



**No frontiers**

The possible impact of Brexit on human rights and equality provisions



**Dark knights**

It is difficult to reconcile vigilante activity with the traditional justice system



**To boldly go**

Correctly scoping a discovery exercise is critically important to its outcome and efficiency

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**LAW**

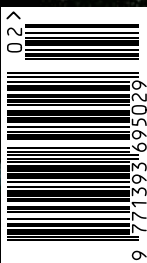
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# SIGN ON THE DOTTED LINE

Are 'comic book contracts' the user-friendly future?

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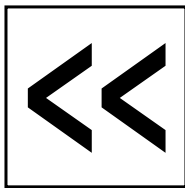




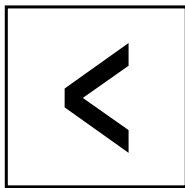
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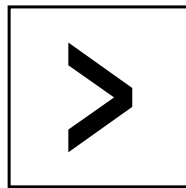
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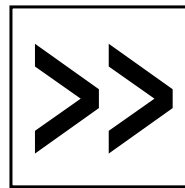
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### Our executive team co-ordinates a seamless delivery of our multi-disciplinary services.



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# MUCH MORE THAN THE SUM OF ITS PARTS

**T**he Law Society is perceived by some as regulatory – but I can assure you that it is much more than that. As I write, the Society is about to receive an independent and expert review of its education function.

This review is in anticipation of the requirement of the Legal Services Regulatory Authority to furnish a report to the Minister for Justice on the education and training of legal practitioners within two years of its establishment, which will be October 2018.

In readying itself for this requirement, the Society's Education Committee invited Professors **Paul Mahrag** and **Jane Ching** – two of the world's leading authorities in legal education – to complete a review of Irish solicitor training. Their report will feature detailed recommendations on our educational services.

It is intended that a high-level review group, chaired by Mr Justice Michael Peart, will carry out a detailed review of that report. Within a very short time frame, the review group will make recommendations to the Law Society Council that, we expect, will lead to enhancements in the education and training of solicitors. This will keep us at least on a par with the highest international standards.

## Major challenge

Some 17 years ago, I took my seat in the Council Chamber in Blackhall Place. At that stage, I was 19 years qualified. My goal was to stay a year as a nominee, and take it from there. I finally managed, thanks to all the colleagues who voted for me, to become your president last November. We have come through the worst recession that I can remember – but, while the tide is rising, many colleagues and practices are not benefitting from the current economic growth. This is a major challenge.

Medium and small practices are facing ever greater demands. Fees are highly competitive, in particular for conveyancing. The profession is one of very few that frequently quotes uneconomic fees for the work it does, in the hope of retaining

work. I would point out that people do not negotiate their medical fees with their doctors or specialists, and yet they feel quite happy to ask lawyers to reduce their legal fees. Uneconomic fees are unsustainable in the long run.

In November, I announced my intention to commission an independent report on the challenges and opportunities facing sole practitioners and small firms in Ireland. Succession for solicitors in such practices is critical, and planning for retirement is difficult. A request for proposals will issue shortly, and I hope to receive the report as soon as possible.


## Stressed out

These matters are a cause of major stress for our members. While stress is an inherent factor of life that knows no boundaries and applies equally to all genders, I am personally concerned for all of us that we take care of ourselves. We need to take time out for holidays, family and exercise.



## AS EMPLOYERS, WE OWE A DUTY OF CARE TO OUR EMPLOYEES

As employers, we also owe a duty of care to our employees. Is the long-hours culture really necessary? Are we giving the best advice to clients when we are stressed? Do solicitors have a duty to tell their employers that they're stressed? This topic is apt, as the *Gazette* begins a new regular column on the subject of well-being, starting with this issue (see page 19).

Finally, please don't forget that the Law Society is here to represent you. The Society's committees, its management and staff are only too happy to assist you in whatever way they can. I am contactable by email at [president@lawsociety.ie](mailto:president@lawsociety.ie), and I look forward to hearing from you. 

MICHAEL QUINLAN,  
PRESIDENT



# gazette

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COVER: SHUTTERSTOCK



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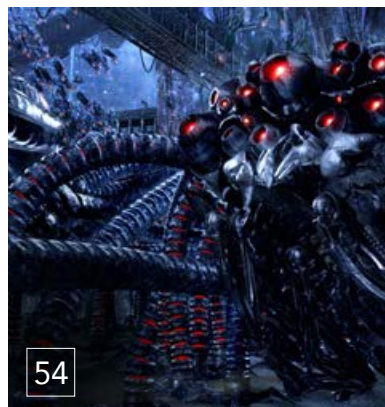
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Lawyers need to re-think legal risk and compliance. Bob Semple, who spoke at the 2017 In-house and Public Sector Conference, warns of the impact of four transformational, disruptive technologies

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The integration of people from different firms and corporate cultures is often the determining factor in the success or failure of a merger/acquisition. John Rankin asks: what's your relationship deal-breaker?

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# THE BIG PICTURE





## TIMEO DANAOS ET DONA FERENTES

A protester throws a flare against riot policemen in Athens on 15 January 2018, during a protest against planned new austerity measures by the Greek government relating to property auctions and changes to a 36-year-old industrial action law demanded by the country's creditors





# MAYO MEETS AT THE LODGE



ALL PICS: JOHN O'GRADY

The Mayo Solicitors' Bar Association Annual Dinner Dance was held at The Lodge at Ashford Castle, Cong, Co Mayo in December. Mr Justice Peter Kelly was guest of honour; (front, l to r): James Ward (president, Mayo Solicitors' Bar Association) and Michael Quinlan (president, Law Society of Ireland); (back, l to r): Judge Eoin Garavan, Mr Justice Raymond Groarke, Judge Martina Baxter, Judge Mary Devins, Mr Justice Peter Kelly and Judge Patrick Durcan



Mr Justice Peter Kelly and James Ward



Ken Murphy and Yvonne Chapman



Patricia Smyth, Rosemarie Loftus, Lynda Lenehan, Aileen Feely, Augusta Tuohy, Ita Feeney and Sinead Manning



Neil Reilly and Samantha Geraghty



Mary Ward and James Ward



Marc Loftus, Deirdre Loftus, Brian O'Keeffe, Rosemarie Loftus, Peter Loftus and Joan Loftus



Pat O'Connor and Brendan Donnelly



Claire Walsh, Dermot Morahan (vice-president, MSBA) and Stacey Morahan



Sandra Murphy, Alison Keane and Judge Martina Baxter



# WATERFORD WHISPERS



ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY

At the Waterford Law Society Annual Dinner in Waterford Castle on 1 December 2017 were (front, l to r): Judge Alice Doyle, Patrick Dorgan (senior vice-president, Law Society), Edel Morrissey (president, Waterford Law Society), Ken Murphy (director general) and Liz Pope (Property Registration Authority); (back, l to r): Richard Hammond (vice-president, Southern Law Association), Judge Tom Teehan, Supt Chris Delaney, Judge Kevin Staunton and Jack Purcell (manager, Court Office, Waterford)



Martin Lavan, Mairead Lavan, Emma Lavan, Ann O'Loughlin and Michael McLoughlin



Eoin O'Herlihy, Anna Purcell, Sonya Fox, Orna Middleton and Paul Murrain



Ian O'Hara, Leona McDonald, Ellen Hegarty, Rosa Eivers and Colin Byrne



Judge Tom Teehan and Rosie O'Flynn



Derry O'Carroll, Finola Cronin, Margaret Fortune, Fiona Gillen and Bryan Douglas



Rosín Hickey, Maeve Brady and Fiona Ormonde



Ken Murphy (director general), Jody Gilhooly, Judge Alice Doyle and Niall King



Danny Morrissey, Edel Morrissey (president, Waterford Law Society), Maura Purcell and Jack Purcell



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

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

---

## 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

---

## 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)**



# IRISH WOMEN LAWYERS CELEBRATE THE FRENCH CONNECTION



ALL PICS: LENSVMEN

The IWLA 'Woman Lawyer of the Year 2017' award was presented to the Ambassador of Ireland to France, Patricia O'Brien, at the association's annual gala dinner on 14 October 2017; (front, l to r): Judge Elizabeth Dunne, Judge Maureen Harding Clark, Ambassador Patricia O'Brien, Ellen O'Malley-Dunlop, Judge Iseult O'Malley and Aoife McNickle BL; (back, l to r): Fiona McNulty, Aisling Gannon, Cathy Smith BL, Pamela O'Neill, Maeve Delargy, Michelle Nolan, Eva Massa, Jane McGowan BL and Kim McDonald BL



Eva Massa and Michelle Nolan (both Law Society)



Award recipient – Ireland's Ambassador to France, Patricia O'Brien



Aoife McNickle BL, Judge Maureen Harding Clark and Gráinne McMorrow



Alex Lebedeva, Deirdre Hosford and Aisling Fitzgerald

BOOK NOW!



# SPRING GALA 2018

SUPPORTING THE SOLICITORS' BENEVOLENT ASSOCIATION

Friday 27 April 2018

SHELBOURNE HOTEL, DUBLIN.



MC:  
**Miriam O'Callaghan**  
Journalist, broadcaster  
and former solicitor



SPECIAL GUEST:  
**Oliver Callan**  
Star of 'Callan's Kicks', Ireland's  
top impressionist and satirist



The Law Society Spring Gala returns in 2018 with a new venue – the historic Shelbourne Hotel in the heart of Dublin. This black-tie dinner is the peak event for members of the profession that raises funds for the Solicitors' Benevolent Association.

**Table dinner package for 12 guests: €2,400. Individual dinner seats: €200 per person.**

To book your place, visit [www.springgala.ie](http://www.springgala.ie)

Gala profits will be donated to the Solicitors' Benevolent Association – a voluntary charitable organisation assisting members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, families and immediate dependants who are in need.



## COUNCIL LEVY ON BENBURB SITE

An Bord Pleanála has ruled that a vacant site owned by the Law Society is subject to a levy because it is suitable for housing but has not been developed.

The annual levy of €162,000 will be imposed from January 2019 following the planning authority's decision. The site at 32-40 Benburb Street was put on the register of vacant sites on July 28 last by Dublin City Council. The levy is applied at a rate of 3% of the site value.



## NO LEGAL AID FOR COMPANIES

**Justice Minister Charlie Flanagan told the Dáil on 13 December 2017 that, while his department had no plans to introduce legal aid for commercial enterprises, the matter would be kept under review.**

**The function of the Civil Legal Aid Act 1995 was to provide legal aid to persons, he said, but not to 'legal persons' – that is, companies.**

**Key structural reforms under the Legal Services Regulation Act will benefit enterprise by obliging legal practitioners to provide better costs information, he said. On the effect of legal costs on small and medium enterprises in terms of their access to the courts, the**



Charlie Flanagan

**minister said that the act allowed employed or in-house lawyers to act in proceedings on behalf of their employers, and for direct access to barristers on non-contentious business.**

## ONUS TO REGISTER LEASE AGREEMENTS

Lease agreements must be registered online within 30 days of stamp certificate receipt from the Revenue Commissioners.

The move is part of a push for greater transparency on the price of leases. The Property Services Regulatory Authority believes

that accurate online information will ensure a level playing field for prospective tenants. The PSRA website holds full details on all farming, commercial and retail leases. A total of 8,300 of leases have been registered since 2012.

## VIEW FROM THE TOP

Julian Yarr has been elected by the partners of A&L Goodbody to serve a third term as managing partner. The term begins on 1 May 2018 and will run for four years.

Meanwhile, Eugene F Collins has appointed Mark Walsh as managing partner for an initial three-year period, during which he will take charge of the firm's strategic approach.

At Arthur Cox, three new senior partners have joined its asset management and investment funds group. The expanded team of Tara O'Reilly, Cormac Commins and Ian Dillon will be jointly led by current head Kevin Murphy and Tara O'Reilly.

## JUDICIAL STUDIES UPDATE

**The Committee for Judicial Studies has issued an update for the national conference 2021. The following date has been booked provisionally: Friday 19 November 2021. (This date was originally given as 21 November 2021.)**

## TRIBUTES TO SLIGO STATE SOLICITOR



Sligo State Solicitor Hugh Sheridan has announced his retirement from the position. Solicitor Gerard McGovern paid tribute to him at a gathering on 25 January on behalf of his colleagues from the Sligo Bar Association. Members of the Courts Service team and An Garda Síochána also attended.

## JUDGES APPOINTED



Paul Gilligan

On 5 December, the Government appointed Mr Justice Paul Gilligan as a judge of the Court of Appeal. District Judge Kathryn Hutton will become a judge of the Circuit Court.





## 'TEAR IT UP AND START AGAIN', SAYS DG ON NEEDLESSLY COMPLEX DRUNK-DRIVING LAW

"The law on drunk driving is needlessly complex and confusing and the Government needs to tear it up and start again."

So said the Law Society's director general Ken Murphy when speaking on the topic of drunk-driving law on *Claire Byrne Live* on RTÉ on 11 December 2017.

"It doesn't do credit to the law or to justice to have meritless technicalities being the basis for dismissals of very serious cases," he said.

He pointed out that Taoiseach Leo Varadkar had promised to prioritise a new *Road Transport Act* that would allow drunk-driving cases to be prosecuted far more simply and effectively.

The director general continued: "The 1961 *Road Traffic Act*, and all these others layered on top, creates a degree of complexity that makes it ... quite easy to find loopholes. And some of these loopholes, as emerged in the programme tonight, are really ridiculous."

Those loopholes needed to be closed off in the public interest, he said.

### Biggest flaw

One of the biggest flaws in the system was the perception that people can buy their way out of justice through the use of the court poor box, because judges were inappropriately applying it in drunk-driving cases.

Murphy pointed out also that the incoming *Judicial Council Bill* created the possibility for sentencing guidelines that might address some of the other issues, highlighted by RTÉ, relating to inconsistency in sentencing.

The public was not being given a clear explanation of why



summonses were not being served by the gardaí, he added.

"There is consensus within the legal profession that drunk-driving legislation is 'needlessly complex and confusing', as it was described by the late Supreme Court judge, Justice Adrian Hardiman. There are 22 different acts on the books that deal with road-traffic laws, with hundreds of other tangentially related pieces of legislation that require consideration when judges are adjudicating on road traffic law violations," he said.

"David Staunton, the barrister and author of the book *Drunken Driving*, has argued that we need to tear up the current system and start again. This

is a conclusion that I believe our profession would support," Murphy said.

### Law Society appeal

The Society has called for a new consolidated and simplified *Road Traffic Act* that brings together the many existing acts and creates a more streamlined and fit-for-purpose system reflective of Ireland in the 21<sup>st</sup> century.

In a [statement](#) issued on 15 December, the Society called on the Government to prioritise a new act that "would allow for the prosecution of road traffic crimes, such as drunken driving, far more effectively, and with an aim of creating a more efficient and timely system".

"The Law Society stands ready to support the Government in a fundamental redesign of road traffic legislation. Many of our 10,000 members have regular, first-hand experience of using the District Court system, so can offer expertise and support for improvements."

The director general added that the current situation highlighted the fact that the District Courts were in urgent need of investment. "The system is not coping with current levels of demand, and this fact is eroding public confidence in the justice system," he said.

The District Courts in Ireland deal with around 285,000 criminal cases annually – already a heavy workload across the 23 defined districts, and with the number of District Court judges unchanged for a decade.

"District Courts may deal with many thousands of criminal cases, but they are additionally responsible for family law, child protection, civil law and licensing cases too. This is an extraordinary level of expectation on one tier of our justice system, and is leading to enormous inefficiencies in the system," the director general concluded.



## SOCIETY SECURES ORDERS TO CLOSE CLAIMS-HARVESTING SITE

The Law Society has welcomed the ruling of the President of the High Court in *Law Society v David Smyth and Agenda Computers* in November 2017.

The Society was granted orders against businessman David Smyth and a company he is director of, Agenda Computers, under section 18 of the *Solicitors (Amendment) Act 2002*, to cease operating the claims-harvesting website [www.personalinjurysolicitorsdublin.info](http://www.personalinjurysolicitorsdublin.info) in contravention of the *Solicitors Acts* and to compel the respondents to provide the Society with the names of all solicitors that have received referrals for personal injury claims via the website. This is the second time that section 18 proceedings have been successfully taken by the Society against a non-solicitor owner of a claims-harvesting website.

Claims-harvesting websites often hold themselves out as solicitor firms and purport to provide legal services. The websites frequently refer to claims for damages for personal injury and, in doing so, attempt to solicit and encourage site visitors into making claims for compensation. Information received from site visitors with an interest in making such claims is then sold to solicitors on an anonymous panel who contact the claimants directly.

Such activity is in direct contravention of the *Solicitors (Advertising) Regulations 2002* and the *Solicitors Acts 1954-2015*. The Society has been swift in cracking down on such activities, with 17 websites permanently closed since 2014.

Over the course of the two-day hearing, Mr Smyth indicated that the website had been sold



PICTURE: SHUTTERSTOCK

to an unconnected person in an 'arm's length' transaction. On the application of the Society, the president permitted cross-examination of Mr Smyth, and the new owner of the website was confirmed. The website, now under the domain of a new solicitor owner, is being reviewed by the Society in the normal way.

The hearing continued into the second day, when the respondents accepted that the website was operating in breach of the *Solicitors Acts* and that the website would mislead the public into believing that they were dealing with a firm of solicitors. Further, the respondents accepted the breach of section 56 of the *Solicitors Act 1954* (pretending to be a solicitor) and agreed to disclose the names of the solicitors who received referrals from the website. The respondents also confirmed that they were willing to offer an undertaking to have no involvement with any website operating in breach of the *Solicitors Acts* in future.

Mr Justice Peter Kelly was satisfied that the website breached the provisions of the *Solicitors Acts*, with statements including "you should choose well-trained

and fully experienced associate solicitors of Personal Injury Solicitors Dublin because we get you what you deserve" and "let our associate personal injuries solicitors help you keep 100% of your compensation".

In giving his *ex tempore* judgment, the president granted the orders sought by the Society, namely:

- An order prohibiting the respondents from acting in breach of sections 55, 56 and 71 of the *Solicitors Act 1954* and section 5 of the *Solicitors (Amendment) Act 2002*,

- An order directing the respondents to take down their website or cease operation of the website in breach of the *Solicitors Acts*,
- An undertaking of the respondents was accepted *in lieu* of an order to cease connection with any website operating in breach of the *Solicitors Acts*,
- An order requiring the respondents to provide a list of the solicitors obtaining referrals from the website for the duration of its existence, and
- An order for costs in favour of the Society.

The Society enforces the *Solicitors (Advertising) Regulations 2002* through the Advertising Regulations Division of the Regulation of Practice Committee. The regulations govern the manner in which solicitors advertise their professional services. They are interpreted and applied by the Society in such a way that, while not imposing a ban on advertising, are robust and clearly delineated, thereby ensuring that a 'level playing field' is maintained across the profession.

## TURNOVER DIP AT MHC

Turnover at Mason Hayes & Curran dipped for the first time in two decades, with a 1.2% drop to €76 million last year, compared with €77 million in 2016.

Negative sentiment among clients around Brexit accounted for the drop, according to managing partner Declan Black. Incoming work in advisory and contentious practice areas grew, but the transactional services area showed a different picture in the first six months

of last year. "The firm has experienced year-on-year growth for up-wards of two decades, so it is, of course, disappointing to see the end of that run," said Black. "But the outturn is still satisfying given the choppy nature of workflows during the year."

Matters picked up somewhat after the summer, and Black said that he expects the firm, with its headcount of 446, to return to single-digit growth this year.



## BREXIT 'IN NAME ONLY' SAYS SCOTTISH PROF

Former senior civil servant and Law Society of Scotland council member Jim Gallagher believes that Brexit will eventually be couched in terms of a “co-prosperity sphere”.

Speaking at the Killarney Economic Conference on 13 January, the visiting professor of government at the University of Glasgow believes that the eventual outcome “will look awfully like contingent membership and will substantially involve membership of the customs union and the regulatory framework”.

Gallagher told the *Gazette* that progress would depend on the EU avoiding rigidity and granting ‘presentational concessions’ that would allow prime minister May to maintain ambiguity and keep her Eurosceptic wing onside.

The ‘nationalist spasm’ of the Brexit vote has economic roots, but must be dealt with as a political problem, Gallagher told the Killarney Economic Conference.

The EU will determine matters in the transition period, he believes, because the British will accept any terms offered so long as trade is not disrupted, since it is in no practical position as yet



Jim Gallagher (visiting professor of government at the University of Glasgow): ‘Brexit will eventually be couched in terms of a co-prosperity sphere’

to leave the customs union.

Much depends on how domestic British politics plays out, but Brexit will ultimately resemble the current arrangements in terms of customs and regulation because that is what the voters want, he said. “What flipped the Brexit vote to a marginal majority was people feeling left behind and the frozen living standards of the squeezed middle, but it is political factors that will determine what happens next.

“I’m pretty sure Brexit will happen by 2019, but its effects will be diluted,” he says.

John Cronin of McCann FitzGerald, also a conference speaker, believes that there is a significant build-up in work for practising lawyers in Dublin, directly as a result of Brexit. This is sometimes co-mingled with MIFID (*Markets in Financial Instruments Directive*) work, since that regulation came into effect at the beginning of January.

“There is a step-up in work that is directly related to Brexit. Whereas the overall perspective is that Brexit is not good for Ireland, there are some opportunities in some areas. It’s important that Ireland identifies what work might be attracted to, or might be appropriate for, Dublin. Then, of course, we have to ensure that we attract a good amount of that work to Dublin.”

Asked about the possibility of the British economy going into recession, Cronin responded: “If you speak to lawyers in the bigger and more significant firms in the City, there is a clear sense that London, as a financial centre, will be somewhat diminished.”

“The legal edifice, into which any withdrawal agreement and new free-trade agreement will have to fit, will be quite confined.

“The rules and principles of the WTO could be significant in the event of a ‘hard-ish’ Brexit. But these are subject to some complexity, and that’s an issue that has been overlooked to date.

“Many non-lawyers had not appreciated the confines of such laws and infrastructure. There is hard work to be done.”

## POLICING EXPERIENCE NOT A PREREQUISITE FOR NEW GARDA COMMISSIONER ROLE

**Justice Minister Charlie Flanagan has asked the Policing Authority to cast the net wide in the search for a new Garda Commissioner.**

**The job is now open to international candidates – and policing experience, while desirable, will not be an essential requirement.**

**Minister Flanagan said that the overriding concern was that the best candidate would be selected. This required that the**



**process should attract the widest possible field from a broad range of backgrounds.**

The minister described the new appointment process as marking “a very significant change in the manner in which this important office will be filled”. He said that the move demonstrated the Government’s continuing commitment to deep reform across the justice sector.

**The new commissioner will be implementing a major strategic reform agenda to include improving governance and performance management, building managerial capacity and enhancing service delivery, the minister said.**

**The remuneration package for the new commissioner will be €250,000 – a jump of 38% from the current €180,613.**



## SPRING GALA PACKS A KICK

This year's Spring Gala at Dublin's Shelbourne Hotel is set to become a 'festival of fun' with the announcement of special guest Oliver Callan.

Callan, famous for his *Callan's Kicks* prime-time radio show, appears regularly on TV as a performer and panellist. A former journalist, he is a columnist and commentator on many issues in *The Irish Sun* and *The Irish Times*.

The impressionist will be joined on Friday 27 April 2018 by journalist and broadcaster Miriam, who will be MC on the night. O'Callaghan qualified as a solicitor in 1983 before beginning her broadcasting career.



Oliver Callan: not just one special guest – but several!

Law Society President Michael Quinlan says: "This black-tie gala dinner will bring together members of the profession from across

Ireland, providing an opportunity to enjoy the company of colleagues, while supporting a worthy cause.

"All profits from the event will be donated to the Solicitors' Benevolent Association, which assists members and former members of the solicitors' profession in Ireland and their families who are in need.

"Spring Gala 2018 promises to be one of the most entertaining evenings of the legal year. I look forward to seeing you at what is sure to be a sell-out event."

Pre-dinner drinks will take place at 6.30pm, followed by dinner at 7.30pm in the Great Room of the Shelbourne Hotel, with a late bar until 1.30am. To find out more, and to book tables or seats, visit [www.springgala.ie](http://www.springgala.ie).

