service, he points out that it is very relevant to know whether their client is being sued by a



PIC: WIKIMEDIA COMMONS

Borg: resistance is futile

counter-party who has had numerous Circuit Court cases on similar or related matters that never made it to the High Court. This information can have a bearing on tactics, research, or strategy, or on how the case is managed.

“Once solicitors get to grips with the possibilities, it becomes a lot more interesting,” Leahy says. “Most have been unable to do this type of research until now.”

#### Market demand

A Courtsdesk search on Denis O’Brien as ‘protagonist’, for instance, reveals that he has 36

directorships, 78 shareholdings, and 183 mentions as plaintiff or defendant.

Leahy developed the ‘non-enterprise’ tier service in response to market demand: “We have spent a long time listening to big clients and enterprise clients. Now we’re turning our attention to the mid-tier, and we have a new offering based around our two core concepts of search and tracking,” he explained.

“The search version is geared for lawyers who want better access to courts and integrated CRO data,” he said. “These plans

are designed for firms with limited search and tracking needs.”

Initially, Courtsdesk focused on firms managing large volumes of litigation. The new mid-tier offering covers every High Court and Circuit Court case and is simplified and less costly. The next version up offers calendar and email reminders on litigation. The site can be searched by either plaintiff or defendant name within filings and records. [E](#)

See [www.courtsdesk.com](http://www.courtsdesk.com) for more details.

THERE WAS A GAP IN THE MARKET FOR A PLATFORM THAT INTEGRATED LITIGATION INFORMATION WITH DATA FROM THE CRO



# THE IMPACT OF BREXIT ON HUMAN RIGHTS

This year's annual Human Rights Lecture explored the uncertainty that Brexit may bring and considered future challenges for human rights.

**Michelle Lynch** reports

MICHELLE LYNCH IS A POLICY DEVELOPMENT EXECUTIVE AT THE LAW SOCIETY



THE BRITISH GOVERNMENT CONTINUES TO MAINTAIN THAT WITHDRAWAL FROM THE EU WILL NOT RESULT IN REDUCED RIGHTS, BUT IT IS UNCLEAR HOW EXACTLY THIS WILL BE ENSURED

The Law Society's Human Rights Committee, in collaboration with Law Society Professional Training, organised an insightful and thought-provoking lecture by Fiona de Londras on 15 May in the Presidents' Hall. De Londras, who is professor of global legal studies and deputy head at the University of Birmingham Law School, explored the risks and uncertainty that Brexit may bring, as well as considering prospective challenges and possibilities for innovation and change in human rights.

Law Society President Michael Quinlan opened the event by welcoming the speaker, guests (including Minister Katherine Zappone), and all attendees to the lecture's 13<sup>th</sup> year.

De Londras began by acknowledging that, unless a second referendum happened reversing the first, Brexit is a reality and one that "we must work within". She explained how she wished to explore a broader perspective that examined questions around how to rebuild "the moral and ethical case for rights" and what Ireland's connection with an altered Britain will mean for rights on the island of Ireland.

#### Rights within Britain

De Londras observed that only in recent times had the protection of human rights become judicially

enforceable and expressly stated as part of the rule of law in Britain. While the British government continues to maintain that withdrawal from the EU will not result in reduced rights, she remarked that it is unclear how exactly this will be ensured. Specifically, she referred to the concept of 'retained law' to guarantee continuity of law in Britain, which does create certainty and allows time to transition. However, this law can then be amended or repealed – which causes concern when it is suggested that this will be the way in which rights will be protected – with little or no parliamentary oversight.

Crucially, the *Charter of Fundamental Rights* will not be retained, with the argument being made that the relevant rights will continue to be protected through retained law. However, de Londras contended that the charter protects rights – including labour, children's and socioeconomic rights – that have no British or European equivalent law. Other remedies, such as the *Human Rights Act 1998*, are "significantly weaker and often inadequate and ineffective". Furthermore, she emphasised that charter rights are fundamental, meaning that their violation can result in the judicial invalidation of laws, including domestic legislation. After Brexit, there will be a much lower standard of rights protection, less

effective remedies for violation of rights, and a "reliance on parliament alone to respect and protect individual rights".

#### Northern Ireland

Prof de Londras turned then to the complex situation in Northern Ireland. She remarked that it was "a place that straddles multiple identities" and said that few took heed when warned that the North was a barrier to Brexit. Fundamentally, the conditions of the peace we have enjoyed for 20 years are fragile, as is the constitutional settlement underpinning it. She noted that the "conditions of peace and unpeace are close neighbours", and it takes very little to move from one to the other. While acknowledging that we do not know what will happen, what can be agreed is that Northern Ireland "is a particular part of the puzzle".

Underpinning this peace is the *Good Friday Agreement*, which includes a commitment to equivalent protection of rights across both parts of the island. In the wake of Brexit, she noted that the North would experience a lower standard of rights protection, and an argument could be made in international law that Britain would not be fulfilling its commitments under the agreement. She suggested that other parts of the agreement might be revived, such as the *Bill of Rights for Northern Ireland* – something considered a



PIC: WIKIMEDIA COMMONS

vital piece of the rights settlement and that might have an increased impetus once Brexit has happened. De Londras noted that, while it is unclear how it will play out, the “potential for serious difficulties is clear”.

### A Europe of rights

She noted that, when discussing Brexit, the tendency was to explain it in terms of Britain alone, suggesting that it was the disenfranchised voters who felt left behind or political risk gone away. However, she suggested that something darker was at play. She referred to Derek Sayer,

who argues that Brexit was in fact about “taking back control” from “the Other” – it is “fundamentally xenophobic”. The issue then revolves around identity and what Sayer refers to as retaining “privilege and entitlement that comes with being (indigenously) white”. De Londras warned that, if such assertions are correct, then it involves a rejection of the European project as a whole – which is a far more concerning possibility.

She cautioned that populism – which is characterised as nationalism, authoritarianism, and anti-establishment sentiment –

appears to be on the rise across the European Union, and this is significant, particularly if we wish to maintain and advance the EU. She noted that it is “anathema to the vision that underpins the European Union”. On a positive note, de Londras proposed that Brexit offered an opportunity to “remake the argument for a ‘Europe of rights’ and to ensure that the EU operates as such”. This, she said, forces us to express the moral case for rights clearly, even where this forces us to sacrifice some sovereignty when violations seem far removed from our own lives. [E](#)

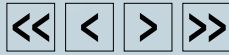
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# Mind the GAP

If the profession is to adapt to a younger, more predominantly female cohort of solicitors, it is going to have to make significant changes in order to address the long-hours office culture. **Suzanne Carthy** crunches the numbers

SUZANNE CARTHY IS A SOLICITOR AND PHD CANDIDATE AT UCD'S MICHAEL SMURFIT GRADUATE BUSINESS SCHOOL, WHERE SHE HAS LECTURED ON GENDER DIVERSITY AND MANAGEMENT



PICTURE: SHUTTERSTOCK





any firms adopt a familiar rhetoric when addressing gender equality, diversity, and inclusion: their employees are their most valuable asset, they are working hard to

retain and promote female talent in their organisations, and some are even proud recipients of awards that recognise their diversity policies.

Despite these efforts, women remain significantly under-represented in positions of seniority and partnership, highlighting a clear gap between the rhetoric and reality of inclusion and equality for women in the profession.

Statistical evidence and interview findings from a study on gender equality in the Irish solicitors' profession offer an insight into the differential career trajectories of female solicitors. Evidence of the extent and degree to which women's advancement to partner is curtailed, relative to their male colleagues, is illustrated in the following graph. In every age cohort, even in age categories where women outnumber men, partnership positions are dominated by men. The sharp divergence observed between men's and women's share of partnership is noted from the age bracket of 30-34 and increases steadily thereafter.

### Crunch points

What is happening in this age and post-qualification experience (PQE) career phase that makes progression significantly more

## AT A GLANCE

- In every age cohort, even in age categories where women outnumber men, partnership positions are dominated by men
- For women, gender and maternity are significant factors associated with career stalling and exit
- Across several countries and different professions and occupations, flexible working arrangements are associated with employee satisfaction and well-being

unlikely for women than men?

The statistics analysed for this study clearly demonstrate that, for women, gender and maternity are significant factors associated with career stalling and exit. For employers, this analysis offers a valuable insight into the crunch points for attrition risk, pinpointing the stage at which the promotion track begins to diverge for men and women. Between the age categories of 30-34 and 35-39, men (despite being fewer in numbers overall) begin to 'pull away' on an upward track, while women's progression path follows a flatter, lower trajectory.

The significant gap between men's and women's share of partnership in these younger age cohorts suggests that inequality in promotion, and the gender

pay-gap associated with it, are not relics of a traditionally male profession. Rather, the study suggests that structures for many day-to-day aspects of practice are disadvantageous to women once they reach their 30s, which normally correlates with them attaining PQE of four-to-nine years. As one senior partner noted, firms are losing solicitors, especially women, just as they "become useful". For many, balancing the arrival of children with the demands of a career in law is a factor.

Interestingly, parenthood is not the only issue identified by younger solicitors in the millennial cohort as being a factor in decisions to leave their firm, or even the profession. Involvement in sport and commitments outside of work are also cited by solicitors, who expressed the view that they can't do more, and wouldn't do more, in terms of hours of work. Discussing these findings with a colleague, she remarked that managing this cohort of employees demands fresh thinking. Firms are dealing with employees who "would rather have a Fiat at the beach than a BMW in the car park".

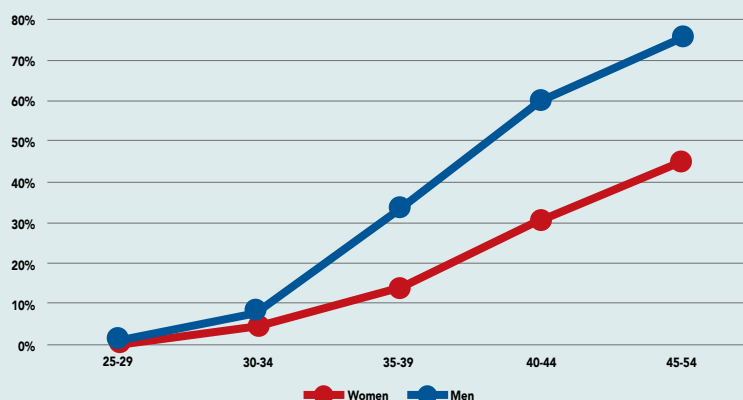
Accordingly, solicitors interviewed for this study highlighted key areas to address if the profession is to adapt to a new demographic, which is notable not just for being predominantly female, but also for its younger age profile. The study identifies the long-hours culture, inflexible work arrangements, lack of mentoring and sponsorship, and opaque criteria for promotion and bonuses as critical.

### 'Agile' working arrangements

Long hours are a defining feature of work in the solicitors' profession, as are increasing and demanding targets for billable hours. The requirement to work long hours (defined in EU directive and by the International Labour Organisation as work in excess of 48 hours per week) is associated with work/life conflict. In this study, and in line with research in the US, Canada, and England and Wales, long hours are experienced as unsustainable and are implicated in many lawyers' decisions to quit.

However, sometimes minor adjustments can have a profound effect in helping solicitors to balance their work and external commitments. One solicitor who participated in this study vividly described the importance of negotiating a small degree of flexibility in

## FEMALE AND MALE SHARE OF PARTNERSHIP POSITIONS IN EACH AGE COHORT





ONE INTERVIEWEE EXPRESSED THE VIEW THAT, IN RETURN FOR SOME FLEXIBILITY, ‘THE FIRM GETS IT BACK IN SPADES BECAUSE OF THE LOYALTY AND GRATITUDE FOR IT’



PICTURE: REX FEATURES/SHUTTERSTOCK

her schedule: “It was like a tyre that was so full of air that something was gonna give. So, all you needed to do was release a little bit of pressure. That pressure could be relieved by just a Friday, a morning, an afternoon – otherwise it’s too intense to keep the show on the road.”

However, many participants noted that firms remain sceptical regarding ‘agile’ work arrangements. Employers are wary of allowing flexibility and assume that this will mean a diminution in availability and service to the client. In common with many solicitors interviewed in this study, one interviewee expressed the view that, in return for some

flexibility, “the firm gets it back in spades because of the loyalty and gratitude for it”.

Research confirms this phenomenon. In a study conducted by the International Labour Organisation, it found that, across several countries and different professions and occupations, flexible working arrangements are associated with employee satisfaction and well-being. Further, the analysis concluded that “there is virtually no research finding that employees working on flexitime have lower productivity than those on traditional fixed-work schedules”.

Accordingly, while flexible working arrangements may help solicitors to ‘keep

the show on the road’ and to balance and integrate a challenging career with life’s other demands, agile policies are neither a silver bullet nor a simple fix in the bid to address female attrition, retention, and promotion. Firms need to be mindful of the potential hindering effect of their work culture, and to consider how decisions are made when evaluating performance and allocating resources, pay awards, and bonuses. If solicitors who avail of flexible working arrangements are excluded from opportunities to continue developing their professional expertise, and from business development and networking events, agile

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14 & 15 June	NORTH WEST GENERAL PRACTICE UPDATE PARTS I & II – in partnership with Donegal and Inishowen Bar Associations Solis Lough Eske Castle Hotel, Donegal	€80 (Part I) €115 (Part II) €170 (Parts I & II) <i>Hot lunch and networking drinks included in price</i>		PART I - 4 incl 2 M & PD Skills, 2 Regulatory Matters (incl 0.5 accounting & AML compliance) (by Group Study)  PART II - 6 incl 2.5 General, 1 M & PD Skills, 2.5 Regulatory Matters (incl 0.5 accounting & AML compliance) (by Group Study)
22 June	ESSENTIAL SOLICITOR UPDATE 2018 – in partnership with Clare and Limerick Bar Association - Treacy's West County Hotel, Co Clare	€115 <i>Hot lunch and networking drinks included in price</i>		6 (by Group Study)
22/23 June	PERSONAL INJURIES LITIGATION MASTERCLASS 2018	€350	€425	10 hours <u>including</u> 1 Regulatory Matters (by Group Study)
19 July	LEGAL ETHICS: A EUROPEAN COMPARATIVE		€95	2 Regulatory Matters (by Group Study)
6 Sept	ESSENTIAL GENERAL PRACTICE UPDATE 2018 – Ballygarry House Hotel, Tralee, Co Kerry	€115 <i>Hot lunch and networking drinks included in price</i>		6 (by Group Study)
14 & 15 Sept	CONSTRUCTION LAW – An Introduction	€350	€425	10 General (by Group Study)
14 & 15 Sept & 28 & 29 Sept	THE FUNDAMENTALS OF COMMERCIAL CONTRACTS <i>The fee includes an iPad &amp; interactive eBook on Commercial Contracts</i>	€1,200	€1,100	20 Hours including 3 Hours Management & Professional Development Skills (by Group Study)
19 Sept	EU REGULATION OF CRYPTOCURRENCY: AML v Bitcoin - in collaboration with the EU and International Affairs Committee		€115	2 Regulatory Matters (incl Accounting & AML) by Group Study
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working can have the effect of relegating those who avail of it to a ‘mommy track’, from which it is difficult, if not impossible, to be promoted.

In this study, solicitors who had agreed flexible working arrangements or reduced-hour schedules with their employers were exclusively female and mothers of young children. They surmised that their prospects for promotion were greatly diminished

because of their atypical work arrangements.

It seems that, in law firms, merit and ‘promotability’ continue to be associated with visibility and long hours. Moreover, several senior partners interviewed for this study admitted that they did not consider that agile working arrangements were compatible with being a partner.

Clearly, if our definition of an equity partner continues to be framed by long

hours and availability, then agile working arrangements will do little to address women’s unequal share of senior positions. As one participant noted, younger solicitors, but especially women, are “looking ahead and saying, I can’t see myself doing this”.


### What helps? What hinders?

The old cliché ‘what gets measured gets managed’ has never been more relevant than for firms when implementing gender diversity and inclusion policies. Moreover, the advent of the *Gender Pay Gap Information Bill* means that mandatory reporting of pay and bonuses will be an important diagnostic tool, revealing the extent to which men’s and women’s hourly median pay is comparable – or not.

Recent findings from Britain’s legal profession disclose that there are fewer women in the upper quartile of earners and that, for women among that uppermost quartile, they are paid less than men. Such findings are not explained by women having a greater share of part-time work, as the median hourly measure takes account of the number of hours worked. Instead, firms must ask what it is in their culture and structures that is holding women back.

### The paper it’s written on...

Gender diversity and inclusion policies that remain on paper or as accreditations on a firm’s website will not help in retaining and promoting female talent unless those policies are accompanied by positive, measurable actions and a recalibration of how merit and contribution are evaluated for promotion.

International research and personal reflections by solicitors who participated in this study, confirm that measures that focus on ‘fixing the women’ instead of addressing the workplace do not significantly improve women’s prospects for equitable outcomes. Great progress has been made; inclusion in a numerical sense is no longer a problem in the Irish jurisdiction. However, admission and equality are not the same thing – the latter requires reframing and debunking many stereotypes, including where, when, and how solicitors can deliver professional service and, not least, challenging the illusion that the prospect of a BMW in the car park will motivate and retain solicitors to progress in their profession. 

## Q FOCAL POINT

### BALANCING THE GENDER SCORECARD

Having regard to the key issues identified by participants in this Irish study, and drawing on international research, what helps and what hinders firms, and their employees, seeking to build genuinely diverse and inclusive organisations? Here are the top three tips for balancing the gender scorecard:

1) *Know your numbers* – how many women and men are employed in each practice area and at the level of assistant, associate and partner? Has this changed over time? Are your numbers representative of the overall proportion of male and female solicitors in the firm? These analytics will reveal where potential blockages for women exist in your firm. In this study, it emerged that, when discussing diversity initiatives in their firms, senior partners had very little evidence against which to judge their progress towards equality. Metrics are important in this regard, and lack of robust data might explain why many (mostly) male senior partners perceive that gender is no obstacle to progression in their firms – in contrast to women, who, at all levels of seniority, expressed the view that gender matters.

2) *Know your employees* – what do solicitors need to achieve personal work/life balance? Is there a conflict between their preferred and actual working hours? What are their ambitions for a long-term career? Incorporating these questions as part of the annual

review process will help firms and employees to tailor schedules and plan for progression in a way that reflects their employees’ capabilities and commitments. Sometimes, as revealed in this study, small adjustments can make the difference between decisions to stay or leave, and the empirical evidence showing gains to productivity from some flexible arrangements is convincing.

3) *Know your goals* – what targets has your firm for gender inclusion and equality? Perhaps a need for more diversity at partnership level, or in key decision and management roles has been identified? If so, analyse what might be impeding women in accessing these positions. Does involvement in a management committee demand an even greater time commitment on top of billable targets that are already difficult to manage? If so, a reduction in billable hours to adjust for time spent on the managerial role could make the prospect viable for women, who are statistically more likely to shoulder more responsibility for care and domestic matters than men. If the goal of having more female partners is to be achieved, do men and women have an equal opportunity to originate business? Are networking and business development events inclusive and appealing to a wide range of interests? If rugby and golf outings are the default activity for business development, it may be time for something different.



# Bank robbery?

Banks' attempts to reserve to themselves absolute discretion to vary interest rates in consumer loans have the potential to affect hundreds of thousands of consumers and be more costly to rectify than the tracker mortgage scandal, argues **Gary Fitzgerald**

GARY FITZGERALD IS A BARRISTER AND DIRECTOR OF THE IRISH CENTRE FOR EUROPEAN LAW AT TRINITY COLLEGE, DUBLIN



In recent years, there have been many problems in the Irish banking sector, from bogus non-resident accounts, excessive lending during the boom that led to a costly public bailout, to the current tracker mortgage scandal. Another significant problem may be facing the banking sector again, due to the way that certain Irish banks deal with interest – this time, attempts to reserve to themselves absolute discretion to vary interest rates in consumer loans.

A variable interest rate loan is one where the interest rate can vary during the loan. There can be little problem with this in general. But many contracts do not set out any procedures or criteria used in setting

a new rate. Such a term commonly states something like this: “If this loan has a variable rate, the bank can vary the rate of interest at its discretion.”

## AT A GLANCE

- A price variation clause that does not set out any criteria as to how the price will be varied is almost certainly unfair
- In the absence of clear and intelligible criteria covering the change in price, the term is unfair and unenforceable against the consumer
- It is not necessary for a bank to have relied on a term for a court to rule that it is unfair, nor does the bank have to have used the term in an unfair way

I argue that this is not allowed under Council Directive 93/13/EC on unfair terms in consumer contracts and that any such term is unenforceable against the consumer – with the consequence that a low interest rate cannot be raised during the life of the loan.

According to the Department of Housing, between 1997 and 2016, banks entered into over 750,000 variable rate loans. Not all of these were consumer loans, and not all would have the above problematic clause. But this issue has the potential to affect hundreds of thousands of



THE POTENTIAL FOR UNFAIRNESS ALONE MEANS THAT THE TERM IS UNENFORCEABLE AND, THEREFORE, SIMPLY CANNOT BE USED BY THE BANK





consumers, and be more costly to rectify than the tracker mortgage scandal.

### The scheme of the directive

The purpose of the directive is to eliminate unfair terms from contracts between consumers and businesses.

The test for fairness is set out in article 3(1): “A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.”

The directive is implemented into Irish law by the *European Communities (Unfair Terms in Consumer Regulations) 1995*, as amended. Any term failing the test is not binding on the consumer, as per article 6(1) of the regulations. However, according to the Court of Justice of the European Union (CJEU), consumers can elect to rely on a term if it, in fact, benefits them (*Pannon*).

These terms give the bank an unfettered discretion to change interest rates to any level, and this is a clear imbalance of rights to the detriment of the consumer.

The fairness test does not apply to terms that deal with the adequacy of price and consideration. While interest is clearly the price for the money borrowed, the CJEU has held (*Kásler v Felzálogbank*) that terms used to amend the price are not covered by this exception.

### The ‘grey list’

The directive contains an annex of terms that may be unfair. The relevant term from the ‘grey list’ is article 1(l): “allowing a ... supplier of services to increase their price without ... giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded”.

This must be read in conjunction with article 2(d), which states: “Subparagraph (l) is without hindrance to price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.”

These terms fail to set out at all how the price will be varied; as such, they are almost



‘Drop ‘em!’

certainly unfair. The CJEU considered price variation clauses in long-term service agreements in *RWE Vertrieb AG*. At issue in that case was the ability of a gas utility company to vary the price for gas delivered to customers. The court said that the supplier had a legitimate interest in being able to change the price of gas, given the indeterminate length of such contract.

However, it also held (at paragraph 47): “A standard term which allows such a unilateral adjustment must, however, meet the requirements of good faith, balance and transparency laid down by those directives.”

It is for the national court to determine if the term was unfair, but it is for the CJEU to set out the criteria that a national court should use in this determination. The court said that two factors were of fundamental importance: firstly, the contract should set out in a transparent fashion the reasons and method for the variation, so that the consumer could foresee, based on clear and intelligible criteria, the alterations that might be made to those charges (paragraph 47). The terms in question here do not set out the reasons or method for the variation.

Secondly, the consumer must have a right to terminate the contract if the charges are, in fact, altered (paragraph 49). The ability to cancel the contract must be not purely formal, but can actually be exercised (paragraph 54). According to the court, this will depend on the nature of the contract and the market in question.

While in theory it is always easy for a borrower to terminate a variable rate loan by simply repaying the full balance, this does not mean that it is practically possible for the normal borrower to raise finance to repay the loan. In the case of a borrower who is in arrears, it becomes almost impossible to seek alternative finance to allow them to cancel the contract. But a borrower not in arrears, whose circumstances have changed (such as having more dependants or being in negative equity due to falling property prices), may also not be able to terminate the contract.

In the absence of clear and intelligible criteria covering the change in price, and the inability of the borrower to terminate the contract, the term is unfair and unenforceable against the consumer.

### The dissuasive principle

A central principle in the operation of the directive is the ‘dissuasive principle’. This principle seeks to protect all consumers and not just the individual consumer before the courts. The dissuasive principle has two main elements.

Firstly, it is not open to a national court to amend a term in a contract to make it fair. According to the CJEU (*Unicaja Banco SA and Caixabank SA*): “In fact, if it were open to the national court to revise the content of unfair terms, such a power would be liable to compromise attainment of the long-term objective of article 7 of Directive 93/13. That power would contribute to



## THE SPANISH SUPREME COURT HAS DECLARED THAT ‘FLOOR CLAUSES’, SETTING A MINIMUM LEVEL TO INTEREST RATES, ARE UNFAIR. AS OF DECEMBER 2017, THIS RULING HAS COST SPANISH BANKS €1.5 BILLION AND AFFECTED OVER 350,000 CUSTOMERS

eliminating the dissuasive effect for sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms, insofar as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be adjusted, to the extent necessary, by the national court in such a way as to safeguard the interest of those sellers or suppliers” (paragraph 31).

Secondly, it is not necessary for a bank to have relied on a term for a court to rule that it is unfair, nor does the bank have to have used the term in an unfair way (*Banco Primus SA v Jesús Gutiérrez García*, at paragraph 73). The test is whether a term *could* be used in an unfair way.

According to *Chitty on Contracts*, a clause is judged on its potential for unfairness. It is no defence for the business to say that it was not relied on unfairly: “If a price variation clause gives a supplier an unlimited discretion to vary the price (a term which can for this purpose be assumed to be potentially unfair given its lack of limitation nor justification), then it would not be binding on the consumer, with the result that even a moderate variation of the price (itself not in the context apparently unfair) would not be effective against the consumer: the unfairness of the term makes it ‘not binding’ on the consumer.”

As such, even a small variation in the interest rate is not allowed. It is no defence for a bank to say that the term was not used in an unfair manner. The test is whether the term *could* be used in that manner.

### Central Bank guidelines

This idea that a variable interest rate clause is only valid if the contract sets out the factors behind the exercise of discretion is assisted by the recent *Addendum to the*

*Consumer Protection Code* published by the Central Bank. The addendum means that, from 1 February 2017, all mortgages must require lenders to provide a summary statement to customers that:

- Clearly identifies the factors that may result in changes to the variable interest rate,
- Clearly outlines the criteria and procedures applicable to the setting of the variable interest rate,
- Clearly outlines where the regulated entity applies a different approach to setting the variable interest rate for different cohorts of borrowers, and the reasons for the different approach.


But it does not cover contracts before 1 February 2017. It is submitted that these are precisely the types of factors that must be included in any loan agreement to allow for the interest variation clause to be fair under the directive and therefore enforceable against the consumer.

### Floor clauses

The directive has yet to make a significant impact on Irish consumer contracts. In contrast, it has led to the Spanish Supreme Court declaring that ‘floor clauses’, setting a minimum level to interest rates, are unfair. As of December 2017, this ruling has cost Spanish banks €1.5 billion and affected over 350,000 customers.

The law at a European level in this area appears settled. A price variation clause that does not set out any criteria as to how the price will be varied lacks transparency and balance and is almost certainly unfair. This position is strengthened by the recent Central Bank *Addendum to the Consumer Protection Code*. The courts cannot amend or vary a term to make it fair, nor can they imply in the contract a term that puts limits

on the discretion of the bank.

If these terms are unfair, it means that a bank cannot vary the interest rate for the duration of the contract. If the rate is initially a low one, then it cannot be raised. For example, if a bank offered an initial ‘teaser’ rate of 2%, and then varied the rate up to 4% after a period, this variation is unenforceable and the consumer should be entitled to a refund of excess interest paid. It does not matter that the rate was not varied in an unfair way. The potential for unfairness alone means that the term is unenforceable and, therefore, simply cannot be used by the bank. 

## LOOK IT UP

### CASES:

- *Banco Primus SA v Jesús Gutiérrez García* (C-421/14)
- *Kásler v Jelzalogbank* (C-26/13)
- *Pannon GSM Zrt v Erzsébet Sustikné Győrfi* (C-243/08)
- *RWE Vertrieb AG v Verbraucherzentrale Nordrhein-Westfalen eV* (C-92/11)
- *Unicaja Banco SA and Caixabank SA* (joined cases C-482/13, C-484/13, C-485/13 and C-487/13)

### LEGISLATION:

- Central Bank of Ireland (July 2016), *Addendum to the Consumer Protection Code 2012* for increased protections for variable rate mortgage holders
- Council Directive 93/13/EC on unfair terms in consumer contracts
- European Communities (*Unfair Terms in Consumer Regulations*) 1995





# Don't dwell on it

Solicitors frequently deal with the issue of advising a concerned parent about how to balance the rights and entitlements of different children with varying degrees of need.

**Tom Martyn and Eoin O'Shea** discuss the issue



When Jennifer went to her solicitor to make her will, she had a number of particular concerns. Jennifer was widowed and had three daughters. The most pressing concern was for her adult daughter Maura who, when Jennifer died, was over 55. Maura is incapable of managing her own affairs due to a medical condition and was subject to regular hospitalisation during her life. She doesn't function outside her home very well and lives a reclusive life. She never leaves the house alone. She can't work and has been on disability allowance for years. Her mother and her sisters are devoted to her, and she is the central concern for all the family.

Jennifer's assets consisted mainly of the family home (where Maura had lived for many years), together with some bank accounts and savings. The vast bulk of her estate was tied up in the home.

## A question of balance

It's an issue that solicitors deal with frequently – trying to advise a concerned parent about how to balance the rights and entitlements of different children with varying degrees of need, while

recognising the parent's desire to be fair to every one of them.

In this case, Jennifer knew that the house that she and Maura lived in was going to be too big to be managed in Maura's later years, and she needed to make provision for Maura out of the house. She also wanted to look after her other daughters.

To deal with the issue, Jennifer's solicitor drafted a relatively straightforward will. In it, she made provision for a trust for sale, as follows:

*“Trust for sale*

*I give, devise and bequeath all my estate to my trustees on trust for sale (with power to postpone the sale in whole or in part for such time or times as my trustees in their absolute discretion shall decide) to pay the proceeds as follows:*

*To pay my debts and funeral and testamentary expenses,*

*To give 50% of my estate to my daughter Maura,*

*To give 25% of my estate to my daughter Penny,*

*To give 25% of my estate to my daughter Sandra.”*

Jennifer died two years after making the will. It was clear on her death that Maura satisfied the criteria set

TOM MARTYN IS A SOLICITOR SPECIALISING IN TAXATION LAW.

EOIN O'SHEA IS A PRACTISING BARRISTER

## AT A GLANCE

- Solicitors are charged with drafting wills to the best of our ability and for the best result, both in terms of implementing the testator's wishes and trying to structure the will in a tax-efficient manner
- If you are drafting a will in the future, it might be worth setting out more background in the will as to the intention of the testator
- Solicitors are the experts in drafting wills. If you have drafted a will, and you think that it is correct but that Revenue have misinterpreted it, don't be afraid to challenge it



PIC REX FEATURES

If Bilbo had left explicit instructions regarding his assets, the situation upon his return might have been very different

## REVENUE REJECTED THE POSITION, AND THE MATTER WAS APPEALED TO THE APPEAL COMMISSIONERS ON FOOT OF AN INHERITANCE TAX RETURN

out in section 86 of the *Capital Acquisitions Tax Consolidation Act 2003* (CATCA) for obtaining dwellinghouse relief.