## BUOYANT MARKET FOR LEGAL TALENT AS SALARIES SWING UPWARDS

In-house counsel and top and mid-tier lawyers in private practice saw a significant upturn in pay and conditions in 2017. Almost half of the top 20 private practice firms reported salary increases of 5%.

That's according to legal recruitment firm Assign, which surveyed changes in the jobs and salary market over the past year.

The survey found that upskilling is now a key factor and differentiator for lawyers at all stages of their careers. And an increasing number of women are progressing to senior ranks, including partnership and the in-house head of legal function.

Meanwhile, employers are responding to requests for more flexible working hours, as they start to see the value in providing greater working autonomy to employees. The 'long-hours culture' for many lawyers is now being offset against lifestyle

choices in order to achieve a better work/life balance.

In both in-house and private practice, remuneration packages may include features such as a bonus, pension, car allowance, medical insurance and mobile phone, among others.

The in-house sector remains buoyant, and newly qualified in-house counsel in the capital can earn between €45-€80k.

Those with three-to-six years' experience can command €80-€110k.

A senior in-house counsel earns between €110-€150k, while the head of legal role can command €120-€300k.

Outside of Dublin, the equivalent scales in Cork lag only slightly behind. There, a newly qualified in-house counsel starts at around €42-60k, rising to €60-€90k after three to six years.

A senior in-house counsel with seven years or more PQE can command €90-€120k, while

a head of legal can reach €120-€275k.

In Limerick, Galway and Waterford, newly qualified in-house counsel earn €35-€50k, while those with three-to-six years' experience can earn €50-€80k. A senior in-house lawyer commands €80-€110k, while a head of legal function can reach €110-€250k.

The demand for well-qualified specialist candidates for corporate in-house roles is increasing year-on-year. The most sought-after practice areas include regulation and compliance, contracts, data protection, intellectual property and IT, employment, litigation, and competition.

Pharma, tech, aviation, banking and finance, funds and insurance are the big corporate employers. There is growing demand, too, in the energy and employment sectors.

In the public sector, the leading employers are Revenue,

the Central Bank, the DPP, the Office of the Attorney General, local authorities, CIÉ, RTÉ and ESB. The *Gazette* will take an in-depth look at this sector in a forthcoming issue.

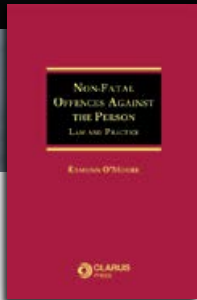
Top and mid-tier private practice firms are moving into expansion mode and leave the years of retrenchment behind. In private practice, newly qualified solicitors in Dublin can earn between €40-€70k. An employee with three-to-six years' experience can earn €70-€95k, while a senior solicitor will command from €95-€130k.

In Cork, the same career levels command €36-€55k, €55-€70k and €70-€120k.

In Limerick, Galway and Waterford, newly qualified solicitors are earning from €35-€45k. Those with three-to-six years' experience pull down €45-€65k, while a senior solicitor can bring home €65-€100k after seven years on the job.



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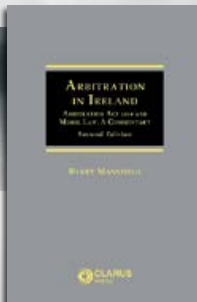
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## PATRICIA O'BRIEN IS 'WOMAN LAWYER OF THE YEAR'



The IWLA 'Woman Lawyer of the Year 2017' award was presented to the Irish Ambassador to France, Patricia O'Brien, at the association's annual gala dinner on 14 October 2017.

Ms O'Brien was nominated ambassador earlier in 2017, having previously served as the UN's legal counsel, appointed by UN Secretary-General Ban Ki-moon.

The IWLA gala dinner at Blackhall Place was held in collaboration with Law Society

Skillnet and the Bar of Ireland. The pre-dinner reception was sponsored by Eversheds Sutherland.

Women lawyers from the judiciary, academia, solicitor and barrister practitioners, trainees and pupils enjoyed a keynote speech from Ellen O'Malley-Dunlop, chairperson of the National Women's Council of Ireland.

Further information on IWLA is available at [www.iwla.ie](http://www.iwla.ie). (See this *Gazette*, p11.)

## INNOVATIVE APPROACH TO DATA PROTECTION

Conor Leavy (23), a final year law student in DCU, has won the 2017 A&L Goodbody Bold Ideas Student Innovation Award, following his proposal to establish an Irish Data Protection Ratings Agency.

With data protection and privacy looming large for Irish businesses ahead of the introduction of the *General Data Protection Regulation* next May, the winning submission puts forward the idea of establishing an independent rating agency for the data sector, which would showcase Ireland as a destination with the highest data protection ethics and practices.

This is the sixth year that A&L Goodbody has held the Bold Ideas competition, which saw over 1,200 members of the public cast their vote on Facebook for their favourite submission. The winner and runners-up were selected by a panel of three expert judges.

Conor received €4,000 in cash and an



Conor Leavy

internship in A&L Goodbody's Dublin office. The firm is also making a donation to a charity of his choice.

Runners up Dylan Markey (Maynooth University) and Áine McCarthy (Trinity College Dublin) both received iPad minis.

Judges for the 2017 competition were Sarah Lennon (legal counsel at Google), Jonathan Newman SC, and John Whelan (partner and head of A&L Goodbody's commercial and technology group).



## MEP CALLS FOR CLASS ACTION REFORM

Fine Gael MEP Brian Hayes has said that the Irish legal system is failing consumers, who frequently have to take separate legal actions to obtain their rights.

He has called for legal reform to facilitate class action lawsuits in Ireland, saying it would increase judicial efficiency and make better use of court resources: “The very existence of class action lawsuits could make businesses think twice before engaging in practices that may ultimately come before the courts. It could act as a strong preventative legal remedy.

“The tracker mortgage scandal is a case in point. Large numbers of people effectively defrauded could, together, have a much stronger case as a group, rather than individuals taking separate legal actions alone,” he said.

The MEP urged the Government to accept and pass the private members’ bill on multi-party actions that is currently before the Dáil.



Brian Hayes MEP: ‘Class action lawsuits could act as a strong preventative legal remedy’

“Ireland is an outlier in the EU when it comes to class-action legal provisions. We are firmly in the minority by comparison to others in the EU,” Hayes said. He pointed out that consumers in Italy could bring collective action for claims related to standard contracts, non-contractual torts, unfair competition issues, and unfair commercial practices.

## HOLOHAN LAW WINS MAJOR AWARD

Holohan Law, with offices in Cork and Dublin, has received the award for Alternative Dispute Resolution Law Firm of the Year (Ireland) by Lawyers Worldwide Awards. Founder and senior partner Bill Holohan said that the firm was “delighted at the news”.

Bill is the current chairman of the Chartered Institute of Arbitrators in Ireland, a member of the Law Society’s Alternative Dispute Resolution Committee, and a Council Member of the Mediators Institute.



Bill Holohan

## WORKPLACE WELLBEING EVERY BEGINNING IS A PROMISE

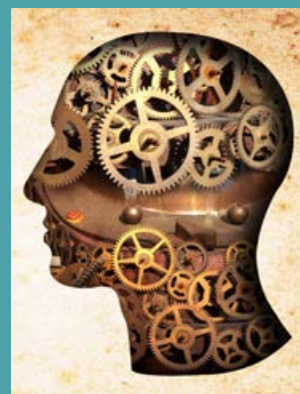
For many of us, returning light, springtime flowering, and birds across the skyline are longed for and hopeful signs. Whether you live in a throbbing urban village or your gaze is wider and opens onto quiet countryside, the pull of the seasons is powerful.

This Gazette issue comes at a pivotal time. The new year is yielding to spring, and January brightens into February. As the days lengthen, our energy for the future begins to gather again. We can imagine what might be meant by the poet Brendan Kennelly when he predicts “every beginning is a promise”.

This column is also beginning. We would like it to be a place for you to stop by; to replenish hopeful energy as you navigate the months on your never-less-than-full calendars.

We have a host of themes planned for you – from mindfully caring for yourself to becoming masters of your time. We will talk mental and emotional health, physical and professional wellness, sources of motivation, and how to navigate challenges and loss. Guest columnists from the worlds of psychology, leadership, coaching and business will pop in from time to time, as will legal practitioners – sharing personal stories and hard-earned wisdom.

So back to now. A season rich with potential. I like to use the leadership metaphor of ‘balcony and dancefloor’ at this point in the year. To lead, we need to be on the balcony – not lost on the dancefloor. And yet, in professional life – and indeed



in our personal lives – we are inevitably pulled onto the dancefloor. Caught up in the action, seeing and hearing only what’s close to us, and missing much of what is unfolding out of reach and out of sight.

By consciously making time to climb onto the ‘balcony’ at the opening of a new year, we lift our gaze and can see the much needed meta-picture. To begin (again!) we must first determine what it is we want. In this, our first issue of 2018, the call to action is simple. Don’t just live your life – lead it. Make time to come off the dancefloor regularly – the view from the balcony will make it worth the climb.

*Though we live in a world that dreams of ending that always seems about to give in something that will not acknowledge conclusion insists that we forever begin.* (‘Begin’ by Brendan Kennelly, from *The Essential Brendan Kennelly*.)

*Antoinette Moriarty is a psychotherapist and heads up the Law School’s counselling service.*



## MEMBER SERVICES

### LAW AND WOMEN MENTORING PROGRAMME

Now in its third year, the Law and Women Mentoring Programme is a joint initiative of the Law Society and the Bar, in collaboration with the Irish Women Lawyers' Association.

Set up to support women in practice, the programme aims to promote equality and improve diversity within the legal profession.

Following a careful selection and training process, solicitors are paired with a more senior colleague. Meetings take place for one hour a month over the course of a year. A mentoring agreement ensures that the relationship is based on a shared set of expectations and is structured and effective for both parties.

The Law Society is now inviting applications from female solicitors who wish to be mentored by a more senior colleague in 2018. Applications are welcome from mentees at varying degrees of seniority, including those at the beginning of their career, those at a point of change in their professional lives, and those applying for promotion or changing jobs.



If you would like to be mentored, please complete the online application form, available at [www.lawsociety.ie/lawandwomen](http://www.lawsociety.ie/lawandwomen). The closing date for receipt of applications is 12 February. If you have any queries about the programme, please direct them to Judith Tedders at [LW@lawsociety.ie](mailto:LW@lawsociety.ie).

The Society also offers a mentoring programme for solicitors setting up in practice. For more information about this and other member services, see the [Member Services Directory](#), which is available at [www.lawsociety.ie](http://www.lawsociety.ie) (in the 'solicitors/representation/member benefits' section).

## 'PRE-TICKED' BOXES TO BE BANNED UNDER GDPR

WP29, the EU's Data Protection Working Party, has issued updated guidelines on consent, which include the banning of 'pre-ticked' boxes, *writes Mary Hallissey*.

Consent is one of the lawful grounds for processing personal data. But the upcoming GDPR could require firms to significantly change the consent wording on their data request forms.

The GDPR defines consent as a "freely given, specific, informed and unambiguous" indication of a person's wishes.

WP29, which gives independent advice to the European Commission, has now defined 'free' as implying actual choice and control for data subjects. Therefore, if consent is bundled up into other non-negotiable contract terms and conditions, it is presumed not to have been freely given. Consent and contract should not be merged into each other.

WP29 also signals the importance of 'granularity' or the level of detail in datasets. Consent is presumed not to be freely given if the process doesn't give data subjects separate assents for separate processing activities.

'Specific consent' can only be given when data subjects are specifically informed about the intended purposes of data use.

WP29 is clear that the data subject must deliberately consent to the particular processing of their data to comply with the requirement for 'unambiguous' consent. A 'blanket' acceptance of terms and conditions is not a clear consent. 'Pre-ticked' boxes that must be unticked to prevent agreement will not be allowed under the GDPR.

WP29 also warns against the dangers of diminishing consent through 'click fatigue'.

Since data controllers now have to obtain 'explicit' consent for the processing of sensitive personal information, this can take the form of a signed digital statement of consent or of two-factor authentication, where assent is followed up with a confirmation email.

The data controller is also obliged to keep a record of consent forms received. Consent data must also be refreshed at regular intervals, and WP29 is adamant that permission given in one area of business cannot be migrated to another area of interaction.



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## PIC'S FIRST REPORT FAILS TO DELIVER



The first report of the Personal Injuries Commission (PIC) says that Ireland has a very high frequency of whiplash claims, with PIAB estimating that 80% of motor personal injury claims are whiplash-related. PIC, however, has produced no independent statistics to verify this claim, *writes Liam Moloney (Moloney & Co Solicitors, Naas)*.

Whiplash injuries refer both to the symptoms that arise following the whiplash mechanism of injury, and the mechanism of the injury itself. A whiplash injury can lead to longer-term problems, and this is supported by retrospective studies.

The commission has recommended that all medical reporting should now follow the Quebec Task Force (QTF) Whiplash Associated Disorder grading for whiplash injuries.

Since its release in 1995, the QTF classification system has been severely criticised on the grounds that the guidelines were adopted and promoted without proper scientific validation.

The system classifies patients with whiplash according to the type and severity of signs and symptoms observed shortly after an injury. It takes no account of the presence of both physical and psychological impairments – and only relates to the cervical spine. Lumbar, thoracic, chest, abdominal and head injuries

are not included in this system.

The USA Abbreviated Injury Scale (AIS) system was first published in 1971 and ranks injuries in various anatomical regions of the body relative to the risk of fatality. The AIS has been updated regularly since 1995 and is used internationally in ranking injury severity. This system is a much more appropriate model for Irish doctors who are preparing medico-legal reports.

The report also failed to address the role that crash-related factors have in the severity of injuries caused. Such factors include collision direction, use and type of head restraints, speed of impact, awareness of collision, positioning in a seat, and whether the person's head was turned at the time of the accident.

While the report highlights the fact that there has been a considerable growth in the increase of direct settlements between claimants and insurance companies, it fails to shine a light on the dangers created by insurance companies' offers of quick cash settlements before injured victims can get medical or legal advice.

The issue of pre-medical offers was recently the subject of an interesting High Court judgment in *Ryan v Leonard* ([2017] IEHC 566), which dealt with a below-value settlement without legal advice.

## MARKETING YOUR FIRM

### HAVE I TOLD YOU LATELY ABOUT YOUR LIST?

So far in this series, we have looked at the importance of your client list, the importance of having this list in a usable format – and so the next important and inevitable step is to tell you to keep in touch with those on your list.

The best, simplest, and most powerful way to do this is through a regular printed newsletter. Yes, print may seem anachronistic in this increasingly digital world, but don't we get enough email already?

Our inboxes are full – nobody wants more email, and they almost certainly don't want a generic emailed newsletter or e-zine. So, while email can seem like the cheapest and easiest way to do a newsletter, resist that temptation and go with what works – a print version. (Done properly, of course, email marketing is powerful – and you can send your newsletter by email too – but don't make it your primary means of marketing.)

While almost everyone gets too much email, very few of us receive anything welcome in the post. As a result, anything personal and interesting in this physical 'inbox' is going to stand out a mile and be welcomed.

Of course, your newsletter must not be perceived as junk mail, marketing, or advertising. Counter-intuitively, your job in your newsletter is not to sell your services, but rather to build and foster relationships and a sense of community with your list of past, present and



prospective clients.

The cardinal rule for a newsletter is that it must be interesting. It should be something that the person receiving it will actually look forward to reading. Think of a features magazine or the glossy lifestyle supplements in weekend newspapers – the publications that people pick up and leaf through first when they want to relax. This is what you should be aiming for: light, entertaining and engaging.

By communicating regularly through print with those on your list, you are creating a platform for building and maintaining your relationship with them. When done properly, this simple tool becomes extraordinarily powerful. So, don't ignore the humble printed newsletter. If it isn't at the centre of your marketing, it should be.

Next, we'll look more specifically at how to do it.

*Flor McCarthy is the author of the Solicitor's Guide to Marketing and Growing a Business.*





## VINCENT SHIELDS 1952 – 2017

**W**ell-known Galway solicitor Vincent

Michael Gordian Shields has died aged 65, sadly passing away suddenly on 16 December 2017 at his home in Athenry, while getting ready to go hunting with the County Galway Blazers on his beloved horse ‘Rayboy’.

Born in Loughrea, Co Galway, Vincent was educated at Clongowes Wood College, Garbally College, and later University College Dublin. From the outset of his life, he showed a keen interest in law, and his career commenced with his grandfather VP setting him the task of drafting copy indentures (a laborious task), which did not quell the interest of the then seven-year-old Vincent in entering the profession.

At 19 years of age, Vincent was effectively running VP Shields Solicitors’ Athenry and Loughrea practices. The firm was founded by VP Shields in 1922. Both Vincent’s father Thomas and his uncle Daniel G Shields (later District Court judge) were partners. Vincent’s brother Dan continues to run the firm.

Vincent ran a busy practice in Athenry, specialising mainly in litigation defence work, and was very popular among his colleagues, one of whom, namely Judge Gerald Keys, remarked that: “Vincent had an incredible work ethic, was ambitious and always had time for his clients, irrespective of the merits of their case.



“He understood their problems, legal or otherwise, and his clients received his full attention and care. He was an excellent advocate and always to the point when representing them and when appearing for them in court. He also enjoyed the challenge of court work and was conscious that justice would be done.”

Such was the high regard in which he was held that his legal colleagues last summer commissioned a painting of him jumping a formidable stone wall while engaging in his favourite pastime of fox-hunting. This painting now hangs in Galway courthouse. Indeed, Vincent’s funeral cortege was led by his aforementioned trusted steed

‘Rayboy’, who bowed his head as his master’s coffin passed, in final tribute to a gentleman of the law and master of the hounds. The hunting horn sounded *Going Home*, which echoed across the fields of Athenry.

Vincent was a man who believed that life was for living and his motto was ‘work hard, play hard’, and he did exactly that. He is survived by his wife Majella, his daughter Aoife, son Vincent and loving grandchildren, Molly, Patrick and Maria. Both Vincent’s children Aoife and Vincent run their own legal practices in Cork and Tipperary respectively, ensuring that the family tradition lives on.

*AS & VS*



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CORK

## UCC LECTURE HONOURS LATE HIGH COURT JUDGE



Geraldine Feeney, Juli Rea (SLA CPD coordinator), Ms Justice Marie Baker, Joan Byrne (president, SLA), Ursula Kilkelly (dean, School of Law, UCC), Helen Boyle BL and Aine Ryall (UCC School of Law)

The Southern Law Association recently collaborated with the School of Law at University College Cork (UCC), the Bar of Ireland, and the Cork Bar to host a lecture in honour of the late High Court judge Mr Justice Kevin Feeney. The lecture – ‘Equity and law: fusion or confusion?’ – was delivered by Ms Justice Marie Baker to a packed UCC venue. Chief Justice Frank Clarke, who is an adjunct professor at the school, delivered the opening address. The session was chaired by Mr Justice George Birmingham. The lecture provided a

thought-provoking consideration of the nature of equity as a remedy in legal disputes. It was followed by a reception.

This was the second lecture held at UCC in honour of Mr Justice Kevin Feeney, the first taking place in March 2015, which coincided with the Supreme Court sitting in Cork for the first time. In the audience were Mrs Geraldine Feeney and members of the Feeney family, members of the judiciary, practitioners from Cork city and county, and the dean and members of faculty at the School of Law.

GALWAY

## NO SECOND BITE OF THE CHERRY

A CPD seminar run by the Galway Solicitors' Bar Association on 8 December at Galway Courthouse reminded participants that keeping detailed notes and time records is now essential, given that legal costs are becoming more and more transparent.

There is a duty on a solicitor presenting a file to properly describe such work, the seminar heard. Where such work is referred to as including ‘considerable’ or ‘numerous’ attendances, this will not be satisfactory to the taxing master. The fees of experts are now carefully scrutinised, and sight of a diary or other proofs may be requested, attendees were told.

Legal cost accountant Patrick Flynn (Hughes Flynn, Athlone) told solicitors that when the new *Legal Services Regulation Act* is fully commenced, the current system may change.

“There may be no objections process before the same taxing master, [meaning] the case will automatically go straight to the High Court, which is an extremely expensive process,” he said.

Legal costs accountants must know the solicitor’s file inside out and be in a position to deal with any queries or objections raised on taxation, as there will no ‘second bite of the cherry’ without the expense of a High Court action, he said.

In *Kevin Reynolds v RTE*, the taxing master took account of the then economic downturn and the consequent decrease in professional fees in deciding the matter.

Flynn said that it could be argued that, since the economy has now improved, this should also be taken into consideration when assessing costs.



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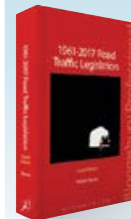
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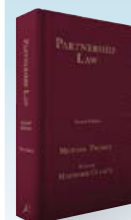
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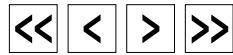
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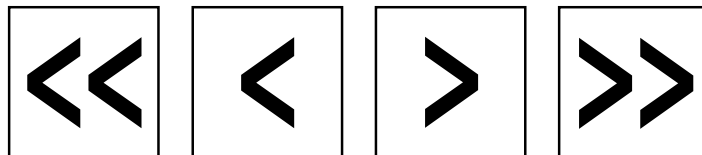
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## GAZETTE SHINES AT THE IMAS

The *Gazette* was one of the big winners at the Irish Magazine Awards on 30 November 2017, securing the top prizes for ‘Designer of the Year’ and ‘Cover of the Year’ in the business magazines category.

The judges were lavish in their praise of the work of *Gazette* designer Nuala Redmond, saying: “Striking covers for every issue ensure reader-grabbing attention. Consistent good design throughout the magazine, with attractive news pages and a colourful ‘People’ section, keeps each section

fresh and inviting for its readers.

“Art director Nuala Redmond retains sole responsibility for overall design and ensures each issue is fresh and has consistent appeal. This designer has shown creativity, flair and dedication, which has contributed to the overall success of the magazine.”

The [winning cover](#) (Aug/Sept 2017) in the ‘Cover of the Year’ category featured a story on the Chinese trade in human organs.

The judges described it as “very compelling and would encourage readers to pick up the magazine

to read the barbaric story of the violations of human rights. The striking cover image, combined with the catchy ‘Blood simple’ cover line and strong colours, make it a deserving winner.”

*Gazette* editor Mark McDermott praised the creative work of the award-winning team: “We really enjoy what we do, and I think that comes across. We always do our best to ensure that we deliver the hard information so sought after by our readers, but with a quirky sense of fun. I can’t praise enough the

dedication of each member of our team, comprising deputy editor Garrett O’Boyle, designer Nuala Redmond, journalist Mary Hallisey, Catherine Kearney in the *Gazette* Admin Office, and our advertising manager Sean Ó hOisín.

“Not wishing to take things for granted, readers will notice some changes from this issue. We’ve reorganised and redesigned certain sections in order to make our content even more accessible and relevant to our readers. We hope you enjoy it.” [g](#)



# FORMER ATTORNEY GENERAL LAID TO REST

The late Peter Sutherland was laid to rest on 11 January, surrounded by his family and mourners from the legal, business and political arenas. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE



**T**he late Peter Sutherland had ambition, wealth, power and prestige, but it was the practice of his faith that gave him his moral compass, up to 2,000 mourners heard at his funeral Mass on 11 January 2018.

The Law Society was represented at the funeral Mass by president Michael Quinlan and director general Ken Murphy.

Mr Sutherland fell ill with a heart condition in London in September 2016 and died on 7 January 2018, aged 71, after a long and distinguished career in the law, business and diplomacy.

He graduated with a BCL from UCD in 1968 and practised at the Bar between 1969 and 1980, before being appointed Ireland's youngest attorney general by then-Taoiseach Garret FitzGer-

ald in June 1981. Sutherland was AG during what he called a "difficult time, both economically and because of Northern Ireland". He admitted to not enjoying that period of his career, when he represented the State both in extradition cases and in the section 31 prohibition of Sinn Féin on RTÉ broadcasts.

## European contribution

Subsequently, he made a particular contribution in international law after his appointment as EU Commissioner for Competition between 1985-89, when he was key to the opening up of the telecommunications, air transport, and energy sectors across Europe. In that role, he was responsible for granting permission that gave the go-ahead for the Irish Finan-

cial Services Centre in Dublin.