In fact, the section could not have been written more specifically with her in mind. She had lived in the house for the requisite time, didn't own any other property, and was over 55 years of age. She was vulnerable, needed provision to be made for her, and needed to be looked after more than her siblings. It didn't benefit the State to take a large amount of tax from her. Section 86 was designed for someone like Maura. The problem was that there was only one asset

(the house), and Maura didn't need the entirety of the house for her needs.

It was also clear from the will that the intention was to sell the house and divide up the proceeds.

### What next?

What actually occurred was that the house was sold during the course of the administration of the estate and, from the share of the estate to which Maura was entitled, a smaller house was bought for her using her full proceeds of sale of the family home and vested in her by stamped

deed of transfer. Accordingly, as far as the executors were concerned, the terms of the will had been complied with and a house was provided for Maura suitable to her needs.

Revenue didn't agree. By letter to the estate solicitor, they wrote: "It appears that Maura is due to inherit 50% of the estate rather than a share of the house. Therefore the dwellinghouse exemption is not available."

Revenue had responded to a submission by the solicitor acting for Maura seeking confirmation that the relief would apply.

Revenue ultimately made an assessment



disallowing the relief and, on foot thereof, the estate made a tax return, paid the full amount of the tax, and then appealed the assessment to the Appeal Commissioners.

### The law

The relevant section is 10(1) of CATCA. Section 10(1) provides that a successor is deemed to take an inheritance where, as a result of any disposition, the successor becomes beneficially entitled in possession on a death to any benefit.

Section 2 of CATCA provides the definition of ‘entitled in possession’ as follows: “‘entitled in possession’ means having a present right to the enjoyment of property as opposed to having a future such right, and without prejudice to the generality of the foregoing, *a person is also*, for the purposes of this act, *deemed to be entitled in possession to an interest or share in a partnership, joint tenancy or estate of a deceased person*, in which that person is a partner, joint tenant or *beneficiary*, as the case may be, but that person is not deemed to be entitled in possession to an interest in expectancy until an event happens whereby this interest ceases to be an interest in expectancy” [emphasis added].

Section 10(2) of CATCA applies sections 5(2), 5(4) and 5(5) to inheritances as well as to gifts. In accordance with section 5(2), an inheritance is deemed to consist of the whole or the appropriate part of the property in which the successor takes a benefit “*or on which the benefit is charged or secured or on which the donee is entitled to have it charged or secured*” [emphasis added].

Section 5(5) of CATCA provides as follows: “For the purposes of this act, ‘appropriate part’, in relation to property referred to in subsection (2), means that part of the entire property in which the benefit subsists, or on which the benefit is charged or secured, or on which the donee is entitled to have it so

charged or secured, which bears the same proportion to the entire property as the gross annual value of the benefit bears to the gross annual value of the entire property, and the gift shall be deemed to consist of the appropriate part of each and every item of property comprised in the entire property.”

It was argued (in the original submission to Revenue and in the appeal) that Maura took a benefit, deemed a benefit in possession, which included the actual family home owned by her late mother.

It was further argued that an entitlement to the proceeds of sale of immovable property is an entitlement charged and secured upon the immovable property itself and/or capable of being so charged or secured – and is deemed by CATCA to be an inheritance of the immovable property itself. It is also the case – pursuant to section 5(5) – that an entitlement to part of the proceeds of the sale of a property is deemed to be an inheritance of part of the property itself.

The definition of ‘appropriate part’, set forth at section 5(5), is cross-referenced in CATCA for the purposes of the dwellinghouse exemption at section 86(1) of the act.

Section 86 of CATCA requires that the relevant dwellinghouse be “comprised in” the inheritance and that the “value of that dwellinghouse is not to be taken into account in computing tax”.

In the foregoing circumstances, it was argued to (and rejected) by Revenue that CATCA provides that Maura, on the date of her mother’s death, had an entitlement in possession to an inheritance in which was comprised a dwellinghouse.

In this case there was a twist. The dwellinghouse did not pass to Maura, as to have done so would be to prevent the other children from inheriting anything from their mother. Instead, the property was left to

the trustees with a power of sale, sold, and a replacement dwellinghouse bought for Maura out of the proceeds of sale. The other proceeds of sale were paid out as cash to the other daughters.

### Vesting of assets in the trustees

Together with the position set forth in CATCA, the position was argued in the submission and the appeal from the point of view of general trust law.

*Legal position* – the will provided that Jennifer’s estate devolved, on her death, to her trustees. Pursuant to part 4 of the *Land and Conveyancing Law Reform Act 2009*, the legal title in the real property vested in the trustees, and the trustees were conferred full powers of dealing with same as a full owner, subject, among other things, to the terms of the will. Maura, as a beneficiary of the trust, obtained a beneficial interest in the property as and from the date of death.

*Equitable position* – the will of the late Jennifer contains a power of sale but, it was argued to Revenue, the will is not what is termed a ‘trust for sale’, on the basis that the trustees have the power to postpone sale at their absolute discretion, and the fact that the trustees were expressly given the power of appropriation under section 55 of the *Succession Act 1965*, and because the trustees have the power (a power they exercised in Maura’s case), pursuant to section 20(2) (a) of the *Land and Conveyancing Law Reform Act 2009*, to permit a beneficiary to occupy the property.

On the foregoing bases – arising from the powers provided to the trustees under the will – the equitable doctrine of conversion does not intervene to convert the realty in the estate (that is, the dwellinghouse) to personalty (that is, proceeds of sale) as at the date of death/date of inheritance. The personal health situation of Maura – that

IN THIS PARTICULAR CASE, THE TAX SAVED HAS A MAJOR BEARING ON THE COMFORT THAT MAURA CAN ENJOY INTO THE LATER YEARS OF HER LIFE, AND IT’S CLEAR THAT THE RESULT WAS FULLY IN KEEPING WITH THE INTENTION OF THE LEGISLATION



## IT WAS ARGUED (IN THE ORIGINAL SUBMISSION TO REVENUE AND IN THE APPEAL) THAT MAURA TOOK A BENEFIT, DEEMED A BENEFIT IN POSSESSION, WHICH INCLUDED THE ACTUAL FAMILY HOME OWNED BY HER LATE MOTHER

is, her mental illness – was, it was argued, decisive as to the intention of Jennifer, the testator. In this regard, the testator wished to provide her daughter Maura with a place to reside in the family home until other suitable accommodation, purchased from her share of the proceeds of sale of the family home, could be found for her.

### Factual position

Notwithstanding the proposition put forth in the submission in respect of the legal difference as between personalty and realty, it was also argued that the nature of the relevant property on the date the trust came into existence (that is, the date of death) was a building falling within the definition of a dwelling for the purposes of section 86(1) of CATCA (including the definition of ‘appropriate part’ thereof, as defined in section 5(5) and imported into the definition of dwellinghouse by section 86). The nature of the trust did not change, and could not have changed, the factual nature of the assets forming part of the estate.

It was argued that the foregoing examination of the legal, equitable, and factual position connected to the vesting of assets in the trustees established that Maura had the requisite interest in the dwellinghouse comprised in the will of her late mother.

Revenue wouldn’t buy it.

Revenue rejected the position, and the matter was appealed to the Appeal Commissioners on foot of an inheritance tax return. The solicitors entered an expression of doubt in relation to the matter, and paid the tax on the basis that dwellinghouse relief was not available, for fear that an ultimate adverse finding would have serious consequences in respect of interest.

The arguments stated above were made by the solicitor for Maura in the statement of case submitted to the Appeal Commissioners.

In response, Revenue stated in their statement of case: “Maura did not inherit a dwellinghouse or a share in a dwellinghouse. The will bequeaths 50% of the estate to Maura, to be paid from the proceeds of the ‘trust for sale’.

“The agent claims that provisions were made a number of years prior to her death by Jennifer and in her will to take account of Maura’s medical condition. No such provisions are included in the will, and Maura is named as one of the executors and trustees. The dwellinghouse/property is not mentioned in the will. The property was not transferred by stamping deed to Maura prior to the sale.

“Dwellinghouse relief is not available for the inheritance of proceeds of sale.”

It could be said that Revenue were relying on the exclusion of extrinsic evidence as to the wording of a will, but it is also clear that the will, read with the benefit of the background to the matter, was seeking to provide for the children of the testatrix in a particular way.

It could also be argued that Revenue was being rather disingenuous. Maura was indeed named as an executor and trustee under the will, but did not participate in taking out the grant of probate.

### The end result

The Appeal Commissioners sought an outline of arguments from both sides and, shortly afterwards, Revenue wrote to Maura’s solicitor as follows: “I refer to previous correspondence in this case.

“Having examined your documentation and submissions, I agree that dwellinghouse exemption may be applied to the value of the replacement property purchased by Maura for €XXX per my records.

“The balance of her inheritance would fall below her threshold and, consequently, I have reduced my assessment to nil.


Would you please advise the Tax Appeals Commission that you are withdrawing your appeal.”

### The lesson

As solicitors, we are charged with drafting wills to the best of our ability and for the best result, both in terms of implementing the testator’s wishes and trying to structure the will in a tax-efficient manner. In this particular case, the tax saved has a major bearing on the comfort that Maura can enjoy into the later years of her life, and it’s clear that the result was fully in keeping with the intention of the legislation.

If you have had a case like this where you either didn’t claim relief or relief was denied, you may wish to take a look at it now, bearing in mind the four-year time limit imposed by section 865 of the *Taxes Acts*.

If you are drafting a will in the future, it also might be worth setting out more background in the will as to the intention of the testator.

Finally, the real lesson is to remember that we, as solicitors, are the experts in drafting wills. If you have drafted a will, and you think that it is correct, and you think Revenue have misinterpreted it, don’t be afraid to challenge it before the Appeal Commissioners. 

*Names have been changed to protect the identity of the taxpayer.*

## LOOK IT UP

### LEGISLATION:

- [Capital Acquisitions Tax Consolidation Act 2003](#)
- [Land and Conveyancing Law Reform Act 2009](#)
- [Succession Act 1965](#)
- [Taxes Consolidation Act 1997](#)



# Keeping up appearances

The High Court has clarified the narrow scope for conditional appearances in *Bank of Ireland v Roarty*. ‘You needed to be there,’ says **Arthur Cush**

ARTHUR CUSH IS A DUBLIN-BASED BARRISTER



The 2017 decision of the High Court in *Bank of Ireland v Roarty* clarifies the limited circumstances in which a conditional appearance can be entered. The court also restated the test to be applied when setting aside judgment in default of appearance, and refused to apply the ‘arguable defence’ test, as is applied in Northern Ireland.

Once proceedings are served on a defendant, they are required to enter an appearance either in person or by solicitor. Depending on the nature of the claim, the *Rules of the Superior Courts*, *Circuit Court Rules* or *District Court Rules* will specify the form and procedure for the entry of the appearance.

Different rules apply to some specific types of action, such as in proceedings brought by special summons or proceedings involving an infant or a person of unsound mind. If a defendant fails to enter an appearance within the time prescribed by the rules, then the plaintiff can seek judgment in default of appearance.

## Exception to the rule

In most circumstances, the entry of an appearance signifies the defendant’s intention to defend the proceedings,

but also has the effect of precluding a defendant from later challenging the court’s jurisdiction to hear the case.

The exception to that general rule is where a party enters an appearance for the purposes of contesting jurisdiction under article 24 of [Council Regulation \(EC\) 44/2001](#). This is commonly referred to as a ‘conditional appearance’.

*Roarty* concerned an application by the defendant to set aside a judgment of approximately €900,000, which had been marked in the central office of the High Court for failure to enter an appearance on foot of a summary summons. The defendants had, in fact, written to the central office and enclosed their conditional appearance, which stated that the defendants “vigorously contested” the summary summons, and that “consenting jurisdiction are withheld” until 13 specified conditions were fulfilled.

These conditions included a request that the plaintiff provide copies of all documented evidence, which they would rely upon, and that the plaintiff would furnish the set of accounts in question “for forensic examination”. In practice, these conditions amounted to a request of discovery and inspection.

In reply, the central office indicated that there was no basis for a conditional appearance in the *Rules of*

## AT A GLANCE

- *Bank of Ireland v Roarty* has restated the test to be applied when setting aside judgment in default of appearance
- The court refused to apply the ‘arguable defence’ test, as is applied in Northern Ireland
- If a defendant fails to enter an appearance within the prescribed time, the plaintiff can seek judgment in default of appearance
- In light of the judgment, ‘conditional appearance’ should more accurately be referred to as ‘an appearance to contest jurisdiction’



PIC: REX FEATURES

THE JUDGMENT CLARIFIES THE CIRCUMSTANCES WHERE A COURT WILL SET ASIDE JUDGMENT IN DEFAULT OF APPEARANCE. IN DOING SO, IT HIGHLIGHTS THE EXTREMELY NARROW SCOPE OF CONDITIONAL APPEARANCES

*the Superior Courts*, and that the only instance in which a conditional appearance could be entered would be under article 24 of Regulation 44/2001, where jurisdiction was being challenged – specifically a challenge that Ireland is not the correct country in which the legal proceedings should be heard.

The central office went on to state that it could only accept documents that were

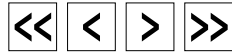
specifically allowed under the *Rules of the Superior Courts* and that there was no document referred to in the rules relating to conditional appearance.

#### Precedent cases?

The defendants replied that their conditional appearance should be accepted on the basis that the central office had accepted

other conditional appearances in the past. The defendants provided the central office with High Court record numbers that they claimed were examples of cases where conditional appearances had been accepted. They concluded by stating that they would await a reply from the central office before resubmitting the documents.

One month later, solicitors on behalf of



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THE COURT NOTED THAT IT WAS PECULIAR THAT THE CENTRAL OFFICE APPEARED TO HAVE ACCEPTED CONDITIONAL APPEARANCES IN OTHER CASES, NOTWITHSTANDING THAT THE DEFENDANT WAS NOT ENTITLED TO DO SO AS A MATTER OF LAW

Bank of Ireland obtained judgment in the central office on the basis that no appearance had been entered. The defendants brought a motion to set aside the judgment on the basis that they had been taken by surprise, as they believed the central office was still considering their conditional appearance.

The motion was progressed to hearing by only one of the defendants and, in refusing to set aside the judgment, Ms Justice Ní Raifeartaigh clarified the circumstances where a court would set aside judgment in default of appearance and, in doing so, highlighted the extremely narrow scope of conditional appearances.

### Different test

When a court is asked to set aside a judgment in default of appearance, a different test will apply, based on whether or not the judgment is regular or irregular.

A regular judgment is one that comes before the court without any procedural error, such as an error of service. In those circumstances, the court will apply the test as set out in *Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Co Inc* (1986) and endorsed by the Irish Supreme Court in *O'Callaghan v O'Donovan* (unreported), where the defendant must show a defence that has a real prospect of success.

In the case of irregular judgments – those that come before the court with some error of procedure – the court will exercise its discretion to do justice between the parties, and there is no requirement to consider the extent or nature of the defendant's defence.

In applying the *Saudi Eagle* test, Justice Ní Raifeartaigh declined to apply the test of an 'arguable defence', as set out by Northern Irish case law, which was relied on by the defendant.