As a free-market liberal, he believed that growth could only be provided by the individual, not by the State. He was an advocate for globalism, because he believed it countered a narrow nationalism that avoided global responsibility.

With the 1989 collapse of the Berlin Wall, he saw the potential for the opening up of world trade to the forces of globalisation. "We had the potential, for the first time ever in history, to have a single, global, economic dynamic integrating across borders," he told *UCD Connections* magazine in 2010, describing the intense lobbying to bring the Chinese and Russians into the system, and the eventual 1995 creation of the World Trade Organisation as a force for open economies.

PETER WAS ALWAYS AWAKE, ALERT, HIS LAMP WAS ALWAYS LIGHTING. HE DID NOT SQUANDER HIS OPPORTUNITIES, HE DID NOT SQUANDER TIME



PIC: ROLLINGNEWS/IE



PIC: ROLLINGNEWS/IE



AS A FREE-MARKET LIBERAL, HE BELIEVED THAT GROWTH COULD ONLY BE PROVIDED BY THE INDIVIDUAL, NOT BY THE STATE

Former Taoiseach John Bruton has said that Peter Sutherland contributed to a quarter of a century of global prosperity through his leadership role in the General Agreement on Tariffs and Trade negotiations in 1994, involving 130 nations.

Principal celebrant Fr Noel Barber spoke of the many blessings Mr Sutherland had received in his life, and the blessing that his life had been to many people. The funeral Mass, at the Church of the Sacred Heart in Donnybrook, Dublin 4, was concelebrated by nine priests and the bishop of Down and Connor.

The congregation heard that, when a Gonzaga classmate criticised a teacher for his use of corporal punishment, the young 'Suds' sprang to his

defence saying, "He has to biff us, that is his job!"

And Fr Barber gave a gentle verbal biff of his own when he said that Peter's genuine advocacy for the cause of refugees sometimes 'blurred his view' of the downsides of mass migration.

The eulogy was given by his old school friend Mr Justice Garrett Sheehan. He said that there was one thing of which Peter was very sure: that he could not have achieved what he did without the great love of his Spanish-born wife, Maruja. Her support was critical to every one of his many accomplishments, and critical also to him being able to maintain, develop and sustain an ever-widening circle of friends.

Mr Justice Sheehan added that Peter understood, appreciated

and sometimes marvelled at the creative energy of Irish business people, both here and abroad. He was never cynical about politicians, but always optimistic and had a high regard for those who entered what he regarded as the most difficult of professions.


#### A lighting lamp

"Peter was always awake, alert, his lamp was always lighting. He did not squander his opportunities, he did not squander time," Sheehan said.

Peter had known for some time that he had been given very special talents, Mr Justice Sheehan added, but didn't take them for granted. He worked at them and improved them, knowing that they had been given to him for a purpose.

The funeral Mass ended with a

blessing from Pope Francis, with a message carried by the pontiff's secretary of state Cardinal Pietro Parolin, giving thanks for the great dedication and assistance that Mr Sutherland had given to the Church and the Holy See.

Peter Sutherland was generous with his great wealth and was the chief benefactor, along with five leading law firms, for the purpose-built €27 million UCD Sutherland School of Law, which opened in September 2013. At the opening of the school, he said: "Education is one of the most important benefits we can pass on to future generations. The rule of law underpins the cohesiveness and prosperity of society, making a sound legal education one of the most important [benefits] we can deliver." 



# PC NUMBERS UP AS GOODBODY TAKES POLE POSITION

The number of practising certificates issued by the Law Society at the end of December 2017 was 10,461 – up 3.5% on 2016. **Ken Murphy** crunches the numbers

KEN MURPHY IS DIRECTOR GENERAL OF THE LAW SOCIETY



**A**t this time every year, the Law Society publishes, with some analysis, the statistics for the number of practising certificates (PCs) issued by the Society at the end of the previous practice year on 31 December.

We choose the same date every year to ensure that like can be compared with like.

This is objective data. While

individual firms, in their marketing, use terminology such as ‘total number of fee earners’ or ‘total staff employed’, the payment by the firm to the Law Society of the fee for a practising certificate – the individual licence, required by law to be issued annually, in order that a solicitor may offer legal services to the public – makes the PC number a firm and objective measure.

In overall terms, the number of PCs issued by the Society on 31 December 2017 was, at 10,461, up by 363. This was an increase of 3.5% on the 10,098 PC figure on the last day of 2016.

Every year, we also publish the practising solicitor numbers of the 20 largest firms. That group grew, in net terms, by 84 in 2017 to 2,525 PCs. This represents a 3.4% increase on the figure of

ANYONE EXPECTING THAT THE PERCENTAGE GROWTH LEVEL OF THE 20 LARGEST COMMERCIAL LAW FIRMS WOULD HAVE EXCEEDED THAT OF THE PROFESSION AS A WHOLE WOULD BE SURPRISED

## LAW FIRM PRACTISING SOLICITOR NUMBERS (AS OF 31/12/2017)

2017 ranking	2016 ranking	Firm name	31/12/2017	Diff +/- over 2016	31/12/2016
1	1	A&L Goodbody	293	18	275
2	1	Arthur Cox	274	-1	275
3	3	Matheson	268	17	251
4	4	McCann FitzGerald	247	7	240
5	5	William Fry	220	10	210
6	6	Mason Hayes & Curran	201	5	196
7	7	ByrneWallace	127	6	121
8	8	Maples and Calder	115	-1	116
9	9	Eversheds Sutherland	103	-1	104
10	10	Ronan Daly Jermyn	95	-1	96
11	11	Freshfields Bruckhaus Deringer LLP	86	-1	87
12	12	Dillon Eustace	82	0	82
13	13	Beauchamps	79	3	76
14	15	Eugene F Collins	59	9	50
15	14	LK Shields Solicitors	56	3	53
16	17	Hayes Solicitors	49	5	44
17	18	Walkers Ireland	47	6	41
18	20	Philip Lee	44	6	38
19	16	McDowell Purcell	42	-4	46
20	19	Holmes O'Malley Sexton	38	-2	40
TOTAL			2,525	84	2,441

These figures represent the total number of solicitors with a practising certificate, advised to the Law Society, up to and including 31/12/2017. The total firm figure comprises a firm's primary and suboffices on the Law Society's database



A&L GOODBODY HAS OPENED A SUBSTANTIAL GAP AT THE TOP

2,441 in 2016. Anyone expecting that the percentage growth level of the 20 largest commercial law firms would have exceeded that of the profession as a whole would be surprised. In fact, in 2017, the percentage growth in the large

firms, at 3.4%, was fractionally behind the 3.5% increase in the profession as a whole.

The PCs in the 20 largest firms this year, as last year, comprise approximately 24% of the PCs issued to the profession as a

whole. Next month, for the first time, the *Gazette* will publish a table of the entities with the largest numbers of solicitors practising in-house.

The great majority of large firms have not changed their places in the PC numbers rank from the previous year. There has been some movement at the very top, however. For four years, from 2013 to 2016, Arthur Cox was the firm with the largest number of practising solicitors – albeit that they held that position jointly with A&L Goodbody at the end of 2016, when there was an exact tie between them of 275 PCs each.

In the course of 2017, however, A&L Goodbody has opened a substantial gap at the top. There is now a margin of 19 PCs between Arthur Cox (274) and A&L Goodbody (293). A&L Goodbody also had the overall largest numerical increase with 18 additional PCs this year – just one ahead of Matheson who increased by 17. William Fry was also in double figures, increasing by ten.

With Mason Hayes & Curran now holding 201 PCs, for the first time there are six Irish law firms with in excess of 200 practising solicitors.

In percentage-growth terms, Eugene F Collins's increase by nine, from 50 PCs in 2016, represents a very impressive expansion of 18%, while the percentage increase at Philip Lee was not far behind at 15%.

There is some evidence in the statistics that, in 2017, the firms towards the top and bottom ends of the size ranking were tending to expand while the firms in the middle were not.

**Brexit PC holders**

In a new departure this year, we have published a separate table headed 'Brexit firms with Irish practising certificates'. Freshfields Bruckhaus Deringer LLP is far ahead of all others. This firm has made clear, however, that it has no intention of establishing in Ireland. Pinsent Masons, in fact, is the only firm on this list known to be in the process of opening an office in this jurisdiction. [g](#)

BREXIT FIRMS WITH IRISH PRACTISING CERTIFICATES (AS OF 31/12/2017)

	Firm	No of PCs
1	Freshfields Bruckhaus Deringer LLP	86
2	Hogan Lovells LLP	22
3	Pinsent Masons LLP	16
4	Shearman & Sterling LLP	10
5	Latham & Watkins (London) LLP	6
6	Clyde & Co LLP	5
7	Caytons Law LLP	5
8	Berwin Leighton Paisner LLP	4
9	Lewis Silkin LLP	4
10	Herbert Smith Freehills LLP	4
11	Pillsbury Winthrop Shaw Pittman LLP	4
12	Sidley Austin LLP	4
13	Covington & Burling LLP	3
14	Morgan Lewis and Bockius UK LLP	3
15	Vanguard Asset Management Limited	3
16	White & Case LLP	3
<b>TOTAL</b>		<b>182</b>





# MODERN POLICE FORCE WILL BE OUT IN THE FIELD

Beefed-up IT systems mean gardaí will need less office space in the future, a review of population and crime trends has found. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE



**S**tepside garda station is to reopen, despite a reduction in property crimes in the district during 2016 and the first quarter of 2017.

Assistant Garda Commissioner John O'Driscoll's review of population and crime trends and policing needs said that reopening Stepside should be regarded as an interim measure, given a planned new station at Cherrywood, south county Dublin.

The assistant commissioner's review found that the modernisation of IT systems, including more CCTV, automatic numberplate recognition, and hand-held devices that automatically transmit information to relevant databases, will diminish the need for office environments for gardaí.

A total of €200 million has been earmarked for IT upgrades, including the introduction of an investigation management system, in 2018.

Functions conducted at present in garda stations will, in future, happen out in the community, as the force gains access to real-time information on mobile devices.

## Population clusters

The review indicated that population growth should be considered not simply in terms of residence, but in terms of where large numbers of people are located – in business premises, education campuses, shopping, transport and sporting hubs.

The assistant commissioner's review pointed out that the identification of locations where a new garda station is desirable may be an easier task than reactivating closed-down premises.

Under the Garda Síochána District and Station Rationalisation Programme, 39 stations were closed in 2012, while 100 were closed in 2013 – of these buildings, 61 are no longer available, having been sold, leased, or reallocated, while the remaining 78 could potentially be brought back into use, with upgrading works.

Rush garda station in north county Dublin is recommended for reopening, given the 8% population growth in the Fingal area. The review said that the station

should not have been closed in 2012 and that the nearby Lusk station "would have been a better decision" for closure.

The review also recommends that the force increase its footprint in the Northern region, given the possibility of a post-Brexit hard border. Bawnboy station in Co Cavan is eight kilometres from the border.

## Trends

Between 2011 and 2016, the largest population increase in rural Ireland occurred in Co Cork, which is a factor in the reopening of Ballinspittle station. There was a steady and constant decline in property crimes in the district in the three years to 2016, however –

A TOTAL OF €200 MILLION HAS BEEN EARMARKED FOR INFORMATION TECHNOLOGY UPGRADES, INCLUDING THE INTRODUCTION OF AN INVESTIGATION MANAGEMENT SYSTEM IN 2018

## COP SHOPS THAT GOT THE CHOP

- The station on Valentia Island in Co Kerry is now being used by the Irish Coastguard,
- The Loughlynn, Co Roscommon, station has transferred to the HSE for use as an ambulance base,
- Of 15 former garda stations in the northern region, one has been assigned for community use,
- The Western region has 29 closed garda properties, of which five are assigned for community use,
- Six of 22 properties in the southern region are assigned for community use,
- One of five properties in the eastern region is in community use,
- Of four closed stations in the Dublin metropolitan region – Rush, Dalkey, Kill O' The Grange and Stepside – three are under a guardianship arrangement, while a fourth is assigned for community use



Stepside Garda Station

a trend that continued through the first eight months of 2017. In fact, property-related crime reduced by over 40% in the Ballinaspittle district during the 2011-16 period. The low crime level in the district means that a reopened Ballinaspittle station could be staffed from the existing area personnel, according to the review.

Crime figures in nearby Adrigole/Castletownbere were described as “unexpectedly low”, with 130 incidents of property crime reported in a six-and-a-half-year period. Two property crimes were reported at Adrigole station between January 2011 and its closure in January 2013.

Donard station will reopen in Co Wicklow, where the population increased by 4.2% in the relevant five-year period.



Assistant Garda Commissioner John O'Driscoll

Leighlinbridge in Carlow, which is reopening, is adjacent to the M9 motorway, making it vulnerable to mobile crime.

The review also points out that crime in the Western region declined by almost one third in the period under scrutiny, while

14 of the 29 stations shut down had not been occupied for a long period. No station in Connacht has been recommended for reopening.

The Dublin Airport Authority will open a brand new garda facility in 2018, which will also cater for the requirements of the Garda National Immigration Bureau. The airport handled 28 million passengers in 2016, an 11.5% growth, with 3.1 million people passing through the airport in the month of August this year.

The large station in Whitehall, Dublin 9, has been refurbished for use as the state mortuary and offices for the state pathologist.

Fitzgibbon Street station in Dublin 1 is to reopen as 30 gardaí are reassigned to the north-east inner city. [g](#)

POPULATION GROWTH SHOULD BE CONSIDERED, NOT SIMPLY IN TERMS OF RESIDENCE, BUT IN TERMS OF WHERE LARGE NUMBERS OF PEOPLE ARE LOCATED – IN BUSINESS PREMISES, EDUCATION CAMPUSES, SHOPPING, TRANSPORT AND SPORTING HUBS



# ART FOR ART'S SAKE, MONEY FOR GOD'S SAKE

Attendees at ArtSummit Ireland heard that litigation can quickly destroy the value of a work of art. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE



The audience at ArtSummit Ireland at Dublin's Merion Hotel on 3 November heard that litigation can have a devastating effect on the value of a work of art. London-based barrister and mediator at Art ADR Global, Nicola Wallace, warned that litigation is costly, not only in terms of legal fees, but in time spent and risks to business and professional relationships.

She pointed out that the term 'art law' covers a wide range of matters that might fall into dispute, such as breaches of contract, intellectual property issues, insurance claims, authenticity, and misrepresentation. What distinguishes these wrangles from other commercial disputes are the emotional elements that come into play when a work of art is at stake, she said.

Wallace pointed out that emotions drive disputes and quoted Law Society director general Ken Murphy in laying out the benefits of a mediated solution: "Mediation is easily the preferred first step in commercial dispute resolution – and can offer numerous benefits to companies that actually save time, money and even save a business's reputation from potential harm.

"Litigation is risky," said Wallace. "No lawyer will guarantee your outcome. A judge can go either way. Live-witness evidence at trial can often fail to deliver the strength and force of

argument that looked so promising on paper.

"Litigation is quick to escalate. Parties taking strong defensive positions often trigger reactive responses. This can quickly lead to entrenchment," she said.

Wallace referred to the 1993 Washington DC case *Greenberg Gallery Inc v Bauman*. The plaintiffs were art dealers who claimed that a mobile for which they paid \$500,000 was not the Alexander Calder work entitled *Rio Nero* they thought they were acquiring. They invoked theories of fraud, breach of express warranty, and mutual mistake of fact.

In the case, the judge went against a leading expert, while acknowledging that his decision would destroy the market value of the work. "This is not the market, however, but a court of law, in which the trier of fact must make a decision based on the preponderance of evidence," he said.

## BATNA and WATNA

Stressing the value of mediation in art disputes, Wallace pointed out that the process offers confidentiality, flexibility and speed, control in decision-making, significantly cheaper costs, and a legally binding and enforceable outcome. She advised those involved in an art dispute to mediate early and to critically analyse the issues in advance to see where roadblocks lie.

Solicitors were told to prepare

their client for the day of mediation and to be clear as to the client's 'best alternative to a negotiated agreement' (BATNA), and 'worst alternative to a negotiated agreement' (WATNA).

Wallace said that legal advisors must be prepared to 'sell' a proposal in terms of mutual benefit and that each party to a mediation should have a 'back table' to which progress reports could be made.

Legal strategy should also factor in the key element of 'face-saving' she said. The parties should critically think through strategies of approach where one side's preferred solution also allowed all other sides to save face, if they were to agree.

## The art of business

ArtSummit Ireland founder and consultant art solicitor Rosanne McDonnell organised the conference in order to inform the legal profession about the business of art and the importance of collecting it in financially and culturally responsible ways.

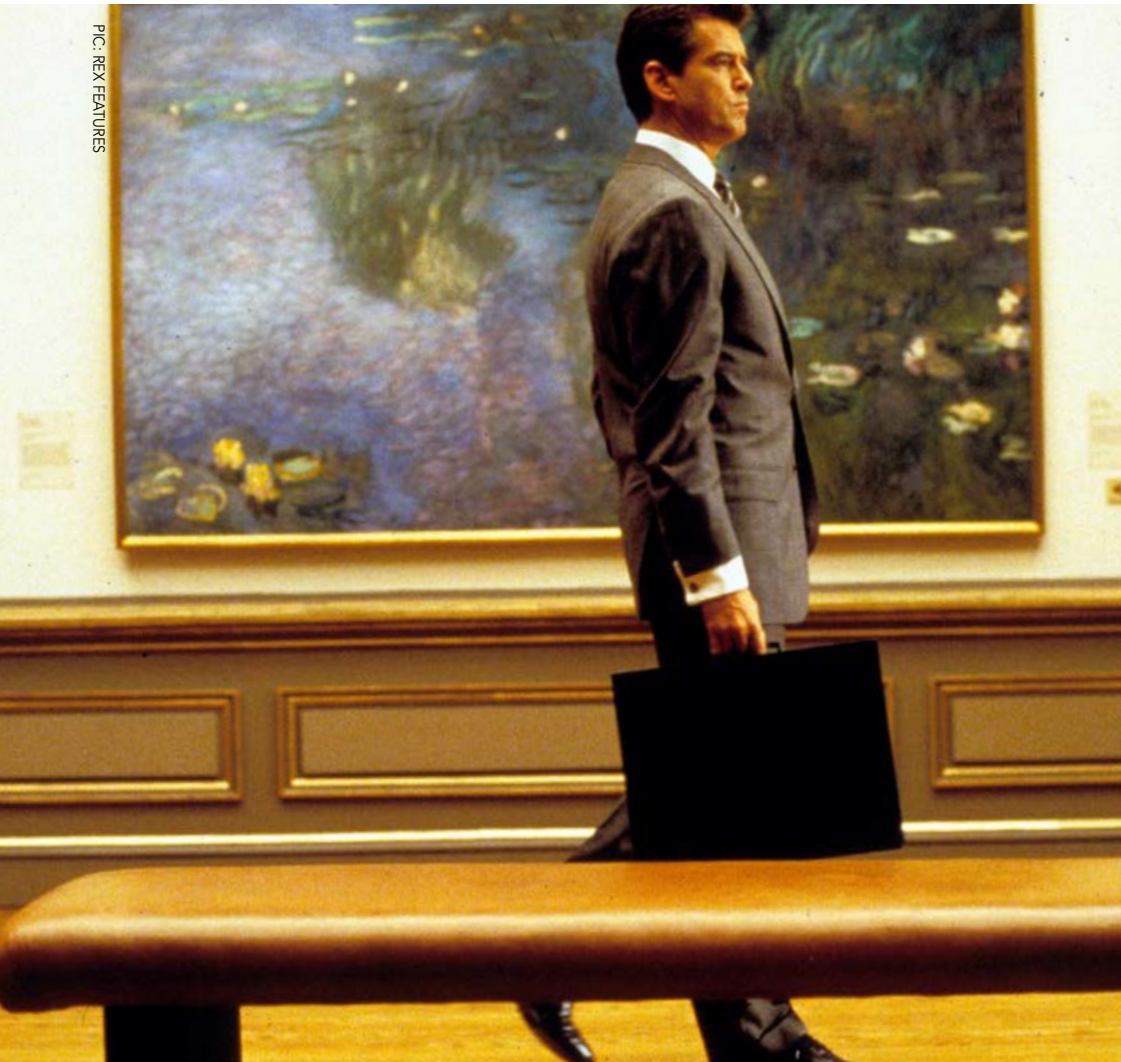
McDonnell chaired a panel that included Nicola Wallace, international art dealer Alan Hobart (Pym's Gallery in London) and Carol Lynch (customs and international trade partner at BDO).

Hobart offered strategies on acquiring 'blue-chip' art, while Lynch detailed the customs and import-export duties and costs

THE JUDGE  
WENT AGAINST  
A LEADING  
EXPERT, WHILE  
ACKNOWLEDGING  
THAT HIS  
DECISION WOULD  
DESTROY THE  
MARKET VALUE  
OF THE WORK



PICTURE: REX FEATURES



THE WONDERFUL THING ABOUT BEING AN ART LAWYER IS THAT YOU NEVER GET BORED. YOU HAVE TO DEAL WITH SO MANY DIFFERENT FIELDS OF LAW

associated with purchasing any work of art at an international art fair.

John Ward from Maurice Ward Art Handling, Swords, Co Dublin, spoke on the complex logistics and liabilities of moving art around the globe and, in particular, the potentially positive impact Brexit could have on the Irish art market.

Other sessions included talks on forgotten artists who might warrant contemporary investment and a celebration of the collector in supporting artists, art institutions, and the art market.

Market buying trends in Ireland and abroad were examined by James O'Halloran of Adams

Auction House, Ciara Hurley of Quilter Cheviot Investment, and Dr Clare McAndrew, economist and founder of Arts Economics.

#### The business of art

The third panel was chaired by Con Quigley of BDO and included art consultant Jane Beattie, Swiss art lawyer Dr Anne Laure Bandle, and Dr James Lindow of Ecclesiastical Insurance.

"The wonderful thing about being an art lawyer is that you never get bored," Bandle said. "You have to deal with so many different fields of law such as tax, export and import, art sales, copyright, and wealth management.

"The range of clients is really


diverse: museums, art galleries, auction houses, art collectors, artists and artists' heirs who want to safeguard the artist's legacy. All these different clients obviously come with different needs," she said.

Bandle said that one of the main challenges is to convince these varying clients that they must consult an art lawyer – although the art market largely relies on handshakes and trust at the moment, art market actors increasingly realise that it makes sense to use contracts and hire lawyers before engaging in transactions.

Heightened standards of due diligence mean that art lawyers play a vital role in advising

their clients, Bandle said.

The next ArtSummit panel discussion addressed the importance of both correct valuations for the acquisition and deaccessioning of art, and of accurate valuations for insurance in cases of damage and theft.

Frank O'Reilly of Whitney Moore Solicitors shared insights on the need for correct valuations when making a will and on the attendant tax implications, while Dr Bandle spoke on Old Master 'sleeper' works left undiscovered for decades. 

Keep an eye on [www.artsummitireland.com](http://www.artsummitireland.com) in autumn 2018 for full details of next year's conference.



# BREXIT, HUMAN RIGHTS, AND THE GOOD FRIDAY AGREEMENT

Most of the discussion about Brexit's impact on Ireland – north and south – has focused on economic issues, trade, and agriculture. But civil society groups believe that human rights and equality provisions are also at risk, says **Michael Farrell**

MICHAEL FARRELL IS A CONSULTANT TO THE LAW SOCIETY'S HUMAN RIGHTS COMMITTEE AND A MEMBER OF THE BOARD OF THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE



ALL THESE RIGHTS AND EQUALITY PROTECTIONS HAVE BEEN CRUCIAL TO CREATING CONFIDENCE IN THE NEW STRUCTURES AND NEW DISPENSATION IN NORTHERN IRELAND

Shortly before the crucial Brexit meeting in Brussels in December 2017, a group of civil society organisations in both parts of Ireland wrote to the Irish and British governments, and the EU Commission's chief negotiator Michel Barnier. Headed by the Irish Congress of Trade Unions, the Irish Council for Civil Liberties, and the Committee on the Administration of Justice in Belfast, the group expressed its concern that Britain's exit from the European Union could seriously undermine the human rights and equality protections that are a crucial part of the *Belfast/Good Friday Agreement*.