Second, the court noted that it was peculiar that the central office appeared



to have accepted conditional appearances in other cases, notwithstanding that the defendant was not entitled to do so as a matter of law. As such, although the defendant was taken by surprise when the judgment was entered against her, it could not be said that the judgment was irregular, as the 'conditional appearance' she entered was not an appearance consistent with the *Rules of the Superior Courts*.

As the judgment in this case was held to be a regular judgment, it could only be set aside if the defendant could demonstrate a defence that had a real prospect of success. The defendant, in this case, sought to raise the defence that she understood the loans to be director's guarantees rather than personal guarantees. For the reasons set out more fully in the judgment, Justice Ní Raifeartaigh held that this did not constitute a defence with a real prospect of success.

### What's in a name?

What is commonly referred to as a conditional appearance should more accurately be referred to as 'an appearance to contest jurisdiction'. Where a defendant enters a conditional appearance for any other reason, this will not be accepted,

and a plaintiff will be entitled to proceed to judgment in default of appearance. Such judgment will be a regular judgment, and a defendant seeking to set it aside will have to demonstrate a defence that has a real prospect of success. [E](#)

## LOOK IT UP

### CASES:

- *Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Co Inc* [1986] 2 Lloyd's Rep 221
- *Bank of Ireland v Roarty* [2017] IEHC 789
- *O'Callaghan v O'Donovan* (unreported, Supreme Court, Lynch J, 13 May 1997)

### LEGISLATION:

- *Circuit Court Rules* (order 15)
- Council Regulation (EC) 44/2001 (article 24)
- *District Court Rules* (schedule C, Form 42.03)
- *Rules of the Superior Courts* (order 12)

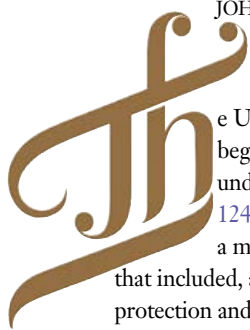




# Holding to account

Unique non-state human rights accountability mechanisms were established in Kosovo in order to provide remedies for alleged human rights violations by the UN and the EU. **John J Ryan** explains

JOHN J RYAN IS A SOLICITOR AND FORMER ARMY OFFICER AND IS CURRENTLY THE LEGAL ADVISER AT THE HUMAN RIGHTS REVIEW PANEL OF THE EU RULE OF LAW MISSION IN KOSOVO



The United Nations' Mission in Kosovo (UNMIK) began its international civil presence in Kosovo under [Security Council Resolution 1244](#) of 10 June 1999. UNMIK was established with a mandate to provide an interim civil administration that included, among other things, responsibility for the protection and promotion of human rights. Accordingly, the extension of accountability for human rights violations from states to international organisations was initiated by UNMIK through the medium of the Human Rights Advisory Panel on 26 March 2006.

The need for a non-state independent human rights accountability mechanism arose because the former Republic of Yugoslavia, the host country of UNMIK, was not a high contracting party to the *European Convention on Human Rights* (ECHR) and, therefore, could not be held accountable for alleged human rights violations by UNMIK in its exercise of executive powers. Neither was UNMIK a high

contracting party to the ECHR and, accordingly, the people of Kosovo had no recourse to the European Court of Human Rights for alleged human rights violations by UNMIK.

## Non-state accountability

The UN Human Rights Advisory Panel (HRAP) was eventually instituted on 12 November 2007.

UNMIK had experienced increasing criticism over time by Human Rights Watch, Amnesty International, the Norwegian Helsinki Committee, and other concerned parties because of its failure to resolve a human rights accountability void in the exercise of its executive powers when it became operational in Kosovo in 1999.

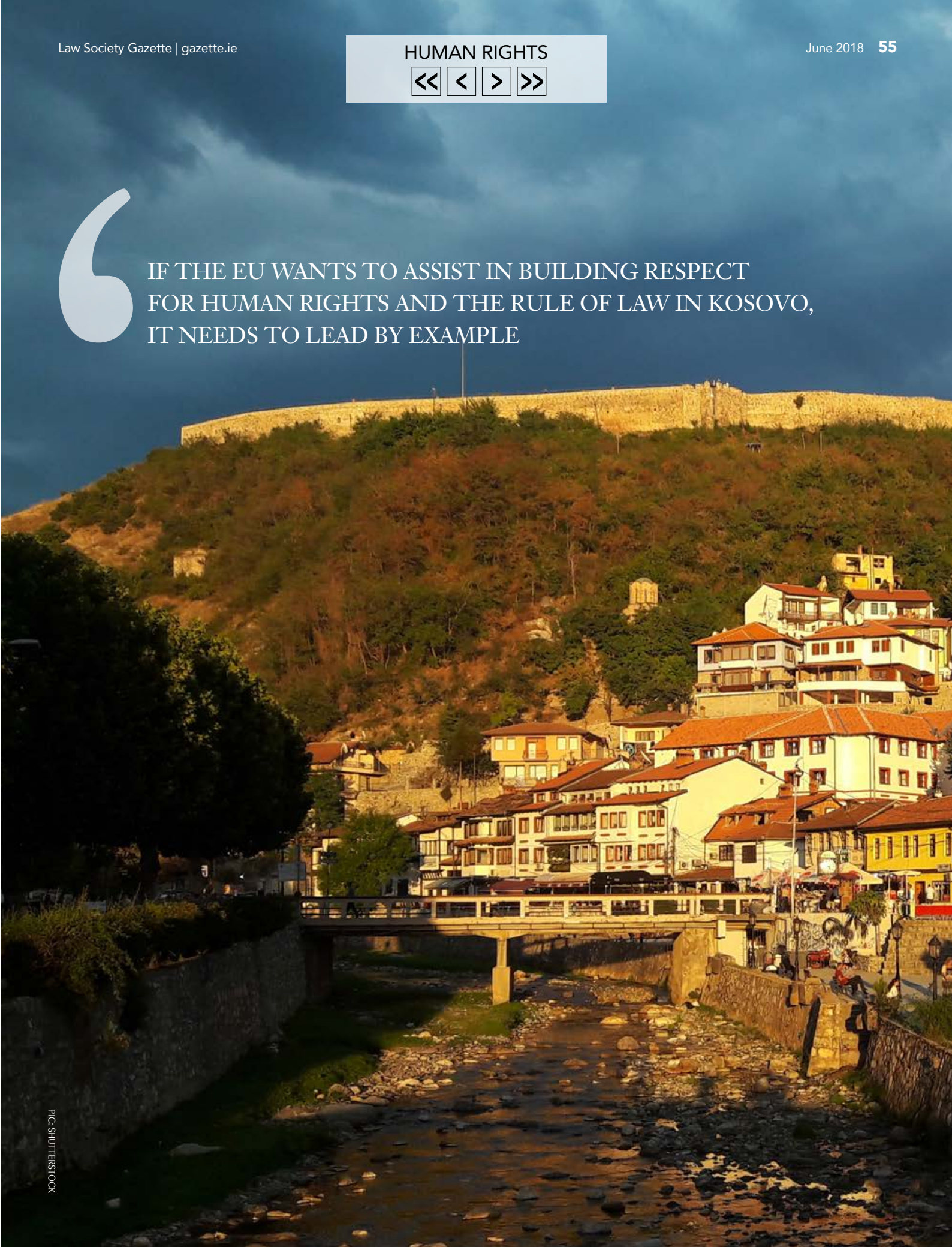
Those international human rights monitoring organisations recommended in a joint press release on 10 March 2008 that the proposed EU mission in Kosovo ought to subject itself to much greater human rights scrutiny and accountability than its predecessor, UNMIK: "If the EU wants to assist in building respect for human rights and the rule of law in Kosovo, it needs to

## AT A GLANCE

- UNMIK was established to provide an interim civil administration that included responsibility for the protection and promotion of human rights
- The EU established EULEX in February 2008. Its mandate was to achieve sustainable and accountable institutions, judicial authorities, and law enforcement agencies in Kosovo
- EULEX duly took over its executive responsibilities from UNMIK in the justice, police, and customs components in December 2009



IF THE EU WANTS TO ASSIST IN BUILDING RESPECT FOR HUMAN RIGHTS AND THE RULE OF LAW IN KOSOVO, IT NEEDS TO LEAD BY EXAMPLE





The annual Vidovdan celebrations

lead by example. That means that its mission accepts serious independent scrutiny of its human rights record from day one.”

The mandate of the HRAP was to examine complaints by individuals or groups of individuals who claimed to be victims of human rights violations by UNMIK in the exercise of its executive mandate.

The HRAP duly received some 527 complaints over time and found that UNMIK had violated human rights in 335 cases. The HRAP found, among other things, that UNMIK had committed 231 human rights violations in murdered and missing person cases (MMP) under article 2 (right to life) and 163 violations of article 3 (prohibition of torture), in conjunction with article 2 of the ECHR respectively, from a total of 248 admissible MMP cases. UNMIK completed its executive mandate in Kosovo on 9 December 2009. The HRAP continued thereafter with the review of its complaints and issued its [final report](#) on 30 June 2016.

The EU established the [EULEX Kosovo](#)

Rule of Law Mission – its largest ever common security and defence policy mission – on 4 February 2008. Its mandate was to achieve sustainable and accountable institutions, judicial authorities, and law enforcement agencies in Kosovo. EULEX duly took over its executive responsibilities from UNMIK in the justice, police, and customs components on 9 December 2009.

The EU had earlier established the Human Rights Review Panel (HRRP) on 29 October 2009, and it became operational on 10 June 2010. The mandate of the HRRP was to review complaints from any person, other than EULEX Kosovo personnel, who claimed to be a victim of a human rights violation by EULEX Kosovo personnel in the conduct of its executive mandate in the justice, police, and customs components.

### Complaints

The HRRP received 195 complaints to date, of which 108 were inadmissible. The HRRP found that EULEX committed

violations in 26 cases, and it found that no violations had occurred in 25 other admissible complaints that it reviewed. While some alleged violations resulted from EULEX action, other complaints came about from a supposed failure to act. These concerned alleged refusals by EULEX prosecutors to initiate investigations and/or their failure to file indictments. Additionally, there were allegations that EULEX police did not adopt adequate measures in some instances to protect complainants from harm by third parties.

The most common human rights violations examined by the HRRP under the ECHR were article 2 (right to life), article 3 (prohibition of torture), article 5 (right to liberty and security), article 6 (right to a fair trial), article 8 (right to respect for private and family life), article 9 (right to freedom of thought, conscience and religion), article 11 (freedom of assembly and association), article 13 (right to an effective remedy), and article 1 of protocol 1 (protection of property).

### Violations by EULEX

The following is a representative sample of the more serious complaints reviewed by the HRRP:

- *A, B, C, D, H and G against EULEX*. The complainants submitted, among other things, that unknown persons attacked them with Molotov cocktails as they returned home from the annual Vidovdan celebrations in Gazimestan, Pristina Region, on 28 June 2012. The HRRP held that poor planning and inadequate operational control, as well as the limited deployment of EULEX police, contributed to the complainants being denied their right to private life, their freedom of assembly, as well as their right to exercise their religion. The HRRP consequently decided that EULEX committed human rights violations, among other things, under articles 8, 9, 11 and 13 of the ECHR.

SUCH HUMAN RIGHTS ACCOUNTABILITY MECHANISMS MAY WELL CONSTITUTE AN ESSENTIAL COMPONENT OF INTERNATIONAL ORGANISATIONS AND, IN PARTICULAR, IN RULE OF LAW MISSIONS



- *X and 115 others against EULEX*. The complainants were part of a larger group of approximately 600 Kosovo Roma, Ashkali, and Egyptians whose homes were destroyed during the armed conflict in Kosovo in 1999. They were then accommodated in the former Trepce mining complex in northern Mitrovica, where they were allegedly exposed to lead poisoning. The HRRP held that there has been a violation of article 13 of the convention.
- *DW, EV, FU, GT, Zlata Veselinovic, HS, and IR; LO against EULEX and Rejhane Sadiku-Syla against EULEX*. These cases almost exclusively concerned Kosovo Serb persons who were murdered and/or went missing, allegedly at the hands of the Kosovo Liberation Army, in the latter half of 1999 and throughout 2000. The complainants alleged that EULEX criminal investigations were inadequate and that EULEX failed to prosecute the perpetrators. The HRRP found that EULEX had violated articles 2, 3 and 13, in conjunction with article 2.
- *F and others against EULEX*. The complainant alleged that the inhuman and degrading treatment of her husband by EULEX led to his suicide. The HRRP held that EULEX violated article 2 in its procedural limb, as well as article 3.

### Implementation

The EULEX Head of Mission (HoM) implemented in full the recommendations of the HRRP in *A, B, C, D, H and G against EULEX* with regard to inadequate planning and organisational shortcomings, lax communications, no risk assessment, insufficient police resources, and no clear instructions and guidelines, in particular at to when EULEX police might intervene to prevent human rights violations.

The HRRP declared that the HoM implemented the recommendations of the HRRP in part only in the following cases: *X and 115 others*; 2014-11 to 2014-17; and 2014-34.

The HoM did not implement the recommendations of the HRRP in case 2014-32.

### Jurisprudence

The jurisprudence of the HRRP emanated primarily from rulings on preliminary procedural matters, such as jurisdiction in

general, temporal jurisdiction, admissibility, complaints manifestly ill-founded, and the exhaustion of remedies. The HRRP also ruled on a number of substantive issues such as the right to life, the right to a fair trial, and the right to protection of property.

The HRRP has also dealt with specific issues such as the definition of the scope of the acts or omissions attributable to EULEX and the identification of continuing and non-continuing violations arising from factual matters that occurred since 1999, where these facts gave rise to a continuing violation from a temporal perspective. The HRRP additionally addressed issues of ‘legitimate aim’, ‘necessity’ and the ‘proportionality’ of the interference with the right of respect for private and family life.

International recognition of the developing jurisprudence of the HRRP can be shown by the publication of the HRRP decisions in *DV, EV, GT, Veselinovic, HS and IR*, as well as *Rejhane Sadiku-Syla*, in the [information note](#) of the European Court of Human Rights on the case law of the court in August/September 2017.

### Accountability

The HRRP decisions and their implementation by the HoM have helped to clarify – in a practical way and in the operational sense – the accountability of EULEX for its human rights violations. The HRRP decisions in cases 2012-09, 2012-10, 2012-11, 2012-12, 2012-19 and 2012-20 have also been of assistance to EULEX civilian police, as evidenced by the vast operational improvements for the Vidovdan celebrations on 28 June 2013 and in subsequent years, which were practically incident free.

Through its operations, the HRRP has enhanced the credibility and status of EULEX from a human rights accountability perspective, with EULEX being subjected to independent external oversight in the discharge of its executive mandate.

The HRRP has also identified a number of factors that limit its effectiveness. These include non-binding decisions, no jurisdictional competence over judicial proceedings, inability to recommend monetary compensation, and limited jurisdiction in relation to *ratione temporis* (temporal jurisdiction) and *proprio motu* (of its own volition).

The HRRP is well established within the EU common security and defence policy

infrastructure as an effective accountability mechanism for the protection of human rights standards in international organisations in the executive role.

Both the HRAP and the HRRP have made major contributions to the development of international human rights law for international organisations in the exercise of executive authority. Such human rights accountability mechanisms may well constitute an essential component of international organisations and, in particular, in rule-of-law missions when these international organisations may again exercise state-type executive powers. [G](#)

## LOOK IT UP

### CASES:

- *A, B, C, D, H and G against EULEX* (case nos 2012-09, 2012-10, 2012-11, 2012-12, 2012-19 and 2012-20)
- *DW, EV, FU, GT, Zlata Veselinovic, HS, and IR* (case nos 2014-11 to 2014-17)
- *F and others against EULEX* (case no 2011-27)
- *LO against EULEX* (case no 2014-32)
- *Rejhane Sadiku-Syla against EULEX* (case no 2014-34)
- *X and 115 others against EULEX* (case no 2011-20)

### RESOLUTIONS AND REGULATIONS:

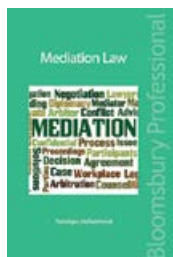
- *Rules of Procedure*, rule 25.2, EU Human Rights Review Panel, European Rule of Law Mission, Kosovo
- *UNMIK Regulation no 2006/12* on the establishment of the Human Rights Advisory Panel (23 March 2006)
- *UN Security Council Resolution 1244* (10 June 1999)

### LITERATURE:

- *Final Report of the UNMIK Human Rights Advisory Panel* (30 June 2016)
- *Information Note of the European Court of Human Rights* (August/September 2017)



## NEW TITLE

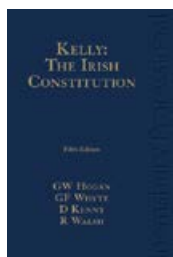
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## JOYCE IN COURT

**Adrian Hardiman.** Head of Zeus (2017), [www.headofzeus.com](http://www.headofzeus.com).  
Price: Stg£18.99 (hardback); Stg£21.25 (e-book) (incl VAT).

The late Supreme Court Justice Adrian Hardiman's *Joyce in Court* is divided into three parts (and an appendix). Part I addresses Ireland and the legal system around 1904 in the context of Joyce, part II focuses on legal references in *Ulysses*, and part III with the prosecution of the book as obscene in the US and England. The appendix concentrates on the trial of Robert Emmet.

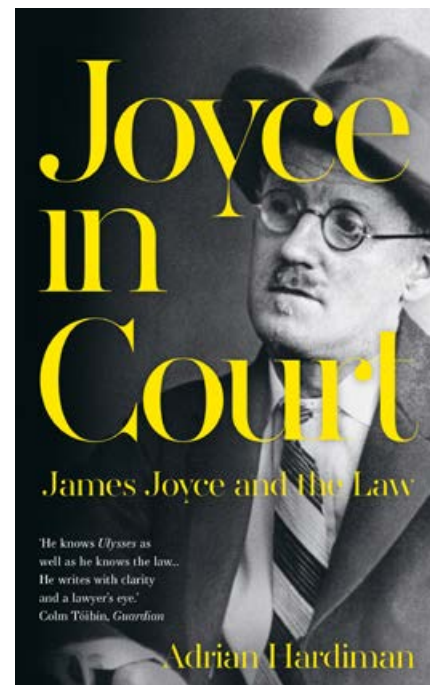
For those put off by the reputed difficulty of one of modernism's most important works, Hardiman is at pains to put such readers at their ease. He has no time for the "obscurantism and the contrived terminology" of the university English department.

Like Joyce, he focuses on facts and, with his legal expertise, he brings a whole new light to *Ulysses*, explaining the murder trials, civil actions, judges, lawyers, and other aspects of legal Dublin that Joyce drew on for his portrait of the city, in the context of the law, legal institutions, and legal personalities of the Dublin of 1904.

For example, in the Hades episode, where Leopold Bloom joins mourners at Paddy Dignam's funeral, the company discusses Dignam's assignment of his life insurance policy as security for a loan, and the subject comes up again in the Cyclops episode.

Hardiman throws fascinating light on these scenes by explaining the uses of life insurance at that time as a form of security for widows and children, and the effect of section 3 of the *Policies of Assurance Act 1867*, which required the assignee of the policy to notify the assignment to the assurance company before suing on it – a loophole that Bloom hopes will enable Dignam's widow recover money, despite her late husband's assignment.

In part III, Hardiman explains the troubled passage of *Ulysses* to the market and the law on obscenity, set out in *Regina v Hicklin*, which created the position that a book with a tendency to corrupt anyone, even a young child, was a work that it was illegal to sell in England. This law, which applied also in the United States, was challenged and



overturned in that jurisdiction in *US v One Book called Ulysses*, a case whose history – from importation and seizure of *Ulysses*, to hearings before Judge Woolsey in the US District Court, and Judge Learned Hand in the Court of Appeals, for the Second Circuit – Hardiman vividly recounts.

Finally, in the appendix, Hardiman examines a case that looms large in the minds of the characters in *Ulysses*, the fascinating story of Robert Emmet's trial and execution – a story that includes the great nationalist lawyer John Philpott Curran, the odious Judge Norbury, and the notorious Leonard McNally. Hardiman, having earlier noted Joyce's mockery of Emmet's famous speech in *Ulysses*, ends his book with a stirring defence of that speech and its power and importance.

As a guide to *Ulysses*, as Irish legal history, or as Irish social history, *Joyce in Court* is consistently informative and entertaining, and very often fascinating. It deserves a place in every Irish lawyer's library.

*Brian McMabon is a solicitor for MUFU Fund Services.*



# JURIES IN IRELAND: LAYPERSONS AND LAW IN THE LONG 19<sup>TH</sup> CENTURY

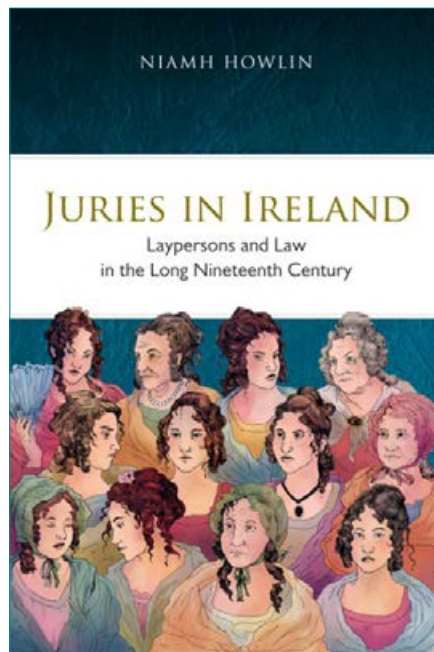
**Niamh Howlin.** Four Courts Press (2017), [www.fourcourtspress.ie](http://www.fourcourtspress.ie). Price: €49.50.

Dr Niamh Howlin of the Law School in University College Dublin has an encyclopaedic knowledge of the historic development of the jury system. Her book on lay participation in the justice system up to the early part of the 20<sup>th</sup> century throws fresh light on – and will overturn many unexamined assumptions about – the composition and workings of juries.


Membership of a jury, entirely male, was generally restricted by a property qualification, much like the right to vote. However, jury service could be burdensome and thankless, and among the received views that Dr Howlin challenges is a perception of “jury service as a privilege jealously guarded by landed proprietors, [because] throughout the 18<sup>th</sup> and 19<sup>th</sup> centuries, compelling the attendance of jurors was a constant battle and a source of frustration for officials”. This sometimes led to unqualified onlookers or ‘standers by’ being empanelled to make up the required numbers.

Jurors were not always the passive recipients of evidence and legal arguments, as now. For many years, they were free to question witnesses, occasionally (perhaps while intoxicated) interrupting a judge’s charge.

The present-day jury derives from the petty (*petit*) jury, the grand jury having effectively been superseded by the creation of county councils in 1898. Howlin describes many other forms of jury that are now defunct, including special juries (wealthier jurors), valuation juries for the Wide Streets Com-



missioners, and the jury of matrons (imaginatively illustrated on the cover). Its function was to determine pregnancy in both criminal cases (potentially delaying the execution of a woman convicted of a capital offence) and civil cases (heirship, to prevent fraudulent substitution of another person’s baby as a male heir). It was abolished in 1876.

Dr Howlin’s book, the richness of which can only be touched upon here, is a notable contribution to Irish legal history. 

*Daire Hogan is a solicitor and legal historian.*



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## REPORT OF THE LAW SOCIETY COUNCIL MEETING

20 APRIL 2018

**Legal Services Regulation Act**

Paul Keane reported that the LSRA website indicated some projected timelines, with the Roll of Barristers planned for Q2 of 2018, followed by a six-month registration period for all practising barristers. This was required before the commencement of legal partnerships, which was scheduled for Q3 of 2018. Mr Keane noted that LLPs were scheduled for Q4 of 2018, and the timeline for the introduction of the new disciplinary regime and the commencement of complaints-handling by the authority was early 2019.

In addition, and as required by the act, the authority was conducting a review of the legislation, including the *Solicitors Acts* and all regulations made thereunder. The authority's strategic plan, which had been submitted to the department a number of weeks previously, had not yet been approved and published.

The director general reported his understanding that a plan for the research project on the education and training arrangements for legal practitioners had been presented to the authority's board. Hook Tangaza Consultants had been engaged to provide the necessary research and reporting services for the authority. It was likely that the section 34 consultation notices would be agreed shortly and would then be circulated to the professional bodies and other identified stakeholders.

**Setanta claims**

Stuart Gilhooly noted that the Government had announced that it would pick up the balance of 35% owing in respect of

Setanta claims. However, this would require legislation, and it was unclear when this legislation would be passed. It was likely to require the creation of a separate fund that would cover both compensation and costs.

Mr Gilhooly noted that an application was being made on the following Monday to the President of the High Court to permit cheques that had been made payable to plaintiffs to issue to solicitors on record, on the authority of their clients.

**Patterns in the profession**

The Council had a discussion on patterns in the profession, as outlined in a series of *Gazette* articles since the beginning of 2018. The latest statistics confirmed that, as at 31 December 2017, 52% of practising solicitors were women, 63% of practising solicitors were based in Dublin, and 19% of practising solicitors worked in-house. In the in-house category, the largest employer was Allied Irish Banks, with 108 solicitors, which, if it were a private practice firm, would make AIB the ninth largest firm in the country.

In terms of the in-house cohort, there was a huge concentration in the financial services sector, and there were 50 practising solicitors employed by the Law Society.

Examining the effect of Brexit, practising certificate renewals by England and Wales solicitors were down on the previous year. A county-by-county breakdown by gender had also been published, and the next *Gazette* would include statistics on transfers from the Bar.

It was agreed that additional

aspects of the latest statistics should be explored further and that particular efforts should be made by the Society to reflect the demographics within the profession, with an emphasis on gender equality. In this regard, the Council noted the interview by the junior vice-president Michelle Ní Longáin on the RTÉ Radio 1 *Drivetime* programme on the topic of women in the legal profession, which had been conducted on International Women's Day.

**Assisted decision-making**

The Council discussed a proposed submission by a Society task force to the Minister for Health on part 13 of the *Assisted Decision-Making (Capacity) Act*, together with a submission made by the National Safeguarding Committee (NSC) on the same matter. Concern was expressed about the call by the NSC for statutory recognition for a new category of 'independent advocate' and also a call for a provision in the bill that would make it an offence for anyone to debar access to an independent advocate.

The president noted that, in recent months, the Society had received a number of complaints from its members who had encountered difficulties in gaining access to their clients, particularly in nursing homes, on the basis that a self-appointed 'advocate' had secured instructions from that client not to meet with their solicitor in the absence of that 'advocate'. Subsequently, clients had confirmed that they had not agreed to, or did not understand, the position being taken by those advocates, purportedly on their behalf.

The Law Society had written to the HSE, HIQA, and Nursing Homes Ireland objecting to this development and to the clear interference with a client's right to consult, in private, with their legal advisor. Nursing Homes Ireland had confirmed its own disquiet with this development, in particular the 'authority to act' form being signed by patients and "the nature of advocates positioning themselves in this way in the absence of underpinning legislation or regulation of advocacy services". Substantive replies were still awaited from the HSE and HIQA.

The Council noted a relevant judgment of the President of the High Court, who expressed himself satisfied that an 'advocate' who was acting on the instructions of an advocacy body and who sought to represent an individual in a wardship case was not entitled to appear on behalf of that individual. Mr Justice Kelly had expressed the view that, while the advocacy body might well have a useful advocacy function for elderly people in general, such a function did not extend to appearing before the court in the manner that had been done, and that he would not permit such appearances in other cases.

The Council noted that the proposal made by the NSC would seek to circumvent the judgment of Kelly P by conferring statutory authority on such 'advocates' to act in a variety of circumstances, including the legal sphere, but without any balancing statutory obligations as to qualifications, training, insurance or regulatory oversight.



Of grave concern to the Council was the fact that there was no proposal that this new category of independent advocate would be required to be licensed by any regulatory body, have minimum educational qualifications, complete mandatory CPD training, hold professional indemnity insurance, be subject to ongoing monitoring, be subject to professional disciplinary rules and regulations, or be open to a transparent and objective complaints procedure.

The Council agreed that it would be wholly inappropriate to grant statutory authority to unqualified individuals, however well-meaning their intentions, without a substantial regulatory framework and vital safeguards for the protection of vulnerable persons, and it was agreed that the Society should express its opposition to those aspects of the submission made by the NSC.

In the Council's view, it would be a reckless course of action to

permit an unqualified, unregulated, and uninsured group of individuals to interline themselves between the State's most vulnerable citizens and their legal representatives or, indeed, to affect in any way their right of unimpeded access to the courts.

It was noted that Mr Justice Kelly, who presided over all wardship applications in the State, was live to the critical distinction between those who might seek to support elderly people as a group and those

who would seek to represent them individually in terms of legal advice and assistance – a role properly and professionally performed by their legal representatives, who operate subject to onerous professional responsibilities and as officers of the court.

#### PII

Richard Hammond reported on the background to and current developments in relation to CBL Insurance Europe. [g](#)

## MAKE A DIFFERENCE IN A CHILD'S LIFE

# Leave a legacy

Make-A-Wish® Ireland has a vision – to ensure that every child living with a life threatening medical condition receives their one true wish. You could make a difference by simply thinking of Make-A-Wish when making or amending your will and thus leave a lasting memory.



"Make-A-Wish Ireland is a fantastic organisation and does wonderful work to enrich the lives of children living with a life-threatening medical condition. The impact of a wish is immense – it can empower a child and increase the emotional strength to enable the child to fight their illness. It creates a very special moment for both the child and the family, which is cherished by all."

*Dr. Basil Elnazir, Consultant Respiratory Paediatrician & Medical Advisor to Make-A-Wish*

"I cannot thank Make-A-Wish enough for coming into our lives. Having to cope with a medical condition every hour of everyday is a grind. But Make-A-Wish was amazing for all of us. To see your children that happy cannot be surpassed and we think of/talk about that time regularly bringing back those feelings of joy happiness and support."

*Wish Mother*

If you would like more information on how to leave a legacy to Make-A-Wish, please contact Susan O'Dwyer on 01 2052012 or visit [www.makeawish.ie](http://www.makeawish.ie)





## CONVEYANCING COMMITTEE

# ICAVS AND PROPERTY TRANSACTIONS

ICAVs (Irish Collective Asset-Management Vehicles) are a new corporate vehicle designed for Irish investment funds. It was introduced by the *Irish Collective Asset-Management Vehicles Act 2015*. This new structure is a tailor-made corporate fund vehicle for both undertakings for the collective investment in transferable securities (UCITS) and alternative investment funds (AIFs).

One can easily recognise an ICAV, as its name must end with either 'Irish Collective Asset-Management Vehicle' or 'ICAV'. An ICAV must be registered and authorised by the Central Bank of Ireland, not the Registrar of Companies. It does not have the status of an ordinary Irish company established under the *Companies Acts*, but rather has its own legislative regime. It is not subject to those aspects of company law that are not relevant or appropriate to a collective investment scheme.