Up to then, most of the discussion about Brexit's impact on Ireland – north and south – had, understandably, focused on economic issues, trade, and agriculture – all likely to be badly affected. But civil society groups felt that the human rights and equality provisions were also at risk.

Under the agreement, signed 20 years ago in April 1998, the British government incorporated the *European Convention on Human Rights* (ECHR) into the domestic law of Northern Ireland through the *Human Rights Act*, with the additional power to strike down legisla-

tion by the Stormont Assembly if it did not conform to the ECHR.

A new, strengthened Equality Commission was established to oppose discrimination in employment and the provision of goods and services on religious or political grounds, but also on gender, disability, and ethnic grounds as well. It drew heavily on EU equality legislation and, after 2010, the *EU Charter of Fundamental Rights* came into force, strengthening both equality and ECHR rights and bringing in new protections for children, workers, the environment, and data.

A key aspect of both the ECHR and the *EU Charter* was oversight by European courts, whose impartiality could be accepted by all sides in Northern Ireland's deeply divided society.

Since the agreement, and as security on the border between North and South was dismantled, the right to freedom of movement was established more firmly than ever before due to the removal of tariffs and customs checks between the two EU states. Cross-border movement expanded exponentially for work, business, education, family, and recreational reasons, easing tensions and establish-



British Prime Minister Theresa May with President of the European Commission Jean-Claude Juncker at 10 Downing Street



THE STAKES ARE HIGH FOR PEOPLE IN BOTH PARTS OF THIS ISLAND WHO WANT TO PROTECT THE HUMAN RIGHTS AND EQUALITY PROVISIONS IN NORTHERN IRELAND, AND THE RIGHT TO FREELY TRAVEL AND TRADE

ing good relations – all of which strengthened support for the 1998 agreement.

And the agreement itself confirmed the right of all the people of Northern Ireland to hold British or Irish citizenship, or both, without distinction or discrimination between them, with the result that over 500,000 people from Northern Ireland now hold Irish passports.

#### Erosion of confidence

All these rights and equality protections have been crucial to creating confidence in the new structures and new dispensation

in Northern Ireland. The civil society bodies that wrote to the negotiators at the beginning of December were concerned that Britain's withdrawal from the EU could lead to the dismantling of these safeguards and an erosion of confidence in the new dispensation there.

Already the *European Union (Withdrawal) Bill 2017-19*, which is currently proceeding through the British parliament, specifies that the *EU Charter* will cease to have effect in Britain from the proposed date of withdrawal in March 2019. And the Conservative Party is committed to

repealing the *Human Rights Act* and replacing it with a weaker *British Rights Act*. They have agreed to postpone action on this until after Brexit is completed. But if and when it is completed, they will be freed from the EU requirement that all member states must be bound by the ECHR.

On the more positive side, however, British and EU negotiators issued a [joint report](#) on 8 December 2017, stating that they had made enough progress in the initial negotiations, which included the Irish issues, to enable them to go on to the

next phase of the process (*Joint Report from the Negotiators of the European Union and the United Kingdom Government on Progress During Phase 1 of Negotiations Under Article 50 TEU on the United Kingdom's Orderly Withdrawal from the European Union*).

The report initially appeared quite reassuring on human rights and equality issues. The British government committed itself to protecting the agreement "in all its parts" and ensuring "no diminution of rights" as a result of Brexit, including in the area of discrimination prohibited by EU

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DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
9/10 Feb	PROPERTY TRANSACTIONS MASTERCLASS Module 3: Commercial Property Transactions	€500 <i>(Ipad included in fee)</i>	€600 <i>(Ipad included in fee)</i>	CPD Hours including 2 M & PD Skills
1/2 March	ENGLISH & WELSH PROPERTY LAW AND PRACTICE	€441	€588	9 General (by Group Study)
8 & 15 March	PRACTICAL LEGAL RESEARCH FOR THE PRACTITIONER - SKILLS WORKSHOPS <b>Note:</b> Attendance on both workshops is required * <i>(Ipad not included in fee)</i>	€403 <i>(Ipad included in fee)</i> €188*	€538 <i>(Ipad included in fee)</i> €250*	2 General plus 4 M & PD Skills (by Group study)
8 March	SOLICITORS' FOR THE ELDERLY SEMINAR Ethical Representation for the Older Client	€150	€176	3.5 General
9 March	EMPLOYMENT LAW MASTERCLASS: Bringing cases in the Labour Court and Workplace Relations Commission	€210	€255	6.5 General (By Group Study)
23 March	TRAINING OF LAWYERS ON THE LAW REGARDING VIOLENCE AGAINST WOMEN (TRAVAW)	Complimentary		6 General (By Group Study)
20/21 April	MASTERCLASS IN PLANNING & ENVIRONMENTAL LAW AND PRACTICE FOR THE CONVEYANCER	€350	€425	8 General, 2 M & PD Skills (By Group Study)



law. It also committed to avoiding a 'hard border' with physical structures and road checks.

It proposed to maintain the [Common Travel Area \(CTA\)](#) between the Republic of Ireland and Britain, including Northern Ireland, which had been in operation before both states joined the EU. However, the CTA had not excluded border controls in the past. And responding to a query in Belfast's *Irish News* later in December about how Britain would deal with a third-country national who sought to enter the state from the Republic, Prime Minister Theresa May said they would expect the Republic to exclude the person in the first place (*Irish News*, [22 December 2017](#), p5). It appeared that she might expect the Irish authorities to implement Britain's more

restrictive immigration policies as the price of continuing with the CTA.

### Fickle promises?

And can the other promises in the joint report be relied upon?

Speaking on television two days after the report was published, David Davis (Secretary of State for Exiting the European Union), said the report was a "statement of intent" rather than something that was legally enforceable (*The Guardian* online, [10 December 2017](#)). He hurriedly withdrew his remarks the next day, but Theresa May pointed out in a letter to Conservative MPs that nothing in the joint report was agreed until everything was agreed.

The EU Council stated rather sharply a few days later that

"negotiations in the second phase can only progress as long as all commitments undertaken during the first phase are respected in full and translated faithfully into legal terms as quickly as possible" (European Council (Art 50) meeting, 15 December 2017, [EUCO XT 20011/17](#)).

Will that happen? Sources in the EU Commission were reported after the publication of the joint report as saying that the commitment to a 'soft border' between Northern Ireland and the Republic was incompatible with Britain's insistence on leaving the Single Market and Customs Union and its rejection of the idea of making an exception for trade between the North and the South.

And since the publication of the report, which also included

Britain's agreement to a financial settlement with the EU, there has been a noisy backlash from Brexiteer members of the Conservative Party and sections of the British press.

With a badly divided government in Britain, it is unclear how many of the commitments in the joint report it will be willing to deliver. This saga has some distance to run yet, though time is fairly short. But the stakes are high for people in both parts of this island who want to protect the human rights and equality provisions in Northern Ireland and the right to freely travel and trade between the two jurisdictions, which are so important to preserving the still fragile new dispensation north of the border – whether 'hard', 'soft', or preferably invisible. [E](#)

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# MOB RULE V RULE OF LAW

Mob rule and the rule of law are rarely compatible, and the damnation of individuals – even those found to be guilty – without the protections afforded to them by the constitutional order is a huge step in the wrong direction, argues **Dara Robinson**

DARA ROBINSON IS A PARTNER IN THE DUBLIN LAW FIRM SHEEHAN & PARTNERS AND IS A VICE-CHAIR OF THE LAW SOCIETY'S REGULATION OF PRACTICE COMMITTEE



JUST AS ONLINE MEDIA FACILITATE THE GROOMING OF YOUNG CHILDREN BY PREDATORY PAEDOPHILES, THE SAME MEDIA ALLOW FOR THE CONTROVERSIAL ACTIVITIES OF THE ACTIVISTS

Readers will probably not readily recall the name of Michael Donald – the last recorded victim of a lynching in the USA, in Alabama in 1981. Some may remember Yvette Cloete, a trainee consultant paediatrician living in St Brides, Gwent, who had to vacate her home in the summer of 2000 after it was targeted by a mob that confused her profession with the word ‘paedophile’. These and countless other examples help to point up the risks of ‘ochlocracy’ – or mob rule, as it is better known. An aspect of the mob is vigilantism, and some recent uncomfortable events have served to promote an examination of issues surrounding this phenomenon.

A few weeks before Christmas, an RTÉ producer was arrested in Leeds by local police, having been targeted by online activists in a ‘sting’ operation intended to lure him to England on the pretext that he would there meet a local child for sexual purposes. The man, Kieran Creaven, has since pleaded guilty to two charges relating to child sexual offending, and he awaits sentence.

At around the same time, a British-based vigilante group confronted a number of men in Drogheda, again as a result of a sting, but no charges have yet followed. Louth gardaí have confirmed that they are investigating. However, footage of the

Drogheda confrontations was quickly uploaded to Facebook, with as yet immeasurable consequences for reputations, justice, and the law.

## Reckless dissemination

Nowadays, everyone with a smartphone is a *de facto* publisher. But, traditionally, the ability to publish came with attached responsibilities – a concern for accuracy, clear identification of the publisher, a right of reply and, of course, being answerable to the law of defamation. None of those features apply to any real extent any more – the almost instant capacity to publish, by words, photographs or video on Facebook, Twitter, WhatsApp, and umpteen other platforms has eroded, if not destroyed, the long-standing constraints that curtailed reckless dissemination, and at the same time protected reputations. The internet has rewritten the rulebook for publishing, and there’s no indication that the rules are likely to catch up any time soon.

Such ‘online activists’ justify their activities easily: the ‘targets’ are among the most reviled members of the community; the police lack the resources to track down the ‘paedos’; the conventional justice system is too slow and too constrained by old-fashioned rules. There is no doubt that their activities are widely supported, at least by online commentators.

It is often said that the support and empowerment of victims and potential victims is crucial – both as catharsis and to publicise the issue to a wider audience. And it is true that police – at least in Britain – have commonly decried their underfunding and understaffing.

Delays in the criminal justice system in Ireland are notorious. But there are very real consequences for setting aside the usual means of detecting and prosecuting offenders and, notwithstanding the legitimate grievances about the flaws in the justice system, a strong case can be made that the protections it offers are there for a reason.

Reputational damage is often the first casualty. There is very little by way of available remedy for a wrongful identification of a person – as an Irish civil servant learned in a highly publicised incident in Co Kildare last year, when a mob confronted him in the wholly incorrect belief that he was a convicted paedophile, to whom he bore little resemblance. He had to be rescued by gardaí after taking refuge in a pub.

## Stark questions

But it is when the focus turns to the criminal justice system that even starker questions arise. Some would argue that, not only in this context, social media are now out of control. In this context, however, it can be argued that the very rule of law itself



PIC: REX FEATURES

## MOB RULE AND THE RULE OF LAW ARE RARELY COMPATIBLE

– a cornerstone of all democracies – is threatened. An essential component of the rule of law is the right to a fair trial. Even a risk of a threat to that right should worry all who subscribe to our constitutional order.

In a criminal trial, strong rules of evidence govern the admissibility – or otherwise – of material tending to show the guilt or innocence of an accused person. Activities such as those of online activists threaten the integrity of the process in, broadly, two ways.

First, material placed online suggesting the guilt of a person is only rarely comprehensively removed. It is now, sadly, a regular feature of criminal trials that jurors have resorted to Google for additional material, not in the evidence, that pertains to the accused or a witness. Despite regular judicial warnings, a number of trials have had to be halted for that reason in the last few years.

Second, an accused person can complain that, for various reasons, their right to a fair trial has been violated: there has been excessive prejudicial pre-trial publicity; the rules of evidence have been disregarded in some confrontation that has led to their arrest; a ‘sting’ amounts to entrapment; or the police have been dragooned into taking action without a proper examination of the evidence. Any number of complaints can be raised – perfectly cogently – since the evolution of the rules of evidence has, likewise, not kept pace with the digital revolution.

### Beneath the radar

A further potential downside to activist behaviour is the possibility that a suspect, when alerted, may take steps to destroy incriminating evidence in advance of the arrival of the gardaí with a search warrant. And there is also the possibility that, by failing to alert

the gardaí to their suspicions, the activists themselves risk committing a crime – a 2012 statute creates an obligation to notify suspicions of paedophile behaviour to the gardaí at the risk of committing an offence by failing to do so (see section 2 of the *Criminal Justice (Withholding Information on Offences against Children and Vulnerable Persons) Act 2012*).

The reality is that it is very difficult to reconcile vigilante activity, especially if social media are included, with the traditional system of justice. Just as online media facilitate the grooming of young children by predatory paedophiles, the same media allow for the controversial activities of the activists.

But grooming is, unequivocally, criminal behaviour, which should be detected, investigated, and prosecuted to conviction and sentence in the ordinary way by the ordinary courts, controlled according to the Constitution

by judges appointed in accordance with law. Shortcuts threaten to undermine the constitutional order. All decent citizens would condemn paedophile activities, but that should not translate into subversion of the Constitution.

Where stands the presumption of innocence in all of this? The internet threatens to drive a coach-and-four through the most fundamental precepts of our justice system. Having said that, there are few people who would have much sympathy for the Kieran Creavens of this world, and even the most avowed constitutionalist would agree that paedophile behaviour is an egregious cancer. But mob rule and the rule of law are rarely compatible, and the damnation of individuals – even those found to be guilty – without the protections afforded to them by the constitutional order is a huge step in the wrong direction. We allow it at our peril. [E](#)



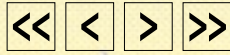
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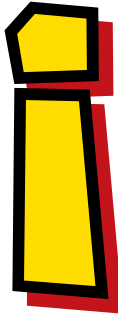
**BATMAN!**

‘Comic-book’ contracts offer a visual approach to legal documents that proponents believe provides greater transparency and usability.

**Mary Hallssey** turns the page

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE





Is it possible to have a legal contract that is transparent, simple and clear? One Finnish lawyer believes that it is.

Helena Haapio is a contract innovator and pioneer of the 'proactive approach', where contracts and the law are seen as enablers rather than obstacles.

She promotes the use of simplification and visualisation in commercial contracts.

Haapio believes that contracts are not currently drafted with the end user in mind. They are written by lawyers, with the intended reader of the contract being another lawyer – or, when things go badly, a judge.

Her research focuses on ways to transform contracts from legal instruments into valuable business tools. Based in Helsinki, she consults worldwide, promoting the use of visualisation as a non-binding aid in understanding the text of an agreement. In 2013, she published *Next Generation Contracts: A Paradigm Shift*.

Visualisation is a step away from the text-based contract model. Such innovators believe that pictures can not only aid understanding of the contract, but can actually be the contract. These visual or comic-contract proponents

## AT A GLANCE

- 'Comic contracts' seek to prevent legal difficulties and misunderstandings
- It's an approach that encourages the drafting of contracts with the end user in mind
- Comic-contract proponents believe that pictures not only aid understanding of the contract, but can actually be the contract
- With 'next-generation' contracts, the intention is, proactively, to avoid disputes and litigation

believe that, in many micro-transactions, such as end-user licence agreements, people do not read their contracts because they feel alienated by legal jargon.

Most people are wary of small print, and even the most engaged stakeholder can find it difficult to wade through. Lovers of legalese can often seem to take pride in its impenetrability.

When contracts are written, the key elements usually focus on limitations on liability, indemnities and costs. Very often there is little attention paid to the scope of the contract, the parties' end goals, their responsibilities, and the services to be rendered. These are often just tacked on afterwards.

But with 'next-generation' contracts, the intention is to proactively avoid disputes and litigation. Ease of comprehension is also greatly helped by large point sizes and simplified layouts.

### The Authority

Asked whether there is much enthusiasm in the broad commercial world for the concepts of simplification and visualisation, Haapio points out that the International Association for Contract and Commercial Management has been instrumental in spreading the word and using these approaches to promote ease of doing business.

In terms of the spread of visual contracts, Haapio says: "We have worked mainly in business-to-business contracting, but we see great potential in consumer contracting.

"And we see growing interest among public procurement professionals, too – many seek to involve small local suppliers. Contract simplification and visualisation offer ways to reach and engage them. There is just too much complexity, and the time has come, not only to stop adding to it, but also to start removing or hiding much of it from our contracts.

"Having seen all the new projects that are in the works in various parts of the world at the recent Comic and Creative Contracts Conference at the University of Western Australia in Perth, I am convinced that, within the next two to three years, we will see new



A non-disclosure agreement in three-strip cartoon format

THESE DEVELOPMENTS ARE NOT JUST ABOUT COMICS OR IMAGES, THEY ARE ABOUT COMMUNICATING CONTRACTS MORE EFFECTIVELY, EMPOWERING THE PARTIES TO TAKE OWNERSHIP OF THEIR CONTRACTS, AND CREATING MUTUAL UNDERSTANDING



contract genres that are very different from the contracts we know today. These developments are not just about comics or images, they are about communicating contracts more effectively, empowering the parties to take ownership of their contracts, and creating mutual understanding.

“Clause libraries can be merged with image banks and visual design patterns, and new tech tools can make it easier to produce next-generation contracts. Coded clauses and smart contracts can automate part of their execution and help get rid of unnecessary complexity. New design paves the way for a new mindset and opens up new avenues for contract innovation and new opportunities for lawyers and clients alike.”

### Stormwatch

Have there been any legal difficulties arising from comic-book contracts?

“Comic contracts seek to prevent legal difficulties and misunderstandings, and they seem to have been successful in doing so. So far, we are not aware of any major difficulties, such as litigation.

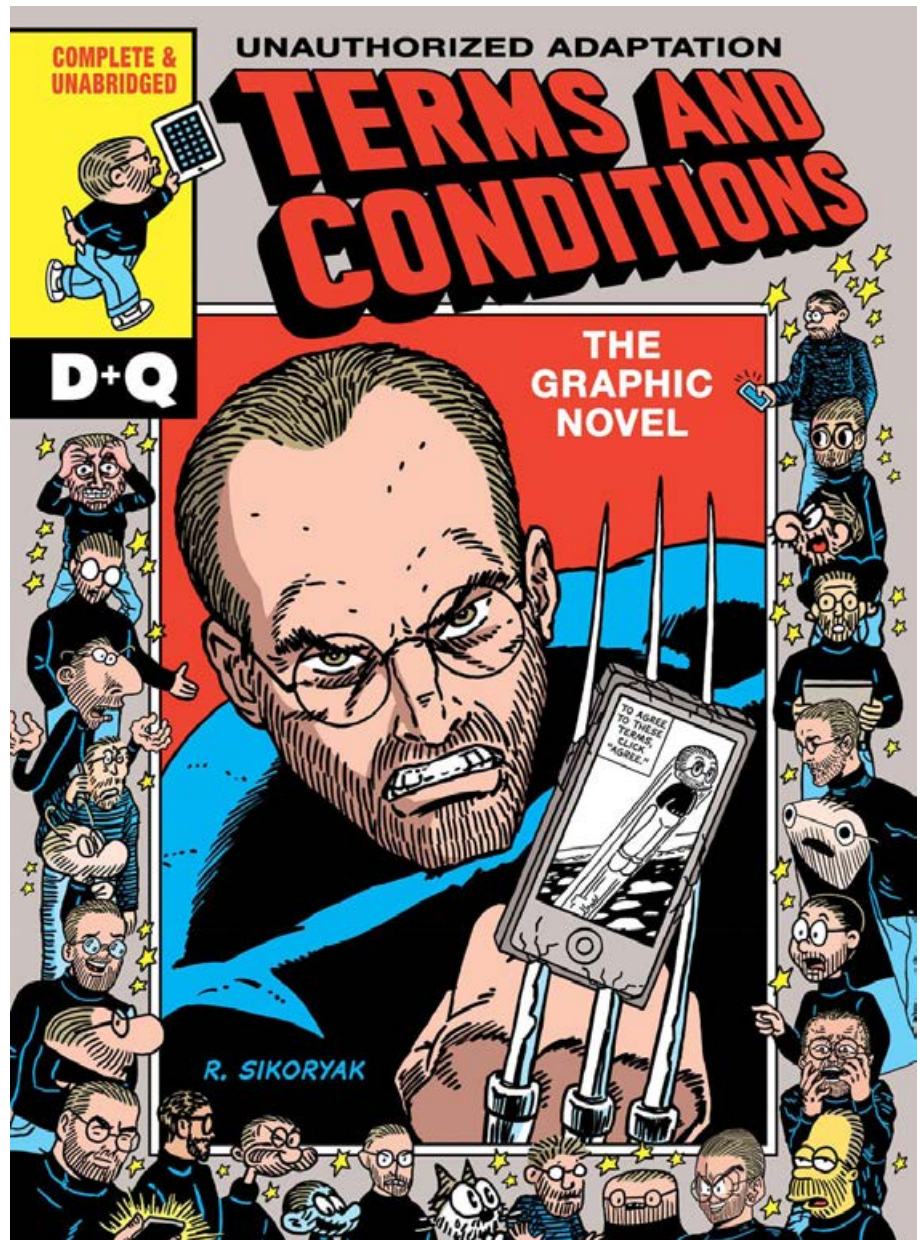
“We have been told that, in South Africa, where lawyer Robert de Rooy originally introduced the idea to fruit pickers’ employment contracts, supervisors have their comic contract with them in the field, and if questions arise, they will use the contract on the spot to prevent problems from escalating. This is proactive/preventive law in action,” Haapio says.

Haapio spoke at the Leman Consulting Future of Law conference in Dublin’s Aviva stadium last November, where she told the audience that there were over 400 of these comic contracts in existence – and working smoothly worldwide.

But are lawyers – in general, fond of legalese and traditional legal phrasing – reluctant to let it go? Is this a hard or an easy sell?

“Change is never easy, and we are talking about a major change here – in attitudes and ways of working. Existing templates are text-only and often full of legalese. Lawyers are used to following templates and precedents, and do not necessarily see contracts through their users’ eyes.

“We find allies among corporate legal departments and lawyers who, like us, seek to



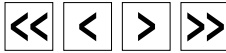
make life easier for people who work with contracts and translate them into action. As we get more examples out, business people will start to require simpler contracts from their lawyers. It may take a few years, but we believe it will happen,” she says.

### The Ultimates

Is this movement a good fit for the internet age and the flattening of hierarchies that has come with the information revolution?

“Absolutely! We should not automate existing templates that are just too complex – and neither machine-readable nor genuinely human-readable. Let’s simplify and visualise them first, and then rely on tech tools to make it easy for our colleagues to produce contracts and work with them,” she says.

Robert de Rooy, the South Africa-based lawyer who organised December’s Comic Book Contracts Conference in Perth, describes comic-book contracts as follows:



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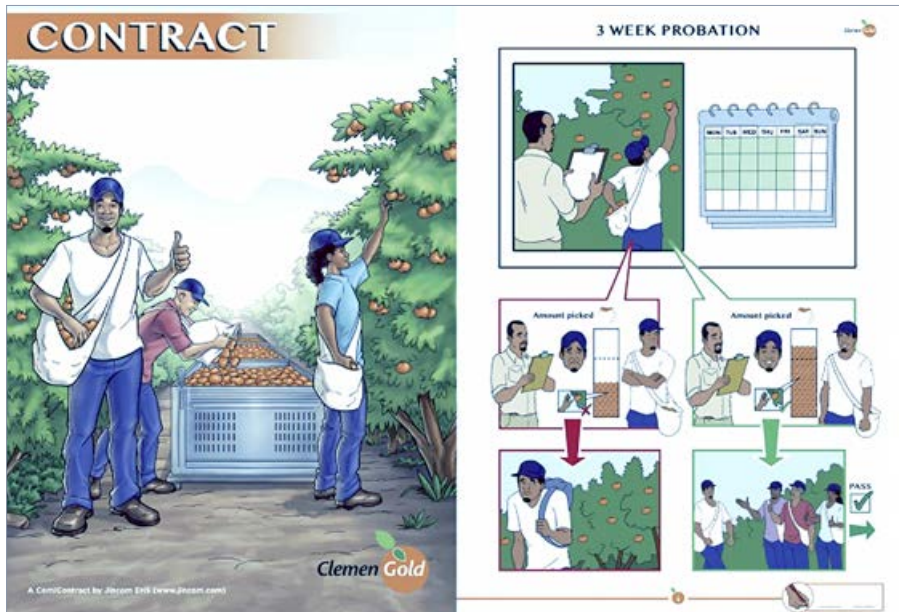
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THERE IS JUST TOO MUCH COMPLEXITY, AND THE TIME HAS COME NOT ONLY TO STOP ADDING TO IT BUT ALSO TO START REMOVING OR HIDING MUCH OF IT FROM OUR CONTRACTS

ARTIST: ROBERT DE ROOY, JINCOM.COM



A comic contract devised for fruit-pickers

- Legally binding contracts in which parties are represented by 'comic book' characters,
- An agreement that is captured in pictures,
- Relevant parties sign the 'comic' as the contract.

The concept is that everyone is enabled to independently understand the contracts they are expected to sign, thus avoiding misunderstandings, wrong decisions, and legal troubles.

As de Rooy points out, this new-style contract is serving the business relationship by making sure that expectations are aligned. "We want contracts to be useful in aligning expectations and to signal healthy relationships towards successful outcomes. We don't try to serve the interests of any party – we try to serve the relationships between them."

#### The Fantastic Four

Helena Haapio works in a lawyer/designer team with Italian-born Stefania Passera, a legal information designer whose mission

is to make contracts more user-friendly through visualisation and good design. She creates templates, explanatory visualisations, and systems of icons to make contracts usable and engaging.

Passera says: "Better understanding means more effective processes internally, and better relationships with customers and suppliers."

Will comic contracts be widespread in ten years? "They will definitely be more widespread than now, but we need to think about what we mean by 'widespread'. Will all contracts be in a comic format? No, but there will be an increase in contracts that are not purely textual. Will all visualised contracts be comic? No. Will comic contracts be the go-to format for certain types of contracts, for a certain audience? Yes, surely!

"Effective design always offers a well-fitting solution to user needs in particular contexts. I can see comic contracts becoming popular in certain types of employment and consumer contracts, and whenever we are addressing the general

population or a vulnerable subset of it.

"I do not see them becoming widespread in complex B2B or financial contracts, where the subject matter may be more abstract and difficult to represent through a comic narrative. In this case, however, diagrams and data visualisation – paired with plain language text – may be the way to go to help the readers," Passera believes.

Another comic-contract evangelist is Camilla Baasch Andersen, a law professor at the University of Western Australia. She first used these tools to help engineering students at the university understand their non-disclosure obligations in relation to work on 'spin-out' innovations being developed on campus.

She realised that engineering students could have difficulties with complex legalese and worked with associate professor Adrian Keating to create a contract made of cartoons. With simple illustrations and minimalist dialogue, the document successfully conveyed the nuances and obligations of confidentiality around the work.

"Contract law is meant to nurture relationships and facilitate frameworks wherein people can work together in agreements that tell them how to behave, what expectations to have, and what outcomes to look out for," she told the Perth conference. "We are alienating people with legalese that nobody reads, nobody understands, and nobody likes."

It seems that illustrated contracts can work particularly well in multicultural workplaces, for vulnerable groups, and for those not literate in the language of the contract. While the comic contract innovators accept that not all contracts can be improved with visualisation, they believe that some will.

And even the most text-literate consumer will surely welcome more accessible end-user contracts – and a move away from the incomprehensible jargon of many present-day legal agreements.





# Brave new world

The GDPR is an important legislative development for the profession as a whole and its impact on legal practice is likely to be substantial and long-lasting.

**John Cahir** steps inside the machine

DR JOHN CAHIR IS A PARTNER IN THE COMMERCIAL AND TECHNOLOGY GROUP AT A&L GOODBODY AND A MEMBER OF THE LAW SOCIETY'S INTELLECTUAL PROPERTY AND DATA PROTECTION LAW COMMITTEE



Most legal practitioners will, by now, be aware of the EU *General Data Protection Regulation* (GDPR) and the fact that it is due to come into force on 25 May 2018. It is well documented that the GDPR will bring about

major changes to Irish and European data protection law by enhancing privacy rights of individuals and by imposing additional obligations on organisations that process personal data.

The GDPR is an ambitious legislative project: not only does it update the rules on how personal data may be processed in the digitally connected world, it also seeks to bring about a culture change in terms of how businesses and public bodies treat personal data. As a consequence, many organisations are currently investing significant resources to ensure that they will be GDPR-ready by May. Businesses are carrying out 'data-mapping' exercises, providing training to management and staff, and

implementing new governance structures for decisions that relate to the processing of personal data.

It is not an exaggeration to say that most, if not all, solicitors will likely encounter the GDPR in the years ahead. Some solicitors will have individual clients who need advice on how to assert or enforce their privacy rights, and others will have

corporate or institutional clients that require advice on how to comply with the legislation. It is one of those rare changes in law that cuts across pretty much every area of legal practice – from employment law to financial services law to medical law. The GDPR is arguably the *Donoghue v Stevenson* of the digital age.

That said, the wide array of GDPR guides and services being offered to assist organisations in becoming GDPR compliant means that it can be challenging to identify those aspects of the GDPR that will have the most significant legal consequences in practice. This article, therefore, outlines several aspects of the GDPR that will have general importance to legal practice. Before considering

## AT A GLANCE

- The GDPR updates the rules on how personal data may be processed in the digitally connected world and seeks to change how businesses and public bodies treat personal data
- It empowers the Data Protection Commissioner to impose administrative fines of up to €10m/€20m, or 2% to 4% of worldwide turnover
- It is likely that most data controllers will need to seek legal advice on how to update their privacy notices to ensure compliance with these new requirements



PIC: SHUTTERSTOCK/NUALAREDMOND



IT WOULD SEEM LIKELY, THEREFORE, THAT THE GDPR WILL BRING ABOUT AN INCREASE IN CIVIL LITIGATION, AND GUIDANCE WILL BE NEEDED FROM THE COURTS AS TO PRECISELY WHAT TYPES OF LOSS CAN BE RECOVERED

these areas, it is useful to first consider the legislation that will, collectively, be data protection law after May 2018.

#### More complicated framework

One difficulty that practitioners will face when the GDPR comes into force is that the statutory framework underpinning data

protection law will be more complicated than it currently is. At present, the bulk of Irish data protection law is encapsulated in a single piece of legislation, the *Data Protection Acts 1988 and 2003 (DP Acts)*. The DP Acts give effect to Directive 95/46/EC – the *Data Protection Directive* – and they apply to the processing of personal data generally.

The *Data Protection Directive* will be replaced by two separate EU legal measures on 25 May 2018:

- The GDPR, which is directly effective across EU member states, and
- Directive (EU) 2016/680 – the *Law Enforcement Directive* – which applies to data processing by law enforcement



## IT IS ONE OF THOSE RARE CHANGES IN LAW THAT CUTS ACROSS PRETTY MUCH EVERY AREA OF LEGAL PRACTICE – FROM EMPLOYMENT LAW TO FINANCIAL SERVICES LAW TO MEDICAL LAW

bodies, but which is required to be implemented by way of legislation at a national level.

It should also be noted that the GDPR permits member states to introduce derogations or modifications in certain areas (for example, in setting the ‘digital age of consent’ at between 13 and 16 years). One final complication is that the EU does not have competency in some areas, for example, on matters of national security, and therefore neither the GDPR nor the *Law Enforcement Directive* will apply to these fields of activity.

In May of last year, the Department of Justice published [draft heads](#) of a new *Data Protection Bill* that sets out the department’s current thinking on how to legislate for these complications. It suggests that three separate codes of data protection law will arise:

- For the processing of personal data generally, the directly effective GDPR will apply, subject to modifications/derogations to be introduced by the *Data Protection Bill*,
- For the processing of personal data by public authorities for criminal law purposes (such as by the gardaí in the course of an investigation), the *Law Enforcement Directive*, as implemented into Irish law by the *Data Protection Bill*, will apply,
- For the processing of personal data that falls outside the field of EU law (for example, the processing of personal data by the State for national security purposes), a separate, as yet to be decided, statutory code will apply.

At the time of writing, the Government has not yet decided whether the *DP Acts* will be repealed in their entirety or whether they will be retained for the purposes of regulating data processing activities that fall outside of



‘Data Protection’ Bill: “It’s more than me job’s worth”

the EU’s areas of competence. This is an issue that remains under consideration pending publication of the *Data Protection Bill* in full. The bill is, in many ways, as important for legal practice as the GDPR itself, and it will need to be closely scrutinised by anyone advising in this area.

Finally, the sectoral privacy rules that apply to electronic communications – currently contained in the *ePrivacy Directive* – are also in the process of being revised at a European level. A draft directly effective *ePrivacy Regulation* has been published by the European Commission and is being targeted to be finalised in the course of 2018.

### Increased enforcement

At present, the Data Protection Commissioner (DPC) has limited powers of enforcement. It can order data controllers to cease unlawful data processing, but it cannot impose financial sanctions for breaches of the legislation. The GDPR overhauls that position by empowering the DPC to impose administrative fines of up to €10m/€20m, or 2% to 4% of worldwide turnover, depending on the nature of the breach. This measure alone explains why GDPR compliance has become a top business priority.

The DPC already has wide investigative powers under the *DP Acts*; however, the *Data Protection Bill* recognises that the new-found power to impose fines brings with it a corollary requirement for fair

procedures. It is to be expected that clients under investigation will require expert advice on their interactions with the DPC and in ensuring that their own rights are properly respected by investigators. Ultimately, court sanction will be required when an administrative fine is imposed by the DPC.

The regulatory impact of the GDPR may in time resemble the change in approach to financial regulation that occurred in the aftermath of the financial crisis. Indeed, the new regulatory powers for the DPC have been modelled on those granted to the Central Bank under financial services legislation.

The Government has underscored its commitment to Ireland’s position as a leading international centre for data regulation by increasing the funding of the DPC sixfold since 2012. The DPC has announced that it will be increasing its staffing levels to 130 in 2018. So data protection regulation will be an area of increased legal and regulatory activity post-May 2018.

### Civil claims

The current *DP Acts* provide a right for individuals to bring a claim in tort for breach of their data protection rights. Since the 2013 High Court ruling in *Collins v FBD Insurance*, the extent of that right has been confirmed as being limited to claims for pecuniary loss only. Due to the fact that losses suffered in data breach cases are typically of the non-pecuniary kind, this limitation has probably prevented the emergence in Ireland of large numbers of claims for breach of data protection rights.

That will change with the introduction of the GDPR, which expressly permits the recovery of both material and ‘non-material’ damage (article 82(1)). The concept of non-material loss is afforded a wide meaning



PIC: SHUTTERSTOCK



in the GDPR, thus opening the door for individuals to claim damages for emotional distress or similar types of loss arising from a data breach. It would seem likely, therefore, that the GDPR will bring about an increase in civil litigation, and guidance will be needed from the courts as to precisely what types of loss can be recovered.

The GDPR also permits member states to introduce measures so that non-profit organisations can take representative actions on behalf of data subjects. This has been described by some commentators as paving the way for ‘class action’ law suits. The current draft of the *Data Protection Bill* does not provide for this type of representative action; however, the introduction of a wider class action system is on the political agenda, so proposals in this area may emerge.

### Data processing

Another change under the GDPR that is of particular significance to legal practitioners is the new rules applicable to data-processing arrangements. A data processor is a person that processes personal data on behalf of a person or entity that exercises decision-making control over that data. For example, an IT service provider may store or otherwise process personal data on its client’s behalf. Law firms themselves may be data controllers or processors of client personal data, depending on the basis on which they hold/use that data.

Under the *DP Acts*, processors are subject to a limited set of statutory obligations. These are due to expand considerably under the GDPR. In particular, processors will be subject to new record-keeping requirements, they will be obliged to cooperate with the DPC, and there are express restrictions on them making onward transfers of personal data. In addition to these statutory obligations, there is a long list of mandatory provisions contained in the GDPR that will need to be included in data processing contracts (article 28).

The upshot of these measures is that the balance of risk and responsibility as between controllers and processors will change as a result of the GDPR. Existing and future contracts will need to be updated to reflect these new requirements, and liability provisions more generally will need to be reassessed in light of the changes.

### Notice requirements

Controllers are already under an obligation to provide certain information to data subjects about the processing of their personal data. For example, employers are required to notify employees about how their personal data will be used, and website owners have to inform website visitors about the type of data gathered and the purposes for which that data will be used.

The GDPR expands the mandatory


notice obligation of data controllers.

For example, data subjects must be given information about the legal basis justifying the processing, and the period for which their data will be retained.

It is likely that most data controllers will need to seek legal advice on how to update their privacy notices to ensure compliance with these new requirements.

### Rights and obligations

More generally, as data and digital technologies become ever more central to our daily lives, clients across all sectors will increasingly need guidance about their rights and obligations under data protection law. For example, in preparing for the introduction of the GDPR, one of the most frequently asked questions by controllers is “what is an appropriate legal basis for justifying their processing of personal data?” The GDPR is principles-based legislation and, therefore, many of these questions require interpretation of legal text, and hence legal advice.

The GDPR is an important legislative development for the profession as a whole, and its impact on legal practice is likely to be substantial and long lasting. The introduction of the GDPR coincides with an increased public awareness and, in some cases, concern about privacy issues, so clients will be alive to the need to ensure compliance with their obligations. 



# The undiscovered country

Solicitors would do well to consider complex discovery from their client's perspective. **Peter Gallagher** reports from the other side

PETER GALLAGHER IS HEAD OF FUNCTION IN THE ENFORCEMENT ADVISORY DIVISION OF THE CENTRAL BANK. ALL VIEWS ARE HIS OWN

In the context of modern commercial litigation, it is staggering how infrequently complex discoveries are considered through the prism of project management. Simple, practical measures can be implemented to reduce the pain of large and complex discovery projects.

Project management in large-scale discovery involves robust planning, governance, communication, and management. I was involved in one discovery where some 4.5 million documents were to be reviewed. That discovery involved over 70 people – from reviewers, to counsel, to third-party technology providers, to case managers, to lawyers, to IT personnel, and so on. It took over two years to complete and saw many people (myself included) come and go throughout its lifespan.

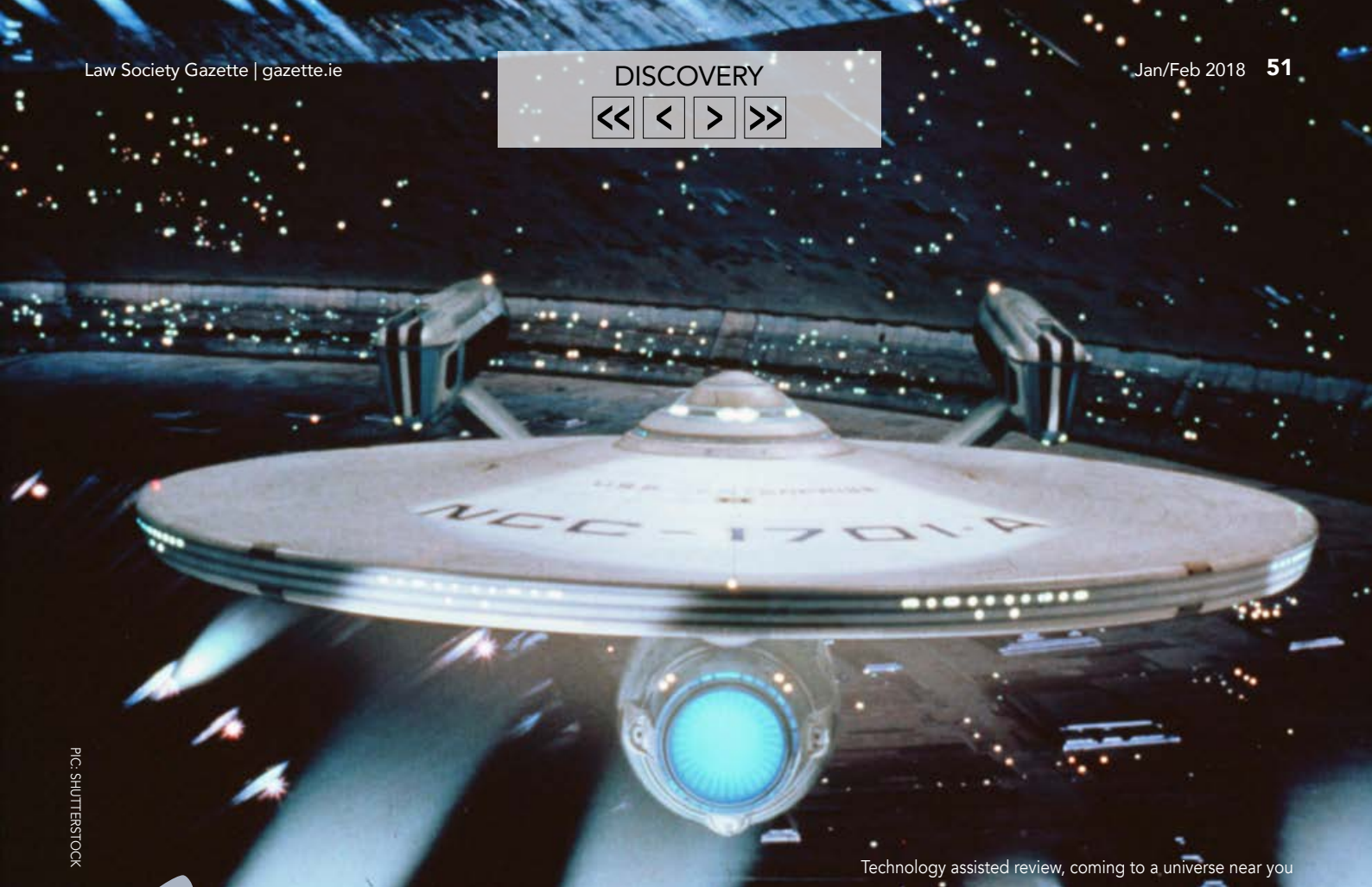
Faced with a discovery process of this magnitude, the first step as the client was to identify the core team, both internal and external, and to identify the roles and responsibilities of the people on that team. Second, we put in place a

communications protocol: who was to be included on communications and at meetings, naming conventions for emails, and shared databases for management information. This all proved invaluable once adopted at project inception. Third, we established a client audit document, separate to the audit document maintained by the review team. The client audit document recorded the steps and decisions taken internally – for example, which databases to search, what custodians were relevant, and what service providers to use.

Despite the various technologies now available, discovery is still

## AT A GLANCE

- Discovery is still extremely costly, and it is essential that the client factors in the financial, technical and human resources necessary for discovery
- Human relationships are an important aspect of any substantial discovery exercise, with the solicitor/client relationship underpinning the entire process
- Correctly scoping a discovery exercise is critically important to the outcome



PIC: SHUTTERSTOCK

Technology assisted review, coming to a universe near you

## OMITTING A SINGLE DATA SOURCE CAN RESULT IN THOUSANDS OF RELEVANT DOCUMENTS BEING OVERLOOKED. IT IS THEREFORE IMPORTANT THAT THE DECISIONS MADE REGARDING SCOPING ARE DOCUMENTED

extremely costly, and it is essential that the client factors in the financial, technical and human resources necessary for discovery. External lawyers will also face the challenge of assembling an appropriately skilled and sized review team.

Correctly scoping a discovery exercise is critically important to the outcome and efficiency of the process. While mailboxes and file-share documents might be obvious sources, tablets, blackberries, personal mobiles, smart watches, personal email addresses, audio and video recordings, hard drives, CDs, DVDs, USBs, and personal drives are just some of the other sources of electronic data that may need to be considered, if only to be discounted. Omitting a single data source can result in thousands of relevant documents being

overlooked. It is therefore important that the decisions made regarding scoping are documented.

### Scoping checklists

Solicitors will frequently issue clients with discovery questionnaires and, while these are useful, they are generally standard templates that do not take account of the peculiarities of a client's data landscape. It may be appropriate for the client to develop its own scoping checklists or questionnaires, which will form part of the client's audit file within the overall project-management structure.

Frequently, the people in a client organisation interrogating data in a discovery context are far removed from the events to which the data relates. Further, few organisations have teams specifically dedicated

to managing e-discovery. Employees are frequently tasked with managing complex discovery exercises alongside their day jobs. People naturally prioritise their day job, but a considered project-management structure can mitigate this risk.

Another challenge in any discovery is managing expectations. A strong project team within the client's organisation will manage the sometimes unrealistic expectations that solicitors have in terms of a client's ability to deliver documents to them for review. The project team will have to report to senior stakeholders within the client organisation and manage their expectations around the cost, duration and robustness of the discovery process. The IT personnel in the client organisation will need to manage expectations around how and when they can



## Q FOCAL POINT

### GDPR COMPLIANCE

The GDPR will have a profound impact on e-discovery once it comes into effect on 25 May. Where data processors, such as your e-discovery provider, are established within the EU, they will be subject to obligations directly imposed on them by the GDPR, in addition to their contractual obligations. The GDPR will permit data transfers to processors in non-EU countries

by new avenues, such as approved codes of conduct and approved certification mechanisms. The GDPR also imposes more prescriptive obligations than current data protection law in relation to the terms of a data processing contract. Clients also face increased penalties for non-compliance, with potential fines of up to €20 million, or 4% of total annual global turnover.

deliver data and provide realistic estimates of volumes to enable appropriate review teams to be established. Solicitors will need to manage expectations as regards how long the review will take.

Managing competing priorities can be a major headache. The same client (should they have the misfortune) could be dealing with a multiplicity of information requests at the same time, from civil litigation,

to investigations (civil or criminal), to governmental inquiries, to regulatory investigations, to data access requests, to customer information requests – the list goes on. Bottlenecks can sometimes be alleviated by investing in additional resources or streamlining processes but, ultimately, decisions must be made around the prioritisation of competing e-discovery exercises. A good solution is a steering group

to evaluate such competing priorities and agree how to manage them. Considerations such as the nature and materiality of the underlying matter, the likely volume of data and the consequential drain on resources, and the deadline by which the data is required are all relevant in this regard. Such a steering group necessarily needs to be made up of legal, business and technical personnel.

#### Relationship management

Believe it or not, human relationships are an important aspect of any substantial discovery exercise, with the solicitor/client relationship underpinning the entire process. It is incumbent on the solicitor to proactively gain an in-depth understanding of the client's data landscape. The solicitor needs to step inside the client organisation (physically as well as metaphorically) to truly understand the scale and detail of the challenges facing the client. Conversely, the client must be open and up front with its solicitor, recognising that they are there to assist with the most difficult of issues and should not be sheltered from them.

The client must also be prepared to challenge its solicitor. External solicitors may not fully appreciate the impact that a particular approach will have on the client, and it is therefore incumbent upon the client to challenge the views held by external solicitors, particularly where those views will have strategic, operational or financial consequences for the client.

The other critical relationship is that between the client and e-discovery provider. While cost is, of course, an important consideration, the suitability of the provider and their software is paramount. For the client, this can be a very difficult choice to make, and one that can have real ramifications for the overall discovery project. A few observations here:

- Know your budget – this will rule out certain providers,
- Ensure that they all quote for similar services and that there are no hidden costs,
- Be sure that you can work with the people you are contracting with, and
- They will all tell you that their offering is perfect for your project, so conduct your own research, talk to somebody independent (experienced solicitors can help here), and don't be afraid to ask for trial runs or demos.

ONE OF THE ADVANTAGES OF BEING DISORGANISED IS THAT ONE IS ALWAYS HAVING SURPRISING DISCOVERIES. THESE ARE BEST AVOIDED





## I AM SATISFIED THAT, PROVIDED THE PROCESS HAS SUFFICIENT TRANSPARENCY, TECHNOLOGY ASSISTED REVIEW USING PREDICTIVE CODING DISCHARGES A PARTY'S OBLIGATIONS UNDER ORDER 31, RULE 12

Maintaining the integrity of potentially relevant material before, during and after review is frequently overlooked. Any discovered document could be the subject of a notice to inspect and, as such, it needs to be readily accessible and its integrity protected. Ideally, your documents would be on lockdown for the duration of the litigation, but the reality is that, during the discovery process, both hard and soft-copy documents may need to be accessed by many people – the client, the review team, counsel, witnesses and experts, to name a few.

The plot thickens when the same documentation needs to be accessed for multiple purposes. In one case in which I was involved, it transpired that our hard-copy documentation was potentially relevant to two unrelated cases. Three case managers and three teams of lawyers all wanted to review the same documentation. We devised a process that enabled the material to be safely reviewed by multiple parties working on different projects, and for each party to take copies or scans of the material of interest to them, without the integrity of the material being affected. Again, good project management and governance was to the fore.