When an ICAV is registered, the Central Bank makes a registration order that specifies the date on which it shall come into operation. The ICAV shall constitute a body corporate from this date. The registration order may be considered as equivalent to the certificate of incorporation of a company incorporated under the *Companies Acts*.

The constitutional document of the ICAV is known as an instrument of incorporation (IOI). This is similar to the constitution of an investment company.

## Documents and common seal

Sections 32 and 33 of the *ICAV Act* deal with execution of documents and common seal. An ICAV may provide itself with a common seal, but there is no requirement to do so. The absence of the requirement for an ICAV to have

a common seal was intended to be an operational benefit of using an ICAV and to align it with its counterpart in Britain (the OEIC, or open-ended investment company). The *ICAV Act* does not set out who may affix the seal and what formalities are required. For companies governed by the *Companies Act 2014*, these requirements are set out in section 43 of that act, which has not been incorporated into the *ICAV Act*.

Where an ICAV has a common seal, the IOI will set out the formalities for its use. These are likely to be similar to those usually found in the constitution of companies governed by the *Companies Act 2014*. Irrespective of whether the ICAV has a common seal or not, a document expressed (in whatever form of words) to be executed by the ICAV and signed on behalf of the ICAV, either by two authorised signatories or by a director of the ICAV in the presence of a witness who attests the signature, shall have the same effect as if executed under the common seal of the ICAV.

For the purposes of execution, each of the following is an authorised signatory:

- A director of the ICAV,
- The secretary or any joint secretary of the ICAV, or
- Any person authorised by the directors of the ICAV in accordance with the ICAV's instrument of incorporation.

The *ICAV Act* also provides that:

- Where a document is to be signed by a person on behalf of more than one ICAV, it is not properly signed unless he or she signs it separately for each ICAV, and
- Where the secretary of an ICAV is a firm, any reference to the signature of the secretary is

a reference to the signature of an individual authorised by the firm to sign on its behalf.

## PRA practice

The Property Registration Authority (PRA) has issued a [legal office notice](#) (Irish Collective Asset-Management Vehicle (ICAV) – Legal Office Notice 2 of 2015) setting out key provisions of the *ICAV Act* and the PRA practice in relation to registration of an ICAV as a registered owner of property. That notice indicates that, in the case of documents executed other than under seal, the PRA will require evidence of authorisation where the document is signed by two authorised signatories or by an individual authorised by a firm who is the secretary of the ICAV. The example given is a solicitor's certificate.

In lieu of Companies Office

searches, searches of the Register of ICAVs and the ICAV Register of Charges maintained by the Central Bank will be required. The Register of ICAVs lists all ICAVs that have been registered with the Central Bank, with links to director details, secretary details, and instruments of incorporation. It does not include any reference to charges, which must be checked separately on the ICAV Register of Charges.

The ICAV Register of Charges may not be fully up to date. Similar to company secretary certificates in respect of any potential charges not yet entered in the Companies Office, or resolutions to wind up, a purchaser from an ICAV should obtain a certificate from the secretary or other officer of the ICAV.

The panel below shows an appropriate form of certificate.

### [SECRETARY'S / DIRECTOR'S] CERTIFICATE

[...] ICAV acting on behalf of its sub-fund [...] (an umbrella fund with segregated liability between sub-funds) having its registered office at [...] ('the ICAV')

[I, [...], [a director/the secretary] of the ICAV] or [for and on behalf of [...] (company number [...]), secretary of the ICAV], I] hereby certify that on the date of this certificate:

- 1) The ICAV has not executed any charges of any description which are not shown as registered on the Register of Charges for Irish Collective Asset-Management Vehicles maintained by the Central Bank of Ireland.
- 2) No resolution to wind up the ICAV has been passed and no notice of a meeting at which it is proposed to wind up the ICAV has been issued or published and no petition has been presented or is pending to wind up the ICAV or to place the ICAV in receivership or to have a receiver appointed.
- 3) Neither the ICAV nor any of its directors or secretary is an entity or person to whom chapter 3 or chapter 4 of part 14 of the *Companies Act 2014* (as amended by section 86 (restrictions on directors of insolvent ICAVs) and section 87 (disqualification of directors etc) of the *Irish Collective Asset-Management Vehicles Act 2015*) applies, and no notice of intention to apply to the court or to institute civil or criminal proceedings under the said legislation has issued.

Dated:

Signed:

[secretary/director]



## GUIDANCE AND ETHICS COMMITTEE

## TEN STEPS TO PROFESSIONAL WELL-BEING FOR SOLICITORS

While working as a solicitor offers many rewards, it can also be challenging. Increased awareness and understanding of well-being issues will enable the profession to manage personal resources and maintain psychological fitness and health at work to successfully meet the challenges of professional life.

- 1) The Law Society's [well-being statement](#) brings together all of the initiatives currently in place within the Society to support the well-being of the profession. It can be found in the members section at [www.lawsociety.ie](#).
- 2) LawCare is the charity that supports and promotes mental health and well-being in the legal community throughout Ireland. It offers a free, confidential service funded by the Law Society, but completely independent of it. LawCare's mission is to help all branches of the legal community with personal or professional concerns that may be affecting their mental health and well-being. Support spans the entire legal life, from student to training, through to practice and retirement. Visit [www.lawcare.ie](#).
- 3) Health screening is a proactive approach to your own personal well-being and can help people identify risk factors, signs and symptoms of common conditions that, if not detected early, could result in serious health issues. Health insurers and many private hospitals have various packages to allow you manage your health and well-being.
- 4) Regular check-ups by way of a visit to your GP can include a consultation with the doctor and a range of tests that include blood, cholesterol and blood pressure. Seeing your own doctor for screening is probably best, as (s)he will be aware of your medical history.
- 5) Other medical visits – for example, dental and physiotherapy: regular check-ups with your dentist can prevent serious dental problems and the expense these can cause if not caught in time. Similarly, a visit to a physiotherapist to assess and diagnose an injury or condition can allow for an early recommendation and an immediate course of action. Specific exercise programmes can be devised for specific injuries or conditions.
- 6) While gyms may not appeal to everybody, they offer programmes to improve physical fitness and can tailor a programme to suit each individual's needs. Exercising in a gym allows people with busy lives to fit in exercise in relatively short periods of time.
- 7) Membership of a sports club allows for physical exercise and social activities, whether it be golf, hill walking, sailing, tennis, soccer, cycling or whatever you prefer.
- 8) Walking is a very simple form of exercise, is free, and requires no special equipment other than a good pair of walking shoes. Taking a walk a day is like the proverbial apple – there's a good chance it'll keep the doctor away. From helping to lose weight and de-stress, to lowering blood pressure and reducing the risk of many chronic diseases, going for regular walks is one of the best and easiest things you can do for your health.
- 9) Complementary therapies – a reason to consider complementary therapies is to help achieve and maintain good health and relieve stress. Some of the more popular complementary therapies include massage, reflexology, relaxation techniques and meditation.
- 10) Don't forget to take regular breaks from work. Depending on the circumstances, breaks will have to be tailored to suit your situation, but even short breaks can make a difference. You will feel better and come back to work refreshed.

## CONVEYANCING COMMITTEE

## RIGHTS OF WAY AND OTHER EASEMENTS AFTER 2021

It has come to the attention of the Conveyancing Committee that there appears to be a misunderstanding among some practitioners as to the effect of amendments made by parts 12 and 13 of the *Civil Law (Miscellaneous Provisions) Act 2011* to the provisions relating to acquisition of easements and profits by prescription contained in part 8 of the *Land and Conveyancing Law Reform Act 2009*. The committee advises, by way of

clarification, the following:

- 1) The extension of the transitional period originally prescribed by section 38(b) of the 2009 act (three years) by the 2011 act (extending the period to 12 years) relates simply to the period when a claim to a prescriptive right can be made by reliance on the 'old' law replaced by the 2009 act. From 2021, reliance must be made on the 'new' law introduced by the 2009 act – in particular, reliance must be made on the new single and shorter period of 12 years' use. There is no question of a cut-off point occurring in 2021 when a claim to a prescriptive right can no longer be made. All that changes in 2021 is the basis on which the prescriptive right can be claimed.
- 2) The new section 49A PRA procedure for the registration of a prescriptive right introduced by section 41 of the 2011 act

is not subject to a time limit. It is a permanent procedure and, in particular, does not cease to be available in 2021. The only change that occurs in 2021 is the basis on which an application must be made to the PRA – as pointed out in (1) above, from 2021 the application will have to be grounded on the 'new' law introduced by the 2009 act, and reliance on the 'old' law repealed by that act will cease to be possible.



## CONVEYANCING COMMITTEE

## RIGHTS OF WAY IN RURAL AREAS

The Conveyancing Committee has been asked to give guidance to solicitors acting for clients in the following situation. The owners are seeking to sell a single house in a rural area that is accessed over a lane or road that is not in charge of the local authority. The purchasers insist on the vendor registering a right of way through the PRA under section 49A or getting a court order and registering that order to provide the purchaser with a legal right of way.

The committee wishes to draw the attention of practitioners to one possible solution to this problem. If the property and the servient tenement were part of a holding that was vested in the owners by the Land Commission, and having regard to the fact that 89% of land passed under the *Land Purchase Acts*, the *Land Law (Ireland) Act 1896* may solve the problem.

Section 34 of that statute reads as follows:

“1)A holding vested in a purchaser by a vesting order under this act shall continue to have appurtenant thereto and to be subject to, as the case may be, any previously existing easements, rights, and appurtenances; and any privilege previously in fact enjoyed, whether by permission of the landlord or otherwise, in such manner and for such time that, if the holding had belonged to a different owner from the rest of the estate, it would have been an easement or right, shall be an easement or right within the meaning of this section, and shall be appurtenant to or exerciseable over the holding, as the case may be.

2)The vesting order may, if the Land Commission think fit, declare that the sale is made subject to or free from any

particular easement, right, or appurtenance, and such declaration shall have full effect.

3)This section shall extend to any sale or declaration of title made by the Land Judge in pursuance of the *Landed Estates Court (Ireland) Act 1858*, in like manner as if it were herein

re-enacted with the necessary modifications.”


It will be seen from the section that it would be necessary to inspect the vesting order before any conclusion could be drawn, as the outcome can vary from one case to another.

## CONVEYANCING COMMITTEE

## ULSTER BANK ONLINE LOAN PACK

Following representations made by the Conveyancing Committee, Ulster Bank recently confirmed that the bank would issue solicitors' loan packs in hard copy by post to solicitors' offices from 9 April 2018 onward

The committee welcomes this development. Discussions are ongoing with Ulster Bank to ensure full compliance with the certificate of title system.

The committee confirms its position on emailed or online loan packs as set out in its [practice note](#) published in the July 2016 *eZine*. Any future move to electronic loan packs in residential mortgage lending will be as part of a coordinated and agreed revision of the certificate of title system in conjunction with Banking Payments Federation Ireland on behalf of all their lender members. 

## 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.

Make sure you keep up to date: subscribe on [www.lawsociety.ie/newsletters](http://www.lawsociety.ie/newsletters) or email [eZine@lawsociety.ie](mailto:eZine@lawsociety.ie).





## 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 Joseph Kane, a solicitor previously practising as Joseph Kane & Company, Solicitors, at 28-32 Pembroke Street Upper, Dublin 2, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT54]**

*Law Society of Ireland*

(applicant)

*Joseph Kane (respondent solicitor)*

On 13 February 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

- 1) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 28 February 2016 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014),
- 2) Failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 33(2) of the *Solicitors Accounts Regulations*, in a timely manner, having ceased practice on 14 March 2016 and having only filed his closing accountant's report on 12 May 2017.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay a sum of €1,137 as a contribution of the whole of the costs of the Law Society of Ireland.

**In the matter of John Nolan, a solicitor practising as John Nolan & Company, Solicitors, 11 Parliament Street, Dublin 2, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT27]**

*Law Society of Ireland*

(applicant)

*John Nolan (respondent solicitor)*

On 20 February 2018, the tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Failed to comply with an undertaking given by him on behalf of his named clients to Irish Permanent, now Permanent TSB, over properties in Dublin by undertaking given on 24 August 2001 expeditiously, within a reasonable time, or at all,
- 2) Failed to respond adequately or at all to the Society's correspondence and, in particular, letters dated 5 January 2016 and 19 February 2016 respectively,
- 3) Failed to comply with the direction of the Complaints and Client Relations Committee meeting on 22 March 2016, whereby he was directed to send to the Society by 8 April 2016 a detailed report outlining precisely the steps that needed to be taken to resolve the outstanding issues and to identify the parties who are responsible for them, and to provide a reasonable estimate as to when these steps would be taken and completed.

## NOTICES: THE HIGH COURT

**In the matter of Patrick E Callanan, solicitor, formerly practising in Wells & O'Carroll Solicitors, Main Street, Carrickmacross, Co Monaghan [2015 no 6 SA]**

Take notice that, by order of the President of the High Court made on 11 April 2018, it was ordered that the name of Patrick E Callanan be struck from the Roll of Solicitors.

**In the matter of Gary O'Flynn, a solicitor formerly practising as Gary O'Flynn, Solicitors, Unit 9 Nof Commercial Centre, Old Mallow Road, Cork [2018 no 13 SA]**

Take notice that, by order of the President of the High Court made on 16 April 2018, it was ordered that the name of Gary O'Flynn be struck from the Roll of Solicitors.

*John Elliot, Registrar of Solicitors, Law Society of Ireland,*

1 May 2018 and 10 May 2018

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €7,500 to the compensation fund,
- 3) Pay a contribution of €2,243 towards the whole of the costs of the Law Society of Ireland.

The tribunal noted that the outstanding undertaking was complied with by the respondent solicitor by lodging the deeds with the lending institution in June 2017, and he was formally discharged from his undertaking by Permanent TSB Bank on 11 September 2017.

**In the matter of Lorna Burke, a solicitor practising as Burke & Company, Solicitors, 133 Upper Salthill, Galway, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT11]**

*Law Society of Ireland*

(applicant)

*Lorna Burke (respondent solicitor)*

On 27 February 2018, the tribunal found the respondent solicitor guilty of misconduct in that she:

- 1) Failed to comply expeditiously, within a reasonable time, with an undertaking given by her on behalf of her named clients over property in Co Galway to Bank of Ireland Mortgage Bank, by undertaking dated 20 September 2007,
- 2) Failed to reply adequately or at all to the correspondence from the Law Society and, in particular, letters dated 13 July 2012, 7 June 2013, 27 February 2014 and 21 January 2015.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €2,000 to the compensation fund,
- 3) Pay a contribution of €3,103 towards the whole of the costs of the Law Society of Ireland.

**In the matter of Maurice B O'Sullivan, a solicitor practising as Maurice O'Sullivan & Company, Solicitors, at 9 Colbert Street, Listowel, Co Kerry, and in the matter of the *Solicitors Acts 1954-2015* [3665/DT87/16]**

*Law Society of Ireland*

(applicant)



**Maurice B O'Sullivan**  
(respondent solicitor)

On 27 February 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

- 1) Failed to comply with an undertaking furnished to ACC Bank on 26 September 2006 in respect of a commercial property in Listowel, Co Kerry, in a timely manner or at all,
- 2) Failed to stamp and register the ACC security documents in respect of that property, so as to ensure that the ACC got a first legal mortgage, in a timely manner or at all,
- 3) Failed to respond to the Society's letters of 17 July 2015, 4 August 2015, 10 September 2015 and 5 October 2015 in a timely manner, within the time prescribed, or at all.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €500 to the compensation fund,
- 3) Pay a sum of €2,112 as a contribution towards the whole of the costs of the applicant.