### Privilege

An in-house lawyer might have a multiplicity of roles or functions within the organisation but, for privilege to attach, the lawyer must be acting in that particular instance as an independent legal adviser. In a recent [English High Court](#) decision, the individual in question was engaged by the client as 'a man of business' – that is, as the head of mergers and acquisitions – and so legal advice privilege did not attach, even where legal advice had been given by a lawyer.

### Data access requests

Where your opponent has sought discovery of documents available to you by means

of a data protection request, but not in your possession, you may now have to take reasonable steps to obtain the documents if they are relevant and necessary, and the request is proportionate and not unduly oppressive. In a [recent High Court decision](#) on this subject, Baker J compelled the defendant to make discovery of documents available to him through a data access request.

### Rules of the Superior Courts

Reform of the rules of discovery in this jurisdiction is now a real prospect. A group chaired by the President of the High Court is reviewing the administration of civil justice in Ireland, and the law of discovery is one of the areas upon which the review group has requested submissions by 16 February 2018. Any reforms that would reduce cost and delay in discovery are to be welcomed and, with this in mind, the Commercial Litigation Association of Ireland's Discovery Subcommittee published a discussion paper, including a set of draft amendments to order 31, rule 12 of the *Rules of the Superior Courts*.

### Predictive coding and TAR

I was on the client side of the pioneering application for the use of predictive coding in *IBRC v Quinn*, in which Fullam J concluded: "I am satisfied that, provided the process has sufficient transparency, technology assisted review [TAR] using predictive coding discharges a party's obligations under order 31, rule 12." It is clear from that case and subsequent judicial comment that, not only is the use of this technology permissible under the *Rules of the Superior Courts*, we are arguably now obliged to consider its use in appropriate cases. Predictive coding or TAR will not suit all large e-discoveries, and issues like the number of documents, the susceptibility of the documents to predictive

coding, the complexity of the categories of discovery and so on, must be considered by solicitor, client and technologist at the outset. (See 'Discovery programme', *Gazette*, April 2017, page 44.)

Without wanting to state the obvious, both solicitor and client must understand the technology before deploying it. This can be achieved by talking to people who have used it, reading the judgments in *IBRC v Quinn* and the *Da Silva Moore* case in the US, reviewing some of the empirical evidence that establishes its superiority over traditional human review, and talking to the providers of the technology.

Key factors in a decision to use TAR will be cost, time, and quality of output. Try not to think of predictive coding as something used in isolation. It is used in combination with human intervention and various other technologies, designed to analyse and evaluate the output and improve it, where necessary.

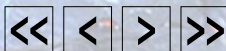
[AA Milne](#) wrote: "One of the advantages of being disorganised is that one is always having surprising discoveries." In a litigation context, 'surprising discoveries' are best avoided. A simple and effective project-management approach can go a long way towards smoothing the path. [E](#)

## LOOK IT UP

### CASES:

- [Da Silva Moore v Publicis Groupe](#) (2011) Civ 1279 (ALC) (AJP)
- [IBRC v Quinn](#) [2015] IEHC 175
- [SFO v ENRC](#) [2017] EWHC 1017 (QB) at paras 188-190 (under appeal)
- [Susquehanna International Group Ltd v Needham](#) [2017] IEHC 706





# Sounds like a revolution

Lawyers need to re-think legal risk and compliance. **Bob Semple**, who spoke at the 2017 In-house and Public Sector Conference, warns of the impact of four transformational, disruptive technologies

BOB SEMPLE IS A DIRECTOR, LECTURER AND INDEPENDENT CONSULTANT WHO ADVISES BOARDS AND SENIOR MANAGEMENT TEAMS ON GOVERNANCE AND RISK ISSUES, WITH A SPECIAL FOCUS ON BOARD EFFECTIVENESS

**I**n my work with boards, I encourage ‘respectful challenge’ – it’s something that’s easy to contemplate, harder to deliver, and hardest of all to respond to. Here are three ‘respectful challenges’ to legal risk and compliance:

- Undue volume and complexity,
- Lack of ownership, and,
- Risk and compliance blindness.

### Volume and complexity

Chief Justice Frank Clarke recently compared the law to a house that has been built ‘higgledy-piggledy’ over a number of years – a new part of the house built whenever a new need was identified. The end result was a house that looked awful and didn’t fulfil its function (*The Irish Times*, 1 November 2017).

One software company specialising in regulatory solutions for multinationals estimates that “there are approximately 1,200 regulatory agencies overseeing banking on a global basis that deliver an output of about 2,000 regulatory changes daily”.

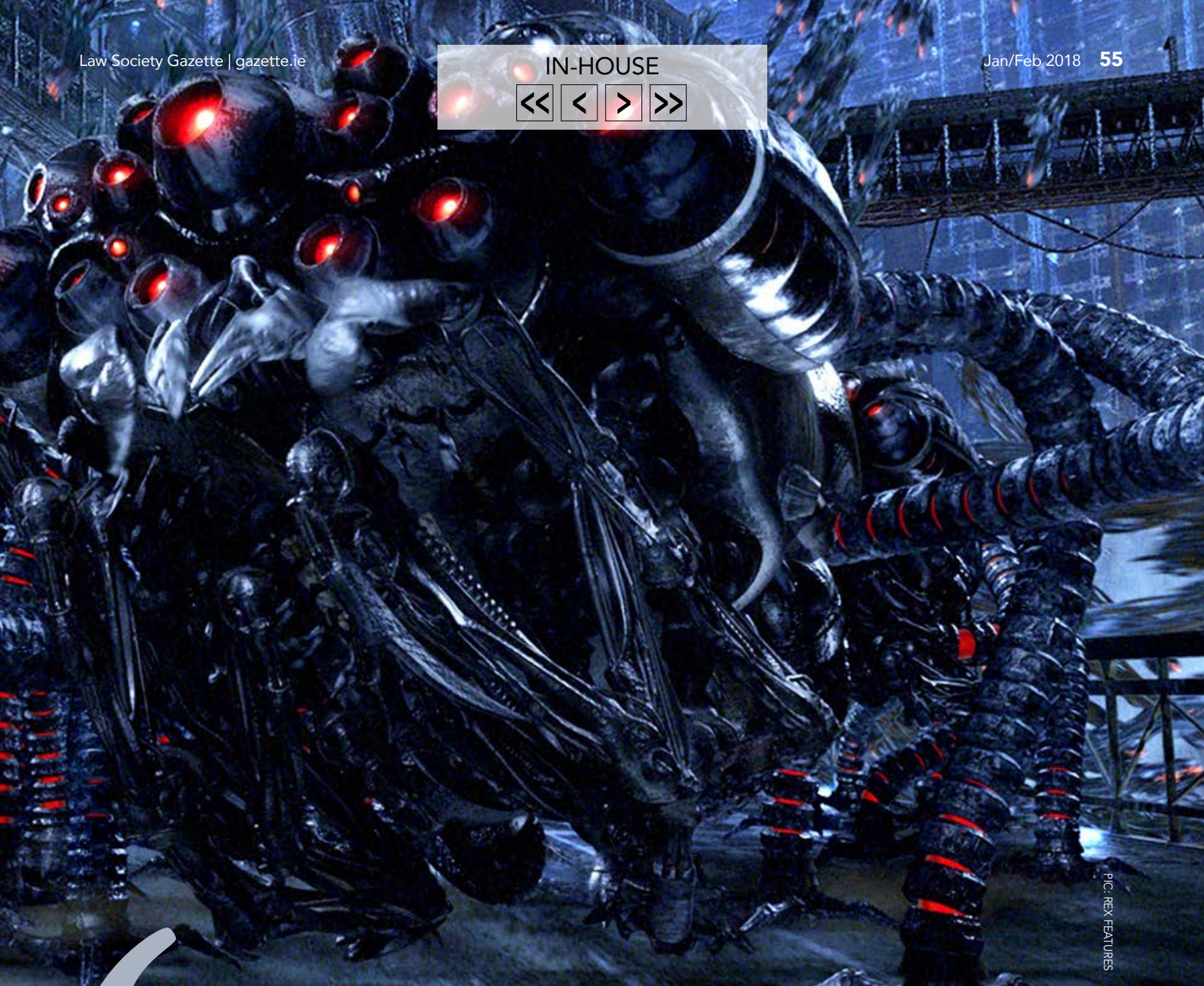
Of course, there are times when detailed legislation and regulation is necessary. But are we inadvertently defeating the purpose of these rules by continuing to produce more and more, ever-more-complex rules that make legal risk and compliance unworkable?

### Lack of ownership

An article in the *Harvard Business Review* in July 2017 reported that those firms that most quickly appointed chief risk officers after the global financial crisis were the ones, perversely, that had the greatest drop in self-regulation

## AT A GLANCE

- Three ‘respectful challenges’ to legal risk and compliance
- The origins, impact, and implications of major risk events
- Risk and compliance blindness
- Major disruptive transformational technologies that will have a significant impact on risk
- Responding to these challenges, lawyers will have to consider their own and their employers’ needs



PC: REX FEATURES

THERE ARE APPROXIMATELY 1,200 REGULATORY AGENCIES OVERSEEING BANKING ON A GLOBAL BASIS THAT DELIVER AN OUTPUT OF ABOUT 2,000 REGULATORY CHANGES DAILY

from a risk perspective. If it's 'somebody else's job', then 'why should I bother to do anything?' seemed to be the logic.

A major study from Cass Business School on the origins, impact, and implications of major risk events identified seven key risks that are potentially inherent in all organisations. They can pose an existential threat to any firm, however substantial, that fails to recognise and manage them, namely:

- Board skills and non-executive directors' (NED) control of risks – limitations on board competence and the ability of NEDs effectively to monitor and, if necessary, control the executives,
- Board risk blindness – the failure of boards to engage with important risks, including risks to reputation and 'licence to operate', to the same degree that they engage with reward and opportunity,
- Poor leadership on ethos and culture,
- Defective communication – risks arising from the defective flow of important information within the organisation, including to board-equivalent levels,
- Risks arising from excessive complexity,
- Risks arising from inappropriate incentives – whether explicit or implicit, and
- Risk 'glass ceilings' – arising from the inability of risk management and internal audit teams to report on risks originating from higher levels of their organisation's hierarchy.

For legal risk and compliance, it can be all-too-tempting to pass the buck to the in-house lawyer/general counsel instead of 'owning the issues'.



**Military research** has identified four factors in today's world that have been found to apply equally to businesses: volatility, uncertainty, complexity, and ambiguity. Perhaps this is one reason why we are still relatively poor at identifying major shifts in risk?

Another reason is that our brains are not especially well equipped to do so – we are far better at extrapolating on a linear basis,

rather than geometrically or exponentially. When there are developments moving at exponential speeds, we find it much more difficult to identify the significance of these – for example, when scientists reported that, after seven years of diligent work they had sequenced 1% of the human genome, many people concluded it would take a total of 700 years to complete the job. However, because work was progressing at

an exponential rate, it actually took only seven more years before the entire genome was sequenced.

### Rising to the challenge

The implications for legal risk and compliance are numerous and multi-layered. For policymakers (including regulators), the challenge has been neatly described as follows: “Policymakers are flying blind into

## Q FOCAL POINT

### DISRUPTIVE TECHNOLOGIES

I suggest that there are four major disruptive transformational technologies (developing exponentially) – ‘bio’, ‘info’, ‘nano’ and ‘cogno’ – that need much closer scrutiny. Here are some examples of just how disruptive they have been – and will continue to be.

#### BIO

- CRISPRcas9 – a new approach that enables genetic editing with relative ease (the recent Young Scientist and Technology Exhibition featured two prize-winning projects in this area),
- Use of 3D printing (to create a ‘scaffold’) and stimulated stem cells is prompting production of artificial organs in a laboratory,
- Cultivating muscle tissue samples from a cow and replicating the cells 1 billion billion times is enabling the first artificial hamburgers to be produced. The cost of a single lab burger has dropped from US\$250,000 to US\$10 (the end product is indistinguishable from ‘real meat’).

#### INFO

We have generated more information in the last two years than in the history of mankind. For example, a typical jet engine today produces 500GB of data per flight, monitoring as many as 5,000 separate parameters every second. Predictions suggest that we will generate as much as 165 zettabytes by the year 2025 – a zettabyte is 1,000,000,000,000,000,000 bytes.

#### NANO

Start with a metre. Divide it into a thousand pieces. Divide each of those by a thousand. And divide each of those by a thousand. Now you have a billion nanometres. That’s the scale that we are increasingly using to make things:

- An antimicrobial nanocrystalline silver dressing that rapidly kills bacteria in as little as 30 minutes,
- A tennis ball with a nanocomposite coating that keeps it bouncing twice as long as an old-style ball,
- A filter that stops the smallest of particles, retaining 99.9999% of viruses,
- Nanocomposites in a car bumper that make it 60% lighter and twice as resistant to scratching.

And we can make devices at a similarly tiny scale – smaller, more powerful and less costly than ever before.

Connecting these to the internet results in the so-called ‘internet of things’, with over 50 billion connected devices expected by 2020.

#### COGNO

Advanced robotics:

- Amazon uses over 45,000 robots in its warehouses,
- A robotic weeder (no driver required – it uses GPS), selectively destroys weeds (using machine vision and deep-machine learning), leaving the desired crop intact.

Augmented reality:

- Gaming (such as Pokémon Go),
- Traditional business processes, for example, inspection of residential and office properties from afar, enhanced education programs, remote surgery, etc.

Deep-machine learning: expert medical diagnosis matches and exceeds the skills of specialist clinicians in areas such as cancer, dermatology and psychiatry.

Chatbots: replacing traditional call-centre staff.

Blockchain: has already caused a stir with new crypto-currencies. Its real potential, however, lies in disruptive innovations that replace traditional processing; for example, in registering and tracking assets (such as title to land), financial transaction processing, etc (see *Gazette*, December 2017, p34).

Artificial intelligence:

- Intelligent personal assistants (Echo, Siri, Amy, Viv),
- Customer mining (Netflix’s recommendations for new movies/series), and
- Automated financial analysis of corporate filings, etc.

Future breakthroughs will increasingly use combinations of these technologies to deliver unprecedented changes in our lives. Consider, for example, that people born in 2018 probably won’t have to learn to drive.



## FOR LEGAL RISK AND COMPLIANCE, IT CAN BE ALL-TOO-TEMPTING TO PASS THE BUCK TO THE IN-HOUSE LAWYER/GENERAL COUNSEL INSTEAD OF ‘OWNING THE ISSUES’

what has been called the fourth industrial revolution or the second machine age” (*Nature*, April 2017).

Lawyers will need to consider their own needs and those of their employers/clients. Some likely responses include:

- Engaging the ‘C-Suite’ – the highest-level executives in senior management usually have titles beginning with ‘chief’, forming what is often called the ‘C-Suite’. These should be involved in conversations about the full effect of these disruptive, transformative technologies on their organisations.
- Challenging all managers to play an active role in identifying legal risk and compliance issues that arise from bio, info, nano and cogno developments (see focal point, p56).
- Identifying challenges in employment law – nearly half of all jobs will be displaced, and other experts point to the creation of entirely new jobs because of such displacement.
- Identifying the new threats from bad actors, especially regarding cyber-threats (see *Bughin et al*, June 2017).
- Examining opportunities to use these disruptive technologies to help with legal



NED risk: ‘Hi-diddly-ho, neighbourino’

risk and compliance. Already, in a recent case in Dublin, a large law firm turned to AI systems to help reduce a theoretical total of 11 million discoverable documents to a more manageable set of 11,000 for more detailed examination.

- Committing even more strongly to continuous learning to stay ahead of these developments.

The Chinese curse ‘may you live in interesting times’ springs to mind? Challenging times indeed. [g](#)

## LOOK IT UP

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- Bughin, Jacques et al, ‘Artificial intelligence: the next digital frontier?’, McKinsey Global Institute, June 2017
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- Pernell, Kim, Jiwook Jung, and Frank Dobbin, ‘Hiring chief risk officers led banks to take on even more risk’, *Harvard Business Review*, 13 July 2017
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# The perfect match

The integration of people from different firms and corporate cultures is often the determining factor in the success or failure of a merger/acquisition.

**John Rankin** asks: what's your relationship deal-breaker?

JOHN RANKIN HAS OVER 18 YEARS' EXPERIENCE IN HUMAN RELATIONSHIP DYNAMICS, WHICH DEMONSTRATE HOW CERTAIN PEOPLE WORK WELL TOGETHER AND OTHERS DON'T



Mergers and acquisitions (M&As) are instruments for businesses seeking to achieve organisational objectives. As anyone who has been involved in corporate deals will testify, completing an M&A is usually considered the

easy part. Mergers happen for different reasons, but essentially occur between businesses with complementary strengths and weaknesses in the hope that:

- Performance will increase and costs will decrease,
- The business will diversify,
- They will achieve supply-chain pricing reduction,
- They will achieve growth, or
- They will eliminate competition.

The challenge lies in bringing the two organisations together, managing staff through uncertain times, and realising the value from the deal. These amalgamations have a profound effect on the employees of the organisations at every level as the two seek to integrate into one. While acquirers and vendors may be tempted to breathe a sigh of relief once a deal is complete, the truth is that the real work has only just begun.

One way or another, people's lives are affected. In many cases, the fallout from people issues – such as the disruption of changed roles or managing different teams – can lead to people leaving.

## Key areas

In any integration programme, there are some decisions that are absolutely critical, but also very sensitive. One of these is

people integration. A recent [report](#) from PwC stated that the top two post-close integration challenges since 1997 have been the integration of business processes, and their underlying information technology systems and people. It is noted and acknowledged that people are, and continue to be, extremely difficult to integrate.

Another critical decision area relates to IT systems, as this tends to pervade all aspects of the organisation. Most effort is put into IT integration, because these systems will be known from the outset and, therefore, how or whether the two systems will work together. It has been suggested that both IT and people integration require the greatest and longest commitment.

The consideration of a merger or

## AT A GLANCE

- The top two post-close M&A integration challenges are the integration of business processes, their underlying IT systems, and people
- Clear vision on key issues and deal-breakers, and due diligence before the merger takes place, are vitally important – as is a clear strategy afterwards
- Disagreements between personnel and current management can lead to lawsuits
- Companies involved in M&As could be sleepwalking into litigation over age bias



MANAGEMENT MUST SELECT WHO THEY RETAIN OR WHO THEY RETRAIN. THE UNKNOWN FACTOR IS, 'ARE THEY PICKING THE RIGHT PERSON FOR THE NEW REORGANISED TEAM?'

acquisition usually comes packed with mixed feelings – from excitement and enthusiasm, to fear, uncertainty and resistance. These emotional reactions can occur at every level of the organisation and can have more of an impact the further up you go on the corporate pyramid.

As every employee knows, mergers tend to mean job losses or people leaving. No sooner is the announcement made than the most marketable and valuable members of staff send out their CVs. Unless they learn quickly that there is a strategy in place for people integration, and that the deal will give them opportunities rather than pay-offs, they will be gone – often with the danger of taking key clients out the door with them. This will be reflected inevitably in a drop in company share value.

#### People due diligence

Unfortunately, I am unaware of any due diligence being carried out on people in a pre-merger situation that has given any indication of the management or key people's ability to work together in a post-merger changed cultural environment. Even in post-merger

team selection, where management or HR strives to achieve the 'best of both' in terms of people selection, tension becomes evident.

People with similar functions in each organisation will see that only one can be successful in retaining their current role. They will also see that management must select who they retain or who they retrain. The unknown factor is, 'are they picking the right person for the new reorganised team?' This is a huge area where managers have no training – nor is training provided by any business school.

Managers have to get used to new people and their interpersonal relationships. It can take several months to understand the dynamics, during which time good people may leave and a company may be left with the underperformers, who cause further long-term disruption.

How an organisation deals with its employees before, during and after the transaction can have a huge effect on its success. The need for clear vision on key issues, deal-breakers, and due diligence before a merger is vitally important, but so is a clear strategy after it.

If 'people' due diligence is done, it is normally only done on the senior executives, and can range from colleague enquiries to psychometric testing. Because there is no process of people integration, this leads to people difficulties that can end up in litigation.

Disagreements between personnel and current management over the effort and results attributed to those at the acquired firm also appear regularly. Such disagreements can lead to distrust on both sides and a dysfunctional operating environment. If current management tries to remove former officers, litigation may be brought by those employees. Alternatively, former officers may stay employed, but bring lawsuits alleging breach of the post-acquisition agreement. Neither scenario is preferable, and can place the entire acquisition in the spotlight for the wrong reasons.

#### Personal chemistry

Personal chemistry matters every bit as much in mergers as it does in marriage. It starts and matters most at the top of the



## HOW AN ORGANISATION DEALS WITH ITS EMPLOYEES BEFORE, DURING AND AFTER THE TRANSACTION CAN HAVE A HUGE IMPACT ON ITS SUCCESS

organisation, but also has effects throughout the entire workforce, and through to the customers.

Bain & Company, one of the world's 'big three' management consulting firms, reported in a December 2013 [article](#) that customers are only as happy as the firm's frontline staff, who, in turn, are only as happy as their manager, and so on up the line. So, engagement and retention are known to be dependent on managers.

Without leadership from managers, a company that is being bought can all too often feel like a defeated army in an occupied land. Employees will wage guerrilla warfare against the merged company, and possibly leave at a crucial time, causing further disruption and damage. This destructive behaviour can go undetected and cause serious problems for a company, which can affect others within the organisation and, in turn, cause key people to leave.

In general, employee fallout from M&As tends to be resolved via trade union negotiations prior to the enactment of:

- New employment contracts with new terms and conditions,
- Retraining schemes,
- Voluntary redundancies, and
- Agreed severance packages.

In some cases, where agreement is not reached, the consequences are compulsory redundancy and, in other cases, disputes that become public. The key areas to focus on are (a) why so much time is taken to negotiate severance packages for key employees, and (b) whether companies involved in M&As are sleepwalking into litigation over age bias (see the European Monitoring Centre on Change's '[ERM case studies: the consequences of mergers and acquisitions](#)').

This survey reveals that older age groups can tend to be over-represented in redundancy situations. It could be that

older age groups may be seen as being too expensive to employ due to seniority, length of service, pension contributions, and other matters. Or they may be regarded as lagging behind in technology terms, and are therefore encouraged to leave. This could be interpreted as bias against older people, where management does not consider knowledge or customer relationships as being important.

### Equality law

Equality law is an area of ever-increasing importance and relevance, particularly in the context of the employment relationship. The law in Ireland relevant to this area is set out in the [Employment Equality Acts 1998-2011](#) and deals specifically with discrimination in the workplace on nine grounds, including age, race, and gender. In the context of post-merger integration, it is important that any redundancies or promotions are not in breach of equality laws or other employment laws, and that there is a process in place that is transparent as to selection for promotions or redundancies.

Many companies ignore the importance of assessing their human capital because it is far from simple. Usually, assessing their human capital is left till post-merger and is probably given to one person in the case of a small company, or to an already overstretched HR department who are up to their necks in new contracts and other matters.

The five HR mistakes that companies make in M&As are:

- Not being involved early enough on the people integration issues,
- Not understanding the combined employees' needs and concerns,
- Not involving the incoming leadership team,
- Not working with the receiving business unit(s), and
- Underestimating the time and amount of work M&As require.

An estimated 70-90% of all M&As fail to achieve their anticipated strategic and financial objectives. This rate of failure is often attributed to various HR-related factors, such as incompatible cultures, management styles, poor motivation, loss of key talent, lack of communication, diminished trust, and uncertainty over long-term goals.

The chances for success are hampered if the corporate cultures of the companies are very different. When a company is acquired, the decision is typically based on product or market synergies, but cultural differences are often ignored.

It's a mistake to assume that personnel issues are easily overcome. In a recent interview with an integration officer, a senior manager estimated that, after he had left his company because of workplace conflict following an acquisition, the conflict and his exit had cost the company in excess of €520,000.

Given the complexities and cost of the dispute resolution process, prevention rather than cure would seem the most sensible strategy. However, all too often, at the point of making a deal, parties are content to leave issues unresolved or to mask them with language that has multiple interpretations.

It goes without saying that thorough due diligence is essential. Many firms believe that they conduct adequate investigations prior to closing the deal. A closer inspection of their techniques may find them lacking. Companies should go beyond in-house counsel and basic financial due diligence. External expertise may prove critical. Getting the right advisers in place can limit scope for future disputes.