**In the matter of Gary O'Flynn, a solicitor formerly practising as Gary O'Flynn, Solicitors,**

**Unit 9 Nof Commercial Centre, Old Mallow Road, Cork, and in the matter of the Solicitors Acts 1954-2015 [10549/DT20/16 and High Court record 2018 13 SA]**

**Law Society of Ireland (applicant)**

**Gary O'Flynn (respondent solicitor)**

On 26 September 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

- 1) Was convicted before Cork Circuit Criminal Court on 28 May 2014 of 13 counts of making a gain or causing a loss by deception, contrary to section 6 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*, having pleaded not guilty to each count. For these offences, the respondent solicitor was sentenced in respect of each count to a term of imprisonment of three years, to date from 28 May 2014 and to run concurrently, with the final two years of each term to be suspended for a period of two years, on the respondent solicitor agreeing to be bound to keep the peace for the said period.
- 2) Was convicted before Cork Circuit Criminal Court on


three counts of soliciting another person to murder an individual on a date or dates unknown between 1 October 2012 and 13 February 2013 inclusive, contrary to section 4 of the *Offences Against the Person Act 1861*, and was sentenced in respect of each count to a term of imprisonment of five years, with the terms of imprisonment to date from 9 February 2015, to run concurrently, and with the final two years of each term to be suspended for a period of two years, on the respondent solicitor agreeing to be bound to keep the peace for the said period.

- 3) Was convicted before Cork Circuit Criminal Court on two counts of making a gain or causing a loss by deception, contrary to section 6 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*. For these offences, the respondent solicitor was sentenced to a term of imprisonment of two years, to date from 9 February 2015.
- 4) Was convicted before Cork Circuit Criminal Court on two counts of using an instrument that he knew or believed to be a false instrument, with the intention of inducing another person to accept it as genuine,

and by reason of so accepting the said instrument, to do some act or to make some omission or to provide some service to the prejudice of that person or any other person, contrary to section 26 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*. For these offences, the respondent solicitor was sentenced to a term of imprisonment of three years, to date from 9 February 2015.

- 5) Has, through his criminal convictions, brought the solicitors' profession into disrepute.

The tribunal ordered that the matter go forward to the High Court and, on 16 April 2018, in High Court proceedings 2018 no 13 SA, the High Court made orders that:

- 1) The respondent solicitor's name be struck off the Roll of Solicitors,
- 2) The respondent solicitor pay a contribution of the sum of €6,000 towards the costs of the Law Society of Ireland in the Solicitors Disciplinary Tribunal proceedings,
- 3) The respondent solicitor pay measured costs of the Law Society of Ireland in respect of the High Court application in the sum of €5,362.97 within three months of the order. 



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## RATES

## PROFESSIONAL NOTICE RATES

## RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €150 (incl VAT at 23%)
- **Title deeds** – €300 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €150 (incl VAT at 23%)

## HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €30 EXTRA

**ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION.** CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazetestaff@lawsociety.ie. **Deadline for July 2018 *Gazette*: 15 June 2018.** For further information, contact the *Gazette* office on tel: 01 672 4828.

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

NEW RATES  
SINCE JANUARY 2018

## WILLS

**Bohan, Mary (deceased)**, late of 49 Harold's Cross, Dublin 6, who died on 26 May 1989. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Karen M Clabby, solicitor, Earl Street, Longford, Co Longford; tel: 043 335 0558, fax: 043 335 0559, email: karenmclabby@eircom.net

**Bohan, Nicholas (deceased)**, late of 81 Broadford Lawn, Ballinteer, Dublin 16, who died on 1 August 2016. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Karen M Clabby, solicitor, Earl Street, Longford, Co Longford; tel: 043 335 0558, fax: 043 335 0559, email: karenmclabby@eircom.net

**Clarke, Patrick (or Pat) (deceased)**, late of Castle Street, Elphin, Co Roscommon, who died on 27 February 2018. 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 Callan Tansey Solici-

tors, Boyle, Co Roscommon; tel: 071 966 2019, email: info@callantanseylee.ie

**Den Dikken, Wouter (Erwin) (deceased)**, late of 9 Coolbane Woods, Castleconnell, Co Limerick, and 18 Lad Lane Upper, Dublin 2, who died on 9 April 2018. Would any person have a knowledge of the whereabouts of any will made by the above-named deceased please contact Avril Mangan, Mangan & Company Solicitors, Pembroke House, 30 Pembroke Street Upper, Dublin 2, tel: 01 234 2690, email: avril@mangan solicitors.ie

**De Khors, John Louis (deceased)**, late of 16 Oldtown Road, Santry, Dublin 9, who died on 1 April 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Business and Commercial Solicitors, 28 Lower Leeson Street, Dublin 2; tel: 01 647 2915, email: law@businesslawyers.ie

**Fehily, Michael (deceased)**, late of 12 Shamrock Place, Ringaskiddy, Co Cork, who died on 17 March 2018. Would any

person having knowledge of the whereabouts of any will made by the above-named deceased please contact Eugene Murphy, Murphy English & Co, Solicitors, 'Sunville', Cork Road, Carrigaline, Co Cork; tel: 021 437 2425, email: emurphy@murphyenglish.ie

**Fennessy, Elizabeth (Betty) (deceased)**, late of Care Choice Nursing Home, Clonakilty, Co Cork, and formerly of 41 Shandon Drive, Phibsboro, Dublin 7. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Denis O'Sullivan, Collins Brooke & Associates, Solicitors, 6/7 Rossa Street, Clonakilty, Co Cork; tel: 023 883 332, email: dosullivan@collinsbrooks.ie

**Forristal, David (deceased)**, late of Chapel View, Gormanstown, Kilcullen, in the county of Kildare, and formerly of 8 Sheridan Place, North Frederick Lane, Dublin 1. Would any person having knowledge of a will made by the above-named deceased, who died on 24 September 2016, please contact Martin A Kennedy & Co, Solicitors, The Diamond,

Malahide, Co Dublin; tel: 01 845 3011 or email: info@mkennedysolicitors.com

**Gibney, Anne (deceased)**, late of 23 Oliver Plunkett Avenue, Monkstown, Co Dublin. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 21 March 2017, please contact Maurice O'Callaghan, O'Callaghan Legal, Solicitors, Dun Laoghaire, Co Dublin; tel: 01 280 3399, email: info@ocslegal.ie

**Hancock, John Francis (deceased)**, who died on 6 December 2017, late of 31 Larkfield Avenue, Harold's Cross, Dublin 6W. 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 Maurice Regan & Associates, Solicitors, Unit 7 Scurlockstown Business Park, Dublin Road, Trim, Co Meath; tel: 086 169 0900, email: mreganassoc@gmail.com

**Heelan, James (deceased)**, late of 18 Island View, Corbally Road, Limerick, who died on 7 March 2000. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact David O'Brien, McMahon O'Brien Tynan, Solicitors, Mill House, Henry Street, Limerick; DX 3004; tel: 061 315 100, email: dobrien@modlaw.ie

**Hennessy, Abigail (née Scott) (deceased)**, late of Castle House, The Demesne, Monkstown, Co Cork, who died on 8 May 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Anne-Marie Linehan, JW O'Donovan, Solicitors, 53 South Mall, Cork; tel: 021 700 300, email: alinehan@jwod.ie



**Higgins, Maurice (deceased)**, late of Glasha, Athea, in the county of Limerick. Would any person having knowledge of a will made by the above-named deceased, who died on 10 February 2018, please contact Mark Bergin, O'Connor & Bergin, Solicitors, Suites 234-236, The Capel Building, Mary's Abbey, Dublin 7; tel: 01 873 2411, email: [mark.bergin@oconnorbergin.ie](mailto:mark.bergin@oconnorbergin.ie)

**Macken, Mary Elizabeth (deceased)**, late of 110 Vine-wood Avenue, Willow Springs, Cooke, Illinois 60480, USA, formerly of 114 Blackcastle Estate, Navan, Co Meath, who died on 26 January 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Elaine Byrne, Regan McEntee & Partners, High Street, Trim, Co Meath; tel: 046 943 1202, email: [ebyrne@reganmmcentee.ie](mailto:ebyrne@reganmmcentee.ie)

**Maguire, Patrick (deceased)**, late of 3 Beaupark Crescent, Clongriffin, Dublin 13. Would any person having knowledge of any will made by the above-named deceased, who died on 4 April 2018, please contact Cogan-Daly Solicitors, Brighthouse, 50 Terenure Road East, Rathgar, Dublin 6; tel: 01 490 3394, email: [contact@coganddalylaw.ie](mailto:contact@coganddalylaw.ie)

**Mannion, Fr PJ (Patrick John) (deceased)**, priest, late of Moycough, Ballinasloe, Co Galway, and formerly of Archdiocese of San Antonio, Bexar County, Texas, USA, who died on 3 September 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact JA Canny & Co, Solicitors, 44 Friary Street, Kilkenny; DX 27 013 Kilkenny; tel: 056 777 1977, email: [tony@jacanny.com](mailto:tony@jacanny.com)

**Murphy, Mary Rose (Rosaleen) (deceased)**, late of Hillview

Nursing Home, Tullow Road, Carlow, Co Carlow, formerly of Castle Street, Carlow, Co Carlow, who died on 10 October 2017. Would any person having knowledge of the whereabouts of any will made by the deceased please contact Nichola Delaney, O'Flaherty & Brown Solicitors, Greenville, Athy Road, Carlow; tel: 059 913 0500, email: [nichola@oflahertybrown.ie](mailto:nichola@oflahertybrown.ie)

**Smith, Julia (deceased)**, late of 54 Pembroke Cottages, Donnybrook, Dublin 4, who died on 17 December 2017. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Alan Wallace, Mangan O'Beirne, Solicitors, 31 Morehampton Road, Donnybrook, Dublin 4; tel: 01 668 4333, email: [solicitors@manganobeirne.ie](mailto:solicitors@manganobeirne.ie)

**Whyte, Eileen (deceased)**, late of 44 Shelbourne Park, Co Limerick, who died on 5 June 2016 at Corbally Nursing Home, Mill Road, Limerick. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Helen Harnett, Leahy & Partners, Solicitors, Park Manor, Upper Mallow Street, Limerick; tel: 061 315 700, email: [hharnett@leahysol.ie](mailto:hharnett@leahysol.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***

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those 3 St Mary's Abbey, Dublin 7, held (as undivided third parts) pursuant to a lease dated 20 October 1869 between Marshall Clarke Vincent of the one part and George John Alexander of the other part for a term of 500 years at a rent of £15, and

(as to the remaining one-third part) pursuant to a lease dated 23 October 1954 between Hubert Dayrell Gallwey of the one part and James E Lalor of the other part for a term of 99 years from 29 September 1954 at an annual rent of £25.

Take notice that the National Leprechaun Museum of Ireland Limited, as tenant under the said leases, intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of their title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant 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 city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

*Date: 8 June 2018*

*Signed: Tom Conlon Solicitors (solicitors for the applicant), 14 South Leinster Street, Dublin 2*

**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 (as amended)* and in the matter of an application by Maureen Ryan in respect of premises known as 136 Lower Baggot Street, Dublin 2**

Take notice that any person having any interest in the fee simple or fee farm grantor's interest or any intermediate interest in the lands and premises known as 136 Lower Baggot Street, in the parish of St Peter and city of Dublin, being all of the premises demised

by a lease forever dated 5 May 1891 and made between Maurice Brooks and Henry Brooks of the one part and Robert James Downes of the other part, is called upon to furnish evidence of their title to the aforesaid premises to the below named within 21 days of the date of this notice.

Take notice that Maureen Ryan intends to submit an application to the county registrar for the city and county of Dublin for the acquisition of the freehold 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 the title to the aforesaid property to the below named within 21 days of the date of this notice.

In default of any such notice being received, the applicant 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 city and county of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest, including the fee farm grantor's interest/freehold reversion in the aforesaid premises, are unknown or unascertained.

*Date: 8 June 2018*

*Signed: Sheehan & Company (solicitors for the applicant), 1 Clare Street, Dublin 2*

**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 the land and premises known as no 1 Verona Villas, O'Connell Avenue, in the parish of St Michael and city of Limerick, and in the matter of an application by Declan Lyons and Gemma Lyons**

Any person having any interest in the freehold estate or intermediate interests of the following premises: the premises known as



no 1 Verona Villas, O'Connell Avenue, in the parish of St Michael and city of Limerick, being all of the premises demised by an indenture of lease made on 3 July 1912 between Michael Gough of the one part and John Begley of the other part, for a term of 980 years from 1 June 1912, subject to a yearly rent of £7.

Take notice that Declan Lyons and Gemma Lyons, c/o 1st Floor, 1 Verona Villas, O'Connell Avenue, Limerick, intend to submit an application to the county registrar for the county of Limerick for acquisition of the freehold interest and intermediate interests in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of the 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, Declan Lyons and Gemma Lyons 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 of Limerick for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

*Date: 8 June 2018*

*Signed: Gemma Lyons (solicitors for the applicant), 1st Floor, 1 Verona Villas, O'Connell Avenue, Limerick*

**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 the premises situate at 15 Curragh Road, Turners Cross, in the city of Cork, and in the matter of an application by Marian Carroll, John O'Sullivan and Margaret Donovan**

Any person having an interest

in the freehold or intermediate estate in the above properties: take notice that Marian Carroll, John O'Sullivan and Margaret Donovan intend to submit an application to the county registrar of the county of Cork for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any person asserting that they hold a superior interest in the property is called upon to furnish evidence of title to the premises to the below named. In particular, any person having an interest in the indenture of lease dated 15 May 1970 made between Michael Joseph Twomey of the first part, Robert Harrington Carrie of the second part and Daniel Curtin of the third part (hereinafter called 'the lease'), all and singular that piece or plot of ground together with the two dwellinghouses and premises now standing thereon and known as number 15 Curragh Road, situate in the parish of St Nicholas and city of Cork, as more particularly delineated and described on the map or plan endorsed on the lease and thereon coloured red, and were demised by the said Michael Joseph Twomey and confirmed by the said Robert Harrington Carrie unto the said Daniel Curtin from 12 March 1968, subject to a term of 99 years, subject to a sublease of a portion thereof dated 31 May 1944, made between James P Gill and Margaret O'Neill, yielding and paying therefore during the said term the yearly rent of £24, payable therein and to the covenants on the part of the lessee and conditions therein contained, with said 99 years commencing on 15 May 1970, should provide evidence of their title to the below named firm of solicitors.

In default of any such information being received, the applicants intend to proceed with their application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that

the person or persons entitled to the superior interests, including the freehold interest, in the said premises are unknown and unascertained.

*Date: 17 April 2018*

*Signed: McNally Campbell Solicitors (solicitors for the applicants), Victoria House, Victoria Road, Cork*

**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 the premises situate at 388 North Circular Road, Phibsborough, in the parish of St George, in the electoral division of Inns Quay B and city of Dublin: an application by Niamh Ní Cholmáin**

Take notice that any person having any interest in the freehold estate of the following property: 388 North Circular Road, Phibsborough, in the parish of St George, in the electoral division of Inns Quay B and city of Dublin, being the property described in Folio 162577L of the register Co Dublin, being part of the property demised by lease dated 10 December 1875 made between James Fitzgerald Lombard and Edward McMahon of the one part and Eliza McMahon of the other part, and being part of the property sub-demised by sublease dated 8 January 1879 made between the Reverend John P Prendergast of the one part and Charles Francis Wilmott and Alfred Lovely of the other part.

Take notice that Niamh Ní Cholmáin intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the 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, Niamh Ní Cholmáin 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 city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

*Date: 8 June 2018*

*Signed: Cormac Ó Ceallaigh & Co (solicitors for the applicant), 388 North Circular Road, Phibsborough, Dublin 7*

**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 Nenagh Military Barracks, Summerhill, Nenagh, Co Tipperary, and in the matter of an application by the Minister for Public Expenditure and Reform**

Take notice that any person having any interest in the freehold estate or intermediate interest in the following property: Nenagh Military Barracks, Summerhill, in the town of Nenagh, barony of Lower Ormond and county of Tipperary, held under fee-farm grant dated 23 March 1792 and made between Peter Holmes of the one part and the Right Honourable Lieutenant General George Warde, the Right Honourable James Cuff, the Honourable Ponsonby Moore, William Handcock, Robert Langrish, Major General David Dundass, the Honourable George Jocelyn, the Honourable Henry Pomeroy and Frederick Trench, commissioners and overseers of the barracks in the Kingdom of Ireland of the other part, held forever subject to the annual rent or sum of Stg£2.

Take notice that the Minister for Public Expenditure and Reform (the applicant), being





the person entitled to and seized of the grantees' interest under the said fee-farm grant, intends to submit an application to the county registrar for the county of Tipperary for acquisition of the freehold interest and any intermediate interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of the 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, the applicant 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 Tipperary for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

*Date: 8 June 2018*

*Signed: Maria Browne, Chief State Solicitor (solicitor for the applicant), Chief State Solicitor's Office, Osmond House, Little Ship Street, Dublin 8*

**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 Owen O'Neill and Maoiliosa Reynolds (hereinafter collectively referred to as 'the applicants')**

Regarding: all that and those the premises and lands situate at Woodview Mews, Glenalbyn Road, Stillorgan, Co Dublin (hereinafter referred to as 'the property'), held under long lease dated 5 October 1933, made between (1) Pdraig Tarrant and (2) Richard Appleby for the term of 900 years from 25 March 1933, subject to the yearly rent of 1p.

Take notice any person hav-

ing any interest in the freehold estate of the property that the applicants, Owen O'Neill and Maoiliosa Reynolds, who are seeking to purchase the freehold interest in the said property, intend to submit an application to the county registrar for the county of Dublin for acquisition of the freehold 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 the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

*Date: 8 June 2018*

*Signed: Noel Smyth & Partners (solicitors for the applicant), 12 Ely Place, Dublin 2*

**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* (as amended) and in the matter of an application by TSAF 1 Mill St II GP Limited in respect of the property known as 34B Blackpitts, Mill Street, Dublin 8**

Take notice that any person having any interest in the freehold estate or any intermediate interests in the following property at 34B Blackpitts, Mill Street, Dublin 8: all that and those the dwellinghouses messuages and premises now known as 33 and 34 Blackpitts, together with the plot or piece of ground at the north side of the said dwellinghouses, all said premises containing in

breadth in the front, 82 feet, 6 inches; in breadth in the rear, 43 feet; and in depth from the front to rear on the south side one, 117 feet, 6 inches and, on the north side, 146 feet, 6 inches, and are bounded on the south by the late Owen McDonald's holding, and on the north by the late Misses Farrells' holding, on the east by the Street of Blackpitts, and on the west by the Old Malt House, all which said demised premises are situate, lying, and being in the parish of St Luke and city of Dublin, and are more particularly delineated and described in the map or terchart thereof drawn on the margin of the lease dated 15 November 1869, and made between Matilda Knox and others to Joseph Corcoran, and on the map endorsed in the fold of these presents held under a lease dated 31 December 1924 between (1) George James Edkins, Thomas Willson Walshe, Jane Fair, Isabella Jane Harriet Osborne, Caroline Seril Osborne, Thomas Walshe Lambert, Maria Willson Jennings, George Murray Knox-Peebles, Richard Bolton and Digby Bolton and (2) Mary Corcoran from 1 January 1925 for the term of 99 years subject to the yearly rent of £12.

Take notice that TSAF 1 Mill St II GP Limited, being the entity now holding the said property, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold simple estate or any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of the title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant 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 city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the aforesaid property are unknown or unascertained.

*Date: 8 June 2018*

*Signed: McCann FitzGerald (solicitors for the applicant), Riverside One, Sir John Rogerson's Quay, Dublin 2*

**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 30 Haddon Road, Clontarf, city of Dublin, and in the matter of an application by MV Nursing Limited**

Take notice that any person having any interest in the freehold estate of or any intermediate interest in the following property: all that and those the premises known as 30 Haddon Road, Clontarf, in the city of Dublin, known as La Verna Nursing Home, held by the applicant MV Nursing Limited and previously held by Vincent McDonald and Jill McDonald as lessee under a lease dated 17 September 1959 between Margaret Meagher, John Meagher, and Philip Meagher of the one part and Jean Callagy and Mary Robinson of the other part, for the term of 185 years from 1 July 1959, subject to the yearly rent of IR£15 and to the covenants and conditions therein contained and on the lessee's part to be performed and observed.

Take notice that MV Nursing Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of



the 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, MV Nursing Limited intends to proceed with the application before the county registrar for the city of Dublin at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid premises are unknown or unascertained.

*Date: 8 June 2018*

*Signed: McKeever Taylor (solicitors for the applicant), 31 Laurence Street, Drogheda, Co Louth*

**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 Calistan Unlimited Company of Seamount House, Malahide, Co Dublin**

Premises held under indenture of lease dated 17 January 1927 between Stella Power Lalor of the one part and Edward Burnett Keegan of the other part, therein described as "all that and those the coach house, stable and yard (now in ruins) at rear of 38 Mountjoy Square in the city of Dublin", held for 99 years from 1 January 1927 at a yearly rent of IR£5 (now €6.35).

Take notice that Calistan Unlimited Company intends to submit an application to the county registrar for the county/city of Dublin for acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the 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, Calistan Unlimited Company 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/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

*Date: 8 June 2018*

*Signed: ByrneWallace (solicitors for the applicant), 88 Harcourt Street, Dublin 2*

**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: an application by JM Photo Limited (in liquidation) and Owen Fitzgerald (as liquidator)**

Take notice that any person having an interest in the freehold estate of the following property: 128 Inchicore Road, Inchicore, Dublin 8, held under an indenture of lease made on 28 May 1862 between David McBirnie of the one part and John Harrison, Michael Duffy and John Owens of the other part for a term of 200 years from 2 May 1862, subject to the yearly rent as therein.

Take notice that JM Photo Limited (in liquidation) and Owen Fitzgerald as liquidator (the applicant) intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant

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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 persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

*Date: 8 June 2018.*

*Signed: Mf O'Callaghan & O'Keefe (solicitors for the applicant), New Market Square, Mitchelstown, Co Cork*

**In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Credit Union Plus Limited**

Take notice that Vanessa Kim Fraser Smith and/or any person having any interest in the fee simple estate or any intermediate interest in all that and those lands more particularly described in and demised by lease dated 26 May 1945, and made between Elizabeth Nixon of the one part and Hugh Gunn of the other part, and being in the townland of Kilballivor, barony of Killaconnigan and county of Meath, containing 38½ perches statute measure or thereabouts, and which is now known as Credit Union Plus, Main Street, Ballivor, Co Meath, for a term of 99 years from 1 January 1945 at a rent of £5 per annum.

Take notice that Credit Union Plus Limited, being the person entitled to the lessee's interest under the said lease, intends to apply to the Meath county registrar at the Courthouse, Trim, Co Meath, for the acquisition of the fee simple and/or any intermediate interest in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the said property is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

In default of such notice being received, Credit Union Plus Limited intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and cannot be ascertained and/or cannot be found.

*Date: 8 June 2018*

*Signed: Malone and Martin (solicitors for the applicant), Market Street, Trim, Co Meath*

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NE ULTRA CREPIDAM JUDICARET

## ZOMBIE SHOCK DURING POWER OUTAGE

A Florida city sent out a 'zombie alert' during a recent power cut.

The *Palm Beach Post* reported that city administrators appeared to send a text alert to all residents around 1.45am on 20 May that read "power outage and zombie alert for residents of Lake Worth and Terminus".

It continued: "There are now far less than 7,380 customers involved due to extreme zombie activity. Restoration time uncertain," the alert read.

Terminus is the name of a settlement in the popular television show *The Walking Dead*.

The city's public information officer assured residents: "I want to reiterate that Lake Worth does not have any zombie activity currently [note: 'currently'] and apologise for the system message."



## BIRD-BRAINED BARNEY BUSTED

Police called to investigate a domestic disturbance in a southern German town found a man arguing with a parrot, *RTÉ* reports.

Concerned about shouting from the next apartment, which had been going on for some time, a resident in Loer-



rach called the emergency number on 14 May. Police discovered that the 'argument' was between a 22-year-old man and a parrot. The man said he had been annoyed with the bird and had been shouting at it. The parrot responded in kind with loud noises of its own.

## IF YOU GO DOWN TO THE WOODS TODAY

Michael Cicconeti, a Municipal Court judge in Painesville, Ohio, is handing down unusual sentences to teach animal abusers lessons they are unlikely to forget, *Liftmeupmag.com* reports.

In one case, a woman who abandoned 35 kittens in the woods was sentenced to spend

a night in the woods by herself. During the hearing, the judge told her: "How would you like to be dumped off at a metro park late at night, spend the night listening to the coyotes ... listening to the raccoons around you in the dark night, and sit out there in the cold not

knowing where you're going to get your next meal, not knowing when you are going to be rescued?"

In another case, a woman convicted after her dog was found living in total filth was sentenced to spend a day at a local dump. The judge said: "I want you to

## FIREBRAND GETS BURNED FOR \$37M

A teenager who started a massive wildfire has been ordered to pay \$37 million (€31.6 million) in damages, *The Independent* reports.

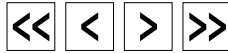
The 15-year-old launched fireworks into a parched canyon in Oregon last year, igniting dry bush and triggering a blaze that lasted two months and spread over more than 48,000 acres.

The fire caused evacuations, an extended shutdown of an interstate highway, and devastation to the Columbia River Gorge, a major tourist attraction.

Judge John A Olson issued the fine – which covers the cost of firefighting, repair and restoration to the gorge, and damage to homes – and ordered the boy to serve 1,920 hours of community service.

The judge ruled that the teenager could set up a payment plan, which could be halted without paying the fine in full after ten years, as long as he completed his five years of probation and did not commit any other crimes.

go down to the county dump, to the landfill, and I want them to find the stinkiest, smelliest, God-awful odour place they can find in that dump, and I want you to sit there for eight hours tomorrow, to think about what you did to that dog ... If you puke, you puke."



# Brightwater Recruitment

# LEGAL ROLES

### Insolvency Solicitor

Top 20 Firm  
Dublin  
€65,000 - €90,000  
Ref: 917918

### Defence Personal Injuries Solicitor

Mid-Tier Firm  
Dublin  
€60,000 - €90,000  
Ref: 918012

### Plaintiff Medical Negligence Solicitor

Specialist Litigation Firm  
Munster  
€50,000 - €80,000  
Ref: 918054

### NQ Commercial Property Solicitor

Top 10 Firm  
Dublin  
€60,000 - €70,000  
Ref: 917973

### Litigation Solicitor

Mid-Tier Firm  
Limerick  
€50,000 - €65,000  
Ref: 918087

### In-house Solicitor / Multinational Dublin / €80,000 - €85,000

As this is a new treasury centre build-out in Dublin, this role would suit somebody that is comfortable working both autonomously and within a small team. The role will involve advising on all matters relating to financing activities including drafting intra group loan agreements, acting as company secretary and responsibility for all corporate governance matters across the company and providing strategic legal solutions to the business. The ideal candidate will have a minimum 2 years' experience specialising in corporate and commercial or banking and finance.

Ref: 917466

### Media & Entertainment Solicitor / Top 20 Firm Dublin / €60,000 - €70,000

The role sits within the firm's corporate department, and it is essential that candidates have demonstrable transactional experience gained from rotations in corporate / commercial or finance departments. The role will involve drafting / negotiating documents relating to various film and tv projects, working on a broad range of transactions including joint ventures, acquisitions, restructurings, project finance, advising and negotiating talent agreements, production clearances, releases, advising on various topics including IP law, technology law, promotions amongst others.

Ref: 918031

Should you require further information about any of these roles or have any other legal recruitment requirements, please contact Michael Minogue on [m.minogue@brightwater.ie](mailto:m.minogue@brightwater.ie) or Sorcha Corcoran on [s.corcoran@brightwater.ie](mailto:s.corcoran@brightwater.ie) in the strictest confidence.

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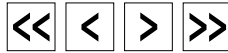
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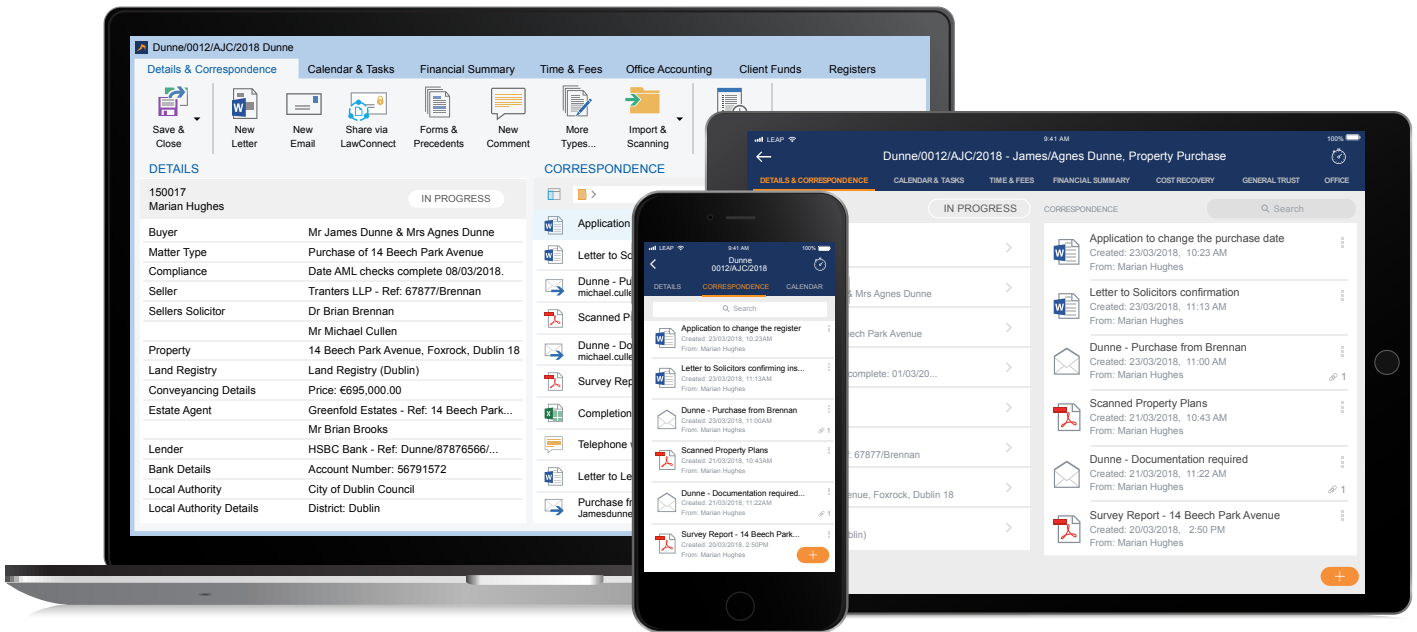
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Contact Seán Ó hÓisín  
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