With information and knowledge, pre-emptive work can yield huge benefits in real workplace relationships, while saving companies from making decisions that lead to conflict, disharmony, bias, and the loss of hundreds of thousands of euro. [G](#)



## REPORT OF THE LAW SOCIETY COUNCIL MEETING

## 8 DECEMBER 2017

**Legal Services Regulation Act**

Paul Keane noted that the final reports on MDPs and on barristers' issues were still awaited, and the minister had indicated recently that he was committed to progressing the issue of LLPs. The director general noted that a significant amount of work had begun behind the scenes on legal partnerships, and the department and the authority were working to a timetable that would see the start of legal partnerships in early 2018.

**Brexit**

The Council noted contributions by the director general to a number of media outlets, including Bloomberg, *The Economist*, *The Guardian* and the *Law Society of England & Wales Gazette*, following publication of an article in the *Irish Gazette* in relation to 'Brexit refugee' solicitors.

**Capital expenditure**

The Council discussed a number of proposals in relation to internal audit, the approval process for capital expenditure by the Society, and consequent amendments to

the Council regulations, following the increase in the threshold approved by the members at the annual general meeting.

**Practising certificates 2018**

The Council approved the practising certificate regulations and fees for 2018, noting that the fees were not being increased beyond those charged in 2017.

**Complaints and client relations**

The Council noted the report from the lay members on the Complaints and Client Relations Committee, which confirmed that the number of admissible complaints had fallen substantially for 2016/17 (by 370), or almost 25%, by comparison with the previous year. The director general confirmed that, as usual, the report would be forwarded to the Minister for Justice.

**Practising certificate numbers**

Eamon Harrington reported that the expected 2017 year-end figure for practising certificates was 10,500, which was an increase of 400 (4%) on 2016. Since the

Brexit announcement, there had been 1,340 England and Wales solicitors admitted to the Roll, and 226 of these had taken out practising certificates.

**PII**

Richard Hammond reported that the professional indemnity insurance renewal season had just closed and all anecdotal indications were that the market was stable to benign. Initial statistics on market share by firm indicated that one new entrant to the market had had a significant impact and was likely to end up being the insurance provider to approximately 25% of firms. This was not to be confused with market share by premium, which was likely to have a very different breakdown.

**Claims harvesting**

The Council noted, with approval, the significant decision in the High Court secured by the Society to close down a claims-harvesting website and noted that this very successful outcome had followed considerable

resourcefulness and effort by the Regulation of Practice Committee and the staff of the Regulation Department.


**Minister Josepha Madigan**

The Council extended its congratulations to solicitor and member of the Society's Family and Child Law Committee, Josepha Madigan, on her appointment as Minister for Culture, Heritage and the Gaeltacht.

**Human rights**

The Council complimented the Society's Human Rights Committee on its recent successful campaign calling on the Government to ratify the UN *Convention on the Rights of Persons with Disabilities*.

**Skillnet**

The Council commended the Education Department on its initiative, supported by Skillnet, in launching the '12 Apps of Christmas' and noted also that Skillnet funding of €383,000 had been granted to the Society for 2018. 

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## CONVEYANCING COMMITTEE

## CERTIFICATES OF REGISTRATION OF SEPTIC TANKS

Under section 70B of the *Water Services Act 2007* (as inserted by section 4 of the *Water Services (Amendment) Act 2012*), the owner of a premises connected to a domestic waste water treatment system (DWWTS) (which includes septic tanks) must register the system with the water services authority, and the certificate of registration remains valid for five years from the date of its issue.

On expiry of the certificate of registration, owners of premises must apply to renew it – as provided under section 70B(6) of the act. Registration of DWWTS has

been handled by the Local Government Management Agency on behalf of all water services authorities through the website [www.protectourwater.ie](http://www.protectourwater.ie).

Under section 70D of the 2007 act, a person who sells a premises connected to a DWWTS must furnish, on completion of the sale, a valid certificate of registration to the purchaser, and the purchaser must notify the change of ownership to the relevant water services authority. The registration process commenced in 2012 and therefore certificates of registration have begun to expire during 2017.

Section 62 of the *Water Services Bill 2017*, when enacted, amends section 70B of the 2007 act:

- To provide that certificates of registration do not expire after five years, and
- By deleting the requirement to renew a certificate.

While the *Water Services Bill 2017* was pending enactment, the following notice appeared on the [protectourwater.ie](http://protectourwater.ie) website: “Please note: If you have already registered, you do not need to re-register. The requirement to re-register every five years is being removed

from the legislation and your existing certificate remains valid.”

Therefore it appears that, pending and following the enactment of the *Water Services Bill 2017*, expired certificates of registration are to be treated as still valid, and the obligation under section 70D on the owner of a premises connected to a DWWTS to furnish a valid certificate of registration to a purchaser is met by furnishing a certificate that, on its face, has expired.

Purchasers will still need to notify [protectourwater.ie](http://protectourwater.ie) of any change of ownership.

## CONVEYANCING COMMITTEE

## ONLINE RETURNS – COMMERCIAL LEASES DATABASE

The Conveyancing Committee would remind practitioners of its practice note published in the October 2012 *Gazette* recommending that they should advise clients who are tenants in commercial leases of their statutory obligation (under section 88 of the *Property Services (Regulation) Act 2011*) to submit certain details of those leases to the Property Services Regulatory Authority (PSRA) at three separate times in the life of the lease for inclusion in their statutory commercial leases database.

The committee was recently advised by the PSRA that the above commercial lease returns are now only conducted online through the PSRA website at [www.psr.ie/PSRACL1137](http://www.psr.ie/PSRACL1137), and clients can be advised that all the specified forms are now online.

The committee’s recommendation that solicitors should not routinely accept authorisations to make these submissions on behalf of clients remains unchanged. Solicitors should advise their clients of their obligations under the act and the time limits that apply for submission of information to the PSRA.

## CONVEYANCING COMMITTEE

## CONTACTING INBS, ANGLO IRISH BANK OR IBRC?

The Conveyancing Committee gets calls on a regular basis from solicitors whose clients want to pay off or who have paid off their old Anglo Irish Bank loan or their old INBS mortgage, asking how they are to contact them to get redemption figures or a vacate/release of mortgage. All can be contacted

at Irish Bank Resolution Corporation (in Special Liquidation) (IBRC).

The committee has been advised by IBRC that its address is: Irish Bank Resolution Corporation Limited (in Special Liquidation), Kings Building, 152-155 Church Street, Dublin 7; D07 W310.

## CONVEYANCING COMMITTEE

## WATER CHARGES – CHANGE IN PRACTICE

Section 48 of the *Environment (Miscellaneous Provisions) Act 2015* inserted a section 3A into the *Water Services Act 2014*, under which an obligation was placed on vendors’ solicitors to discharge any unpaid water charges from

proceeds of sale. Section 5(1)(b) (ii) of the *Water Services Act 2017* has now repealed section 3A of the *Water Services Act 2014*. There is no longer an obligation on vendors’ solicitors to make enquiries of Irish Water about amounts due

and/or to discharge arrears from sale proceeds.

The standard *Requisitions on Title* will be amended accordingly in due course, as will the non-title information sheet in the standard *Conditions of Sale*.



## CONVEYANCING COMMITTEE

## OMNIBUS LETTERS – REGISTERED TITLE

There was formerly a practice whereby vendors' solicitors gave solicitors' certificates on closing (which became known in practice as 'omnibus letters') to purchasers of property registered in the Land Registry, typically certifying one or more of the three matters set out below at the time of closing.

While initially these matters were usually covered in a letter issued by the vendor's solicitor on closing, the practice changed around December 2001, when the committee recommended (in its explanatory memorandum on the 2001 edition of the Society's *Requisitions on Title*) that vendors include a paragraph in their section 72 declarations to deal with the position regarding voluntary dispositions on title.

The committee still receives numerous enquiries from solicitors on this topic, from which it appears to the committee that there is a wide difference of opinion among solicitors as to whether such omnibus letters should be either sought or given. The committee has considered whether or not any of these matters still need to be dealt with either by way of a declaration from the vendor or an omnibus letter from the vendor's solicitor, and it has concluded as follows:

**1. Certificate that there are no dealings pending registration in the Land Registry that affect the property.** A vendor or vendor's solicitor should not ever have been requested to give a blanket certificate in every case stating the above, because it is a matter for a purchaser to carry out a Land Registry search, which will reveal whether or not such dealings were pending. It was only in cases where closing searches showed dealings pending that vendors' solicitors should ever have been required to certify the position. The committee's view is

that, in such cases, it was, and is, sufficient for the vendor's solicitor to explain the act on the search – usually on the face of the searches – and give the relevant explanation saying whether the dealing pending did or did not affect the property being sold and explain why, and if it did affect, identifying the relevant part(s) of the folio that the dealing affects. It is therefore not necessary for the vendor to give a declaration or for a vendor's solicitor to include this matter in an omnibus letter.

**2. Certificate that there are no deaths on title within the previous 12 years.** While this was previously a requirement in practice, it should be noted that, since 3 April 2010, there is no longer a charge on property in respect of unpaid CAT and it is therefore no longer necessary for the vendor to

give a declaration or for a vendor's solicitor to include this matter in an omnibus letter.

**3. Certificate that there are no voluntary dispositions on title with the previous ten years (later, five years).** A certificate or declaration is no longer required, as this matter is covered in replies to requisitions on title.

### Land Registry queries

For clarification purposes, it is acknowledged that, for many years, it was the practice of some solicitors to seek to include in the above omnibus letters an undertaking by a vendor's solicitor to discharge Land Registry queries arising on a purchaser's application for registration as owner of registered property, and it was the practice of some solicitors to give such undertakings.

It should be noted that the Conveyancing Committee's recommendations since the early 1980s were that such undertakings should only be given in relation to a transfer of part of a folio.

In December 2001, the committee recommended that any such undertaking be further limited to payment of Land Registry mapping fees (on transfers of part) **and** that the undertaking should be given by the vendor, not the vendor's solicitor.

This requirement for a vendor's undertaking currently appears at requisition 22.2.c. of the 2015 edition of the *Requisitions on Title*, but will be removed when the next edition is published (due early 2018) on the basis that this matter is provided for as a contractual obligation on the vendor at general condition 13(g) of the Law Society's *Conditions of Sale* (2017 edition).

## CONVEYANCING COMMITTEE

## CONCERNS OVER PURCHASERS WHO DO NOT GET DWELLINGS SURVEYED

Solicitors advise purchasers in most circumstances to get a property they are buying surveyed. The Conveyancing Committee has received reports that up to 20% of purchasers are disregarding this advice. If this unwise practice spreads, the committee is concerned that solicitors may find themselves in the firing line, even though they gave very sound advice. Rory O'Donnell, a member of the committee, adopted a practice of sending clients a detailed memo with a view to both giving good advice and also having a written record of that fact. His memo has been revised with assistance from other members of the committee and has

been approved in principle by the committee. It is published in the [precedents section](#) of the Law Society's website, and colleagues are invited to adapt this in any way they wish and send a copy to

clients in appropriate cases with a suitable covering letter.

If you alter the text in any material way, any attribution to Rory O'Donnell or the Conveyancing Committee should be removed.

## CONVEYANCING COMMITTEE

## COMPLETION NOTICES – NEW PRECEDENTS

The Conveyancing Committee has reviewed its precedent purchaser's completion notice and vendor's completion notice, and the former has been revised to reflect changes in the 2017 edition of the standard *Conditions of Sale*.

The vendor's notice did not require amendment, but the version number has been updated and both are now available in the 'precedents' section in the members' area of the Society's website: see [www.lawsociety.ie/precedents](http://www.lawsociety.ie/precedents).



# DIRECTORS' COMPLIANCE STATEMENT REGIME

The *Companies Act 2014* imposed a new obligation on directors of PLCs (excluding part 24 investment companies, and other large companies satisfying thresholds set out below) to put in place certain structures and compliance policy processes, which include a directors' compliance statement, in their annual report. This obligation applies to all financial years commencing on or after 1 July 2015, when the *Companies Act 2014* commenced.

This practice note is an overview of the directors' compliance statement regime, which is required for all PLCs registered in Ireland and for all other large Irish private limited companies with a balance sheet total exceeding €12.5m and a turnover exceeding €25m.

## 1. Overview

Section 225 of part 5 of the *Companies Act 2014* 'reintroduces' the directors' compliance statement (DCS) regime in a form intended as a more proportionate and targeted version of the previous highly controversial proposed form of DCS regime legislated for in the *Companies (Auditing and Accounting) Act 2003*, but never ultimately introduced, following a storm of criticism from the business, financial and legal communities and a critique by the Company Law Review Group following its regulatory impact assessment in 2005.

Key features of the DCS regime as enacted in the 2014 act are:

a) It applies to all PLCs and to all other large private limited companies (LTDs, DACs, CLGs) with a balance sheet total exceeding €12.5m and a turnover exceeding €25m. It does not apply to unlimited

companies.

b) It requires the directors of in-scope companies to make an annual statement within the directors' report on a comply-or-explain basis, acknowledging the directors' responsibility for securing the company's material compliance with its relevant obligations and either confirming that certain assurance measures have been taken or, if they haven't been taken, specifying the reasons why that is the case. No distinction is made between executive and non-executive directors in this regard.

## 2. Directors' compliance statements

The statement to be included by in-scope companies in the directors' report, forming part of the audited financial statements in respect of any financial year, is known as the directors' compliance statement and (as noted above) comprises an acknowledgement by the directors, on a comply-or-explain basis, of their responsibility for securing the company's material compliance with its relevant obligations and either confirmation that the required assurance measures have been taken or, if they haven't been taken, an explanation of why that is the case.

Paragraphs 3 and 4 below address the content of the 'relevant obligations' and required assurance measures in more detail.

## 3. Relevant obligations

The relevant obligations in respect of which the directors of an in-scope company must acknowledge responsibility for securing the company's material compliance in the directors'

report comprise:

- a) Obligations under tax law, including *Customs Acts*, excise duty legislation, *Tax Acts*, *Capital Gains Tax Acts*, *VAT Acts*, *Capital Acquisitions Tax Consolidation Act*, *Stamp Duties Consolidation Act*, and instruments made under any of the above legislation or otherwise relating to tax, and
- b) Obligations under the act where failure to comply would constitute a category 1 or category 2 offence or a serious market abuse or prospectus offence (or for certain listed PLCs or private limited companies whose debentures are admitted to trading on a regulated market of an EEA state, a serious transparency offence) – that is, indictable offences under the act.

## 4. Key assurance measures

The three measures that are the subject of the comply-or-explain rule (that is, the directors must confirm in the directors' report that the company is in compliance or explain why it isn't) are:

- a) Confirmation that a compliance policy statement has been drawn up, setting out the company's policies (that, in the directors' opinion, are appropriate to the company) respecting compliance by the company with its relevant obligations,
- b) Confirmation that appropriate arrangements and structures have been put in place that are, in the directors' opinion, designed to secure material compliance with the company's relevant obligations, and
- c) Confirmation that a review of the above arrangements and structures has been conducted

during the financial year to which the applicable directors' report relates.

## 5. Breach of DCS obligation

Failure by the directors of an in-scope company to comply with their DCS obligations (as outlined at paragraphs 3 and 4 above) in the relevant company's directors' report constitutes a criminal offence under the 2014 act, and each director in default will be guilty of a category 3 offence (fine of up to €5,000 (Class A fine) and/or up to six months' imprisonment on summary conviction; not an indictable offence). In addition to the penalties that can be imposed upon directors, the desire for in-scope companies not to suffer reputational damage by being held in breach of corporate governance standards under the act is likely to be an equally strong deterrent. In addition, breach of any relevant obligation that is an obligation under the act is an indictable offence under the act and, as such, capable of separate enforcement. Clients will need to be advised of what the relevant obligations are for in-scope companies.

## 6. Protection for directors/standard of compliance

The act acknowledges the reality of corporate management to a certain extent by confirming that directors may rely on appropriate advisers/consultants in complying with DCS obligations and by introducing reasonableness and materiality qualifications into the obligations regarding such arrangements and structures.

In relation to the key assurance measures that are subject to the comply-or-explain rule:



- a) The compliance policy statement must set out the company's policies (that, in the directors' opinion, are appropriate to the company) respecting compliance with its relevant obligations,
- b) Similarly, the obligation to put in place appropriate arrangements or structures is qualified such that the arrangements and structures must, in the directors' opinion, be designed to secure material compliance with the company's relevant obligations,
- c) The act provides that arrangements or structures will be regarded as being designed to secure material compliance with relevant obligations if they provide a reasonable assurance of compliance in all material respects with those relevant obligations, and
- d) The act provides that the arrangements or structures that an in-scope company must put in place to secure material compliance with its relevant obligations may, if so determined by the directors, include reliance on the advice of persons employed by the company under a contract for services, being persons who appear to the directors to have the requisite knowledge and experience to advise the company on compliance with its relevant obligations.

As such, while the risk appetite of certain directors (particularly NEDs) will be relevant in this context, directors of in-scope companies are not expected to be infallible or to guarantee full compliance with all relevant obligations. The standard is quasi-subjective, and the view of the directors is relevant – so if the directors are satisfied that they have taken appropriate advice and have designed (or procured the

design of) policies, arrangements and structures that provide a reasonable assurance of compliance in all material respects with the company's relevant obligations, and that those arrangements and structures have been reviewed in the relevant financial year, that is sufficient to satisfy their DCS obligations under section 225 of the act.

### 7. Compliance policy statement

The compliance policy statement for an in-scope company should be read in conjunction with the arrangements in place to mitigate the risk of non-compliance as set out in section 6 above. It is suggested that this policy should involve questioning the following:

- Are there existing compliance processes and procedures and are they adequate?
- Are arrangements in place and are these documented and sufficient?
- Is there a chart outlining key roles and responsibilities?
- Are directors familiar with their obligations under the 2014 act (and other relevant obligations)?
- How are tax and legal risks monitored?

### 8. Initial steps for in-scope companies

The directors of an in-scope company will need to develop a compliance policy statement and put in place appropriate arrangements and structures to secure material compliance with its relevant obligations.


To achieve this, its corporate activities will need to be mapped to its relevant obligations, areas of risk identified, and appropriate controls designed to eliminate those risks as far as possible in a manner that is also as practical, cost-effective, and efficient as possible.

If the in-scope company is part of a wider corporate group, there may already be a group compliance policy, and there are likely to be relevant group procedures, arrangements and internal controls in the context of financial reporting, tax arrangements, inter-company arrangements, authorisation of key decisions, etc, for the purpose of group compliance with regulatory obligations in other jurisdictions and/or corporate governance best practice. Depending on the scope and effectiveness of existing procedures and arrangements, the focus for the in-scope company may be on the identification of potential conflicts/compliance gaps from an Irish DCS compliance perspective and tweaking existing group policies where appropriate, rather than on implementing or documenting procedures and arrangements from scratch. Additionally, where compliance may be dealt with at a level above the in-scope company, it may now be prudent to incorporate an element of input/review at in-scope company level to enable the directors to comfortably make the required compliance statements.

Ultimately, this exercise will, of necessity, be a combined effort by the directors of the in-scope company, together with Irish management (including financial, legal and company secretarial functions) and external advisors (audit, tax, legal) with appropriate input by the relevant in-scope company/group compliance/management functions.

### 9. Role of solicitors

Many in-scope companies will be initially dealing with their auditors in relation to the DCS, as the statement must be contained in the directors' report that they will prepare. It is important to remember, however, that the 'relevant obligations' are legal obligations, particularly insofar as they relate to the *Companies Act 2014*, and it is hard to see how any director could comfortably give the assurances required in the DCS without the company involved having undertaken a legal review.

Solicitors should remind any of their clients who potentially are in-scope companies (and directors of those companies) of the requirements related to the DCS and the importance of legal advice in this regard. 

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# SOLICITORS DISCIPLINARY TRIBUNAL

REPORTS OF THE OUTCOMES OF SOLICITORS DISCIPLINARY TRIBUNAL INQUIRIES ARE PUBLISHED BY THE LAW SOCIETY OF IRELAND AS PROVIDED FOR IN SECTION 23 (AS AMENDED BY SECTION 17 OF THE *SOLICITORS (AMENDMENT) ACT 2002*) OF THE *SOLICITORS (AMENDMENT) ACT 1994*

**In the matter of Michael Doody, solicitor, practising in the firm of Doody Solicitors, 21 South Mall, Cork, and in the matter of the *Solicitors Acts 1954-2015* [3382/DT06/14]**

*Law Society of Ireland*

(applicant)

*Michael Doody*

(respondent solicitor)

On 23 March 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with a solicitor's undertaking dated 24 March 2006 given to Bank of Ireland Mortgages up to the date of the swearing of the within affidavit,
- 2) Failed to respond to multiple letters from the Society'
- 3) Failed to comply with a direction of the Complaints and Client Relations Committee, made on 28 November 2012, that a copy of the grounding affidavits and a copy of the application under the *Trustee Acts* to the Circuit Court be sent to the Society and to the complainant before 10 January 2013, or at all,
- 4) Failed to attend a meeting of the committee on 7 February 2013,
- 5) Misled the complainant and the Society by informing them that the complainant's mortgage had been sent for registration in the Registry of Deeds.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay a sum of €4,000 to the compensation fund,
- 3) Pay a contribution of €7,500

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, Mallow, Cork, and in the matter of the *Solicitors Acts 1954-2015* [10549/DT165/13]**

*Law Society of Ireland*

(applicant)

*Gary O'Flynn*

(respondent solicitor)

On 26 September 2017, the tribunal found the respondent solicitor guilty of misconduct in that he failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the regulations in a timely manner or at all.

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 €700 towards the whole of the costs of the Law Society of Ireland.

**In the matter of William JP Egan, a solicitor practising as William Egan & Associates, Malt House Square, Bow Street, Smithfield, Dublin 7, and in the matter of the *Solicitors Acts 1954-2015*, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal [3730/DT53/16]**

*Law Society of Ireland*

(applicant)

*William JP Egan*

(respondent solicitor)

On 11 October 2017, the tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Caused or allowed a client ledger debit balance of €24,904 to occur between 6 February 2014 and 31 March 2014 in respect of the client ledger account of a named client, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations 2001*,
- 2) Caused or allowed a client ledger debit balance to appear on a named client account in the sum of €42,500 from the period 6 February 2014 to 24 April 2014, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
- 3) Caused or allowed a client ledger debit balance of €8,992 in respect of a named client ledger account between 6 March 2014 and 21 March 2014, in breach of regulation 7(2)(a) regulations,
- 4) Caused or allowed a client ledger debit balance of €10,000 to occur on the client ledger account of a named client between 5 November 2013 and 15 November 2013, in breach of regulation 7(2)(a),
- 5) Caused or allowed a client ledger debit balance of €12,163 to occur on the client ledger account of a named client between 14 and 23 April 2014, in breach of regulation 7(2)(a),
- 6) Failed to provide a copy of the party-and-party bill of costs to his named client in a personal injury case, while charging a solicitor-and-client fee of €7,995, contrary to section 68(6) of the *Solicitors (Amendment) Act 1994*,
- 7) Failed to provide a copy of the party-and-party bill of costs to his named client in respect of a personal injury case, while charging a solicitor-and-client

fee of €3,075, as required under section 68(6) of the *Solicitors (Amendment) Act*,

- 8) Failed to provide a copy of the party-and-party bill of costs to a named client in a personal injury case, while charging a solicitor-and-client fee of €5,535, as required under section 68(6).

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €4,000 to the compensation fund,
- 3) Pay a contribution of €5,500 towards the whole of the costs of the Law Society of Ireland.

**In the matter of Declan J O'Connell, solicitor, practising under the style and title of Declan J O'Connell & Company, Solicitors, St Mary's House, Old Lucan Road, Co Dublin, and in the matter of the *Solicitors Acts 1954-2015* [6253/DT30/16]**

*Law Society of Ireland*

(applicant)

*Declan J O'Connell*

(respondent solicitor)

On 17 October 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) In relation to a named estate, deducted fees on dates in 2014 when he ought to have known that the client may not have properly authorised or agreed to the deductions, in circumstances where he had been advised that there was a concern that his client was suffering from dementia and, in particular, any and/or all of the fees



(inclusive of VAT) as follows:

- a) 31 January 2014 in the amount of €11,193,
  - b) 6 February 2014 in the amount of €4,735,
  - c) 4 March 2014 in the amount of €2,306.25,
  - d) 23 April 2014 in the amount of €2,306.25,
  - e) 2 May 2014 in the amount of €2,306.25,
  - f) 27 May 2014 in the amount of €2,306.25,
  - g) 16 July 2014 in the amount of €2,306.25,
  - h) 1 August 2014 in the amount of €2,306.25,
  - i) 15 August 2014 in the amount of €2,306.25.
- 2) In relation to the same named estate, continued to seek detailed and complex instructions and authorities from the client, whom he ought to have known may have been suffering from dementia and unable to provide properly such instructions and authorities,
  - 3) In relation to a named estate, deducted fees in advance of the extraction of the grant of probate and, further, in the absence of sufficient funds available to the credit of the estate, thereby creating debit balances in breach of regulation 7,
  - 4) In relation to a named estate, deducted fees in a manner not compliant with the *Solicitors Accounts Regulations* 7(1)(a)(iii) and 11(3) and, in particular, without having, in advance of drawing fees:
    - a) Furnished a bill of costs or interim bill of costs as required by regulation 11, and
    - b) Made it clear to the client that moneys held would be applied against such fees as detailed in the bill of costs/interim bill of costs.
  - 5) In relation to a named estate, unreasonably delayed in making distributions to the beneficiaries

and/or in finalising the administration of the estate, thereby depriving the beneficiaries for an unreasonable period of time of the proceeds of the estate.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €10,000 to the compensation fund,
- 3) Pay the whole of the costs of the Law Society of Ireland, to be taxed before the taxing master of the High Court in default of agreement.

**In the matter of Aine Feeney McTigue, a solicitor previously practising as Feeney Solicitors, First Floor, Lismoyle House, Merchants Road, Galway, and in the matter of the *Solicitors Acts 1954-2015* [10123/DT108/15; 10123/DT75/16; and High Court record 2017 no 74 SA]**

*Law Society of Ireland*

(applicant)

*Aine Feeney McTigue*

(respondent solicitor)

#### 10123/DT108/15

On 28 June 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:

- 1) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2014 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001),
- 2) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

#### 10123/DT75/16

On 6 July 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:

- 1) Allowed a minimum deficit on the client account of approximately €625,000 as of 21 August 2015,
- 2) Failed to keep proper books of accounts, in breach of regulation 12(1) of the *Solicitors Accounts Regulations*, to show the true position in relation to client liabilities,
- 3) Failed to respond to the Society's outstanding queries relating to the payment of €214,476.10, at paragraph 4.1(d) outstanding from the report of 8 October 2014,
- 4) Failed to adequately explain the €35,000 difference on reconciliations of 31 December 2013, set out at paragraph 4.1(g) of the 8 October 2014 report,
- 5) Made round sum transfers of €77,730 from 21 May to 20 August 2015 from the client account to office account, and these sums were not attributed to any clients and not billed.

The tribunal sent both matters forward to the High Court and, on Thursday 19 October 2017, in proceedings 2017 no 74 SA, the High Court made orders that:

- 1) The respondent former solicitor is not a fit person to be a member of the solicitors' profession,
- 2) The respondent former solicitor pay a sum of €5,000 as a contribution towards the costs of the Society incurred before the Solicitors Disciplinary Tribunal,
- 3) The respondent former solicitor pay the costs of the Society in respect of the High Court proceedings, such costs to be taxed in default of agreement.

The respondent former solicitor's name had already been struck from the Roll of Solicitors by order of the High Court on 7 December 2015 in proceedings entitled 2015 no 173 SA.

**In the matter of Cormac Lohan, a solicitor practising as Lohan & Co, Solicitors, 7 Garden Vale, Athlone, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT26]**

*Law Society of Ireland*

(applicant)

*Cormac Lohan*

(respondent solicitor)

On 2 November 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Failed to honour his agreement with the Law Society of Ireland and the complainant to refund the sum of €18,031 to the complainant,
- 2) Tendered a series of cheques to the complainant, purportedly to effect the refund, but failed to ensure that there were sufficient funds in his account to honour cheques dated 5 May 2016 and 10 June 2016, both drawn on his account at AIB in the sums of €3,031 and €3,000 respectively.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €3,000 as part of further restitution to the complainant without prejudice to any of her legal rights,
- 3) Pay the sum of €4,996.50 as a contribution towards the whole of the costs of the applicant.

**In the matter of Michele Caulfield, solicitor, and in the matter of the *Solicitors Acts 1954-2015* [12575/DT94/16 and High Court record 2017 no 71 SA]**

*Law Society of Ireland*


(applicant)



**Michele Caulfield**  
(respondent solicitor)

On 4 July 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:

- 1) Created a shortfall of €261,968.30 on clients' funds in her employer's practice by her misappropriation of client funds and by transferring funds between unrelated accounts,
- 2) On 31 July 2013, requisitioned two cheques to purchase bank drafts payable to Bank of Ireland for €34,639.02 and €25,000 from the ledger account of a minor deceased and misappropriated these funds by lodging €25,000 to her own bank account and €34,639.02 to her father's company's account,
- 3) On 16 November 2012, requisitioned a cheque to purchase a sterling bank draft of £21,500 (€27,143.41) from the ledger account of a named deceased and misappropriated these funds by using this draft to pay a car dealer in Newry for the purchase of a car,
- 4) On 11 January 2013, requisitioned three further cheques from a named estate made payable to St Vincent's Private Hospital (€842.59), Mount Carmel Hospital (€698.60) and Bank of Ireland (€8,000), which were unrelated to the client matter, thereby depriving the estate of these funds,
- 5) On 30 June 2015, requisitioned a client account cheque for €12,500 from a named estate and misappropriated the funds by purchasing a bank draft payable to a named motor dealer, and then tried to conceal the payments made by describing same as 'balance due to residuary beneficiary',
- 6) Withdrew €10,600 on 15 May 2015 from the ledger account of a minor deceased by requisitioning a bank draft payable to a named individual and misappropriated same by paying it to the named individual, a car dealer, a payment unconnected with the matter,
- 7) Wrongfully alleged that the bank had made an overpayment of €20,000 in a named estate, thereby depriving the estate of €20,000 properly due to it,
- 8) Arranged for an altered copy of a bank draft showing €78,272.10 (purporting to be the correct figure) to be placed on file in the estate of a named deceased and arranged for a corrective affidavit to be prepared for Revenue, altered the cash account, and wrongfully informed the beneficiaries of the lesser amount,
- 9) Used the €20,000 misappropriated from the estate of the named deceased to make a number of payments unrelated to this estate, including a number of personal payments,
- 10) Used €8,709.83, including a refund by a nursing home of €7,264.05, for her personal use from the estate of a named deceased by lodging funds to the solicitor's personal bank account,
- 11) Took €5,000 from the estate of a named deceased and lodged same to the account of a company owned by the solicitor's father,
- 12) In the estate of a named deceased, requisitioned a cheque for €34,404.20, described as funds due to a beneficiary, but misappropriated same by lodging it to her personal bank account,
- 13) In the estate of a named deceased, requisitioned a cheque to Bank of Ireland for the balance of the ledger account of €7,506.46, which payment was not made to the beneficiary,
- 14) In the estate of a named deceased, took the sum of €1,059.70 from the client account as 'payment of administration bond' addressed to Avalon Insurance, but wrongfully used same to pay moneys due to Avalon Insurance for the benefit of her father,
- 15) In the estate of a named deceased, wrongfully used a cheque for €1,500 on 3 July 2015 to pay her named obstetrician,
- 16) Made transfers in eight different instances between unrelated ledger accounts, thereby causing a shortfall in the client funds of those accounts affected.

The tribunal ordered that the matter be sent forward to the High Court and, on Monday 6 November 2017, in High Court proceedings 2017 no 71 SA, the High Court made an order striking the name of the respondent solicitor from the Roll of Solicitors. 

#### LEGAL EZINE FOR MEMBERS

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

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## 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%)

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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, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004.*

NEW RATES  
FROM JANUARY 2018

**McCarthy, John Finbarr (deceased)**, late of Lackenacummeen, Belgooly, Co Cork, who died on 27 November 2017. Would any person having knowledge of a will, or holding a will for or on behalf of the above-named deceased, please contact Sean Cahill, Solicitor, CW Ashe & Co, South Square, Macroom, Co Cork; tel: 026 41005, fax: 026 42157, email: [reception@cwashe.ie](mailto:reception@cwashe.ie)

**Murray, Mary B (otherwise Maura) (deceased)**, who died on 26 September 2017 at Cloverhill Nursing Home, Oran, Co Roscommon, and late of Carrick, Curraghboy, Athlone, Co Roscommon. 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 John O'Carroll, Mellotte O'Carroll, Solicitors, 11 Pearse Street, Athlone, Co Westmeath; tel: 090 649 2692, email: [jocarroll@mocsolicitors.ie](mailto:jocarroll@mocsolicitors.ie)

**Neary, Patrick James (otherwise PJ) (deceased)**, late of 17 Riverside Lawns, Kinnegad, Co West-

## WILLS

**Birchall, Mary (deceased)**, late of 772 St Patrick's Park, Celbridge, in the county of Kildare. Would any person having knowledge of a will made by the above-named deceased, who died on 10 June 2016, please contact Enda P Moran, Solicitors, Main Street, Celbridge, Co Kildare, by post or tel: 01 627 1137, email: [enda@endapmoran.ie](mailto:enda@endapmoran.ie)

**Breslin, Mark (deceased)**, late of 16 Willington Grove, Templeogue, Dublin 6W. Would any person having knowledge of a will made by the above-named deceased, who died on 24 August 2016, please contact Adrian P Bourke & Company, Solicitors, Victoria House, Ballina, Co Mayo; tel: 096 22055, email: [adrianpbourke@eircom.net](mailto:adrianpbourke@eircom.net)

**Donnelly, Mary (deceased)**,

late of 23 Woodlawn Park Avenue, Firhouse, Tallaght, Dublin 24, who died on 23 March 2017. Would any person holding or having any knowledge of the whereabouts of any will made by the above-named deceased please contact Niall J Moran, Solicitors, Moore Hall, O'Moore Street, Tullamore, Co Offaly; tel: 057 932 4741, email: [info@nialljmoransolicitors.ie](mailto:info@nialljmoransolicitors.ie)

**Donnelly, Seamus (deceased)**, late of 23 Woodlawn Park Avenue, Firhouse, Tallaght, Dublin 24, who died on 1 April 2017. Would any person holding or having any knowledge of the whereabouts of any will made by the above-named deceased please contact Niall J Moran, Solicitors, Moore Hall, O'Moore Street, Tullamore, Co Offaly; tel: 057 932 4741, email: [info@nialljmoransolicitors.ie](mailto:info@nialljmoransolicitors.ie)

**Farrell, John (deceased)**, late of Roxboro, Roscommon, who died on 13 September 2002. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Thomas K Madden & Co, Solicitors, 1 Camlin View, Longford; tel: 043 334 1192, fax: 043 334 1561, email: [tina@tkmadden.com](mailto:tina@tkmadden.com)

## MISSING WILL

**Vincent Michael Gordian Shields, solicitor, who died on 16 December 2017, late of The Willows, Cross Street, Athenry, Co Galway, and formerly of Knockamina, Lake Road, Loughrea, Co Galway.**

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 **Padraic Grennan, Finders International, 12 Butlers Court, Sir John Rogerson's Quay, Dublin 2;** tel: 01 691 7252, email: [contact@findersinternational.ie](mailto:contact@findersinternational.ie)

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meath. Would any person having knowledge of the whereabouts of the last will and testament made by the above-named deceased, and deeds to the property of 17 Riverside Lawns, Kinnegad, Co Westmeath, please contact Hamilton Sheahan & Co, Solicitors, Main Street, Kinnegad, Co Westmeath; DX 235 001 Kinnegad; tel: 044 937 5040, email: [roisin@hamiltonsheahan.ie](mailto:roisin@hamiltonsheahan.ie)

**Page, Brian John (deceased)**, late of 36 Gracefield Road, Artane, Dublin 5, who died on 5 May 2017. 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 Jonathan Cosgrove, Aidan T Stapleton & Co, Solicitors, Suites 130-132 The Capel Building, Mary's Abbey, Dublin 7; tel: 01 679 7939, email: [info@astapleton.com](mailto:info@astapleton.com)

**Quigley, Mary (deceased)**, late of 11 Pairc Muire, Ferns, Co Wexford, who died on 29 December 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Pauline O'Toole, solicitor, Main Street, Carnew, Co Wicklow; tel: 053 942 3596, email: [info@otoolesolicitors.com](mailto:info@otoolesolicitors.com)

**Ryan, Daragh (deceased)**, late of 60 Heytesbury Street, Dublin 8 (and formerly of 30B Phibsborough Road, Dublin 7), who died on 12 March 2017. Would any person having knowledge of

a will made by the above-named deceased or its whereabouts please contact Mason Hayes & Curran, Solicitors, South Bank House, Barrow Street, Dublin 4; tel: 01 614 5000, email: [dublin@mhc.ie](mailto:dublin@mhc.ie)

**Sullivan, Anthony (otherwise Tony) (deceased)**, late of 23 Marian Park, Baldoyle, Dublin 13. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Paula McHugh, solicitor, 14A Farrenboley Cottages, Milltown, Dublin 14; tel: 01 216 4488; email: [paulamchugh@oceanfree.net](mailto:paulamchugh@oceanfree.net)

#### TITLE DEEDS

**Property at Main Street, Baltinglass, Co Wicklow.** Would any person having knowledge of the whereabouts of the following original document: deed of conveyance, dated 26 October 1976 and made between Norman Northridge of the one part and John Byrne and Josie Byrne of the other part, of all that and those the piece or parcel of ground with a two-storey slated dwellinghouse erected and standing thereon situate at Main Street in the town of Baltinglass, barony of Talbotstown Upper, in the county of Wicklow, please contact Morrissey & Co, Solicitors, Lismard House, Bridge, Street, Tullow, Co Carlow; tel: 059 915 2910, fax: 059 915 2163, email: [tmurphy@morrisseycosolicitors.ie](mailto:tmurphy@morrisseycosolicitors.ie)

**In the matter of the Landlord and Tenant Acts 1967-2005**

**and in the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1994 and in the matter of premises known as 5 Kenilworth Square, Rathgar, in the city of Dublin, between John Bainbridge (applicant) and Noel O'Gara and the unknown and unascertained owner(s) of the fee simple and all intermediate interests (respondents) – notice of intention to acquire fee simple**

Take notice any person, including Noel O'Gara, having any superior interest (whether by way of freehold interest or otherwise) in the following property: all that and those situate at number 5 Kenilworth Square, Rathgar, Dublin 6, held under indenture of lease dated 31 January 1857 and made between Michael Murphy of the one part and Jonathan Clerke of the other part for a term of 900 years from the date of this lease and subject to yearly rent of £14, thereby reserved and since apportioned.

Take notice that John Bainbridge, the person currently entitled to the leasehold interest in the said property under the lease, intends to apply to the county registrar for the county and city of Dublin to acquire the fee simple and any intermediate interest therein, and any party asserting that they hold a superior interest in the said property are called upon to furnish evidence of their title to this superior interest to the below-named within 21 days from the date of this notice.

In the absence of any such notice being received, the said John Bainbridge intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply as part of this application for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest or interests including the freehold reversion in the aforesaid premises is/are unknown and unascertained.

Date: 2 February 2018

Signed: *PJ Byrne & Co (solicitors for the applicant), Athy Road, Carlow*

**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: the Saint John of God Trust (Ireland) (applicant)**  
Take notice any person having an interest in the property known as 'Cintra', 167 Upper Glenageary Road, Glenageary, Co Dublin, held under a lease dated 16 June 1941 and made between the Right Honourable Edward Arthur Henry, Earl of Longford of the first part, the Right Honourable Yvo Richard, Viscount de Vesci of the second part, and Elizabeth Reid Malley of the third part.

Take notice that the applicant intends to apply to the county registrar for the county/city of Dublin to acquire the freehold interests and any intermediate interest in the said property, and any party asserting that they hold a superior interest in the said property or any part thereof is called upon to furnish evidence of title to the said 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 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 interest in the said property are unknown or unascertained.

Date: 2 February 2018

Signed: *Porter Morris (solicitors for the applicant), 10 Clare Street, Dublin 2*

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of Landlord and Tenant (Ground Rents) Act 1967 and the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of premises**

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**situated at Castle Street, Mullingar, Co Westmeath, being part of the premises known as Wilfs, Sheefin Flowers and Domino's Pizza: an application by Wilfs Limited**

Take notice that any persons having any interest in the freehold estate of, or any superior or intermediate interest in, the hereditaments and premises situate at Castle Street, in the town of Mullingar, barony of Moyashel and Magheradernon, county of Westmeath, being part of the property now known as the Wilfs, Sheefin Flowers and/or Domino's Pizza, Castle Street, Mullingar, and part of the property held under an indenture of lease made on 16 March 1870 between James O'Brien and others of the one part and Patrick McCormack of the other part for the term of 200 years from 29 September 1869, should give notice to the undersigned solicitors.

Take notice that the applicant, Wilfs Limited, intends to apply to the county registrar for the county of Westmeath for acquisition of the freehold interest and all intermediate interests in the above mentioned property, and any party asserting that they hold an interest superior to the applicant in the aforesaid property are called upon to furnish evidence of title to same to the below named solicitors within 21 days from the date hereof.

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 Westmeath for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the such superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.

*Date: 2 February 2018*

*Signed: Moynihan & Co (solicitors for the applicant), Blackhall Court, Mullingar, Co Westmeath*

**In the matter of sections 67 and 69 of the Landlord and Tenant (Amendment) Act 1980 and in the matter of an application by Daphne Goodbody (acting by her attorneys Wendy Goodbody and Jonathan Goodbody)**

Any person having a freehold estate or any intermediate interest in all that and those numbers 3 or 4 Stradbroke Road, Blackrock, Co Dublin, and/or the gardens at the rear of same, and/or the premises the subject of an indenture of lease dated 22 April 1952 between Reisor Manufacturing and Construction Company Limited of the one part and Marjorie Robinson of the other part for a term of 999 years (except the last ten days) from 25 March 1951 at a rent of £17 per annum, applicable to a portion of these premises, containing covenants by the tenant not to erect or build any additional erection or building on the premises the subject of the lease without the consent of the landlord or to use same for any purpose other than as a single private dwellinghouse. Take notice that the said Daphne Goodbody (acting by her attorneys as aforesaid) intends to apply to the Dublin Circuit Court under sections 67 and 69 of the *Landlord and Tenant (Amendment) Act 1980* for an order authorising the erection by her of a dwellinghouse on the portion of the premises the subject of this lease, and has issued an equity civil bill in this regard.

In default of any such notice being received, the said Daphne Goodbody (acting by her attorneys Wendy Goodbody and Jonathan Goodbody) intends to proceed with this equity civil bill at the end of 21 days from the date of this notice and to apply to the Dublin Circuit Court 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 property are unknown or unascertained.

*Date: 2 February 2018*

*Signed: Chris van der Lee & Asso-*

*ciates, solicitors for Daphne Goodbody (acting by her attorneys Wendy Goodbody and Jonathan Goodbody), 9-10 Eustace Street, Dublin; D02 CK70*

**In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: notice of intention to acquire fee simple (section 4) – an application by Susan Joyce and Maureen Joyce (the applicants) as executors of the estate of the Bernard Joyce (deceased)**

Notice to any person having any interest in the freehold interest of the following property: all that and those the licensed house, out offices, yard and garden attached in the village of Cleggan, being part of the townland of Knockbrack, bounded on the north and east by the public right of way, on the south by the county road, and on the west by Patrick Fitzgerald's land, and containing on the north 138 feet, on the east 141 feet, on the south 176 feet, and on the west 146 feet, and also the two detached out-buildings, nos 2 and 3 on the map attached to a lease dated 20 September 1912 and made between Alfred William Hazell (as lessor) of the one part and Mrs Anne King (as lessee) of the other part, of which no 2 is bounded by a parcel of waste ground on the north side, on the south by John McLoughlin's ruin, on the east by John McLoughlin's yard, and on the west by the public right of way, and contains 16 feet by 17½ feet, and no 3 is bounded on the north and east by John McLoughlin's ruin and yard, and on the south and west by the public right of way, and contains 22 feet by 17½ feet, and all of which said premises are situate in the parish of Omev and barony of Ballinahinch and county of Galway, and are more particularly delineated and shown on the map attached to the lease as aforesaid and are thereon coloured yellow, and which are now more commonly

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known as Joyce's Public House, Cleggan, Co Galway.

Take notice that Susan Joyce and Maureen Joyce (the applicants), the persons being entitled to the interest of the lessee under the lease in respect of the property known as Joyce's Public House, Cleggan, Co Galway, intend to apply to the county registrar of the county of Galway for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

*Date: 2 February 2018*

*Signed: Kemple Gormley (solicitors for the applicants), Bishop Street, Tuam, Co Galway*

## RECRUITMENT

**Experienced solicitor seeks part-time/locum position**

Highly experienced Dublin-based solicitor (recently retired) seeks part-time or locum position practising conveyancing and property law in the Dublin and Leinster areas. Reply to **box no 01/01/18**



## NE ULTRA CREPIDAM JUDICARET

## THREE BLIND MICE – NO WAIT, TWO BLIND FERRETS!

A man assaulted the person who had sold him two blind ferrets – having held the grudge for eight years, Carrick-on-Suir District Court was told.

Judge Terence Finn heard that the blind ferrets were useless for hunting, *The Nationalist* reports.

The confrontation took place on 1 February 2017, when Donal Kavanagh – who had bought the ferrets for €60 – saw Gary Dowley.

Sgt Ian Barrett told the court that Kavanagh (55) dropped his shopping and grabbed Dowley by the throat, saying, inexplicably, “You caught me for a ferret.”

“He should have put the grudge or animosity behind



him,” said Judge Finn, rather than behave in such a manner on a public street years after the

transaction had taken place.

The judge said he accepted the apology offered and that the

matter was now at an end. He imposed a fine of €300 on Kavanagh on the assault charge.

## THE WALKING 'DEAD'

A prisoner in Spain reportedly began snoring from inside a body bag, just hours before his post-mortem examination, the *BBC* reports.

Prison guards thought that Gonzalo Montoya Jimenez (29) had died in his cell that morning – and the ‘death’ had been certified by three experienced doctors, who sent his body to the mortuary. Hospital sources believe that the prisoner may have a condition called catalepsy, where a person’s vital signs slow down so much that they are barely perceptible.

Jimenez is now in intensive care at a hospital in the regional capital, Oviedo. His family said he was on epilepsy medication, but feared he had not been taking it at the right times.

A surgeon who burned his initials on the livers of two unconscious transplant patients has been sentenced to a 12-month community order, 120 hours’ unpaid work, and a €11,200 fine, *The Independent* reports.

Simon Bramhall (53) used an argon laser to mark the organs of two victims at Birmingham’s Queen Elizabeth Hospital, in 2013. A Crown Court judge said he had carried out an “abuse of power and a betrayal of trust”.

The surgeon admitted two

counts of ‘assault by beating’ last month after prosecutors accepted his not guilty pleas to charges of assault occasioning actual bodily harm. He was given a formal warning by the General Medical Council last February.

## LIVER LET LIVE

## BENT COPPER’S VICTIM CLEARED

A man found guilty of stealing mailbags in London in the 1970s has had his name cleared 43 years later, *The Independent* reports.

Businessman Stephen Simmons (62) from Dorking, Surrey, was 19 when he was convicted of theft of the mailbags from Clapham Goods Yard in South London in 1976.

After being found guilty, he served eight months in a youth detention centre, but always maintained his innocence.



After taking legal advice from a radio phone-in show five years ago, Mr Simmons googled the

name of the policeman who’d arrested him and discovered the officer had later been convicted for stealing Royal Mail bags and framing people for it.

His case returned to court when the Criminal Cases Review Commission referred the matter to the Appeal Court last year. Speaking to the *BBC* prior to the appeal case being heard, Mr Simmons said he was “absolutely bitter. I want to let it go, but I can’t. Now I’m going to court and can have my day.”



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