Finance and administration
The budget continues unprecedented support for those affected by COVID

Don't fear the reaper
COVID has brought pensions into the spotlight, particularly death-in-service benefits

The James Gang
Mayo's James Cahill is the Law Society's new president. The *Gazette* heads out west

gazette

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HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

FEATURES

REGULARS

EPA-EFE/IAN LANGSDON

THE BIG PICTURE

FREEZE FRAME

French riot police use water cannons to clear protesters gathered on Place du Trocadero near the Eiffel Tower after a demonstration was held against draft 'global security' legislation. Lawmakers voted on 24 November on the bill, which now goes to the Senate. The legislation aims to ban the distribution of photos in which police officers and gendarmes can be identified in a way that harms their image. Offenders would face a maximum penalty of up to one year in prison and a €45,000 fine. Emmanuel Poupard (National Journalists' Union) said that the legislation "has only one goal – to boost the sense of impunity of law enforcement officers and make police brutality invisible"

CALCUTTA RUN – YOU MADE IT!

We made it. Thanks to all the contributors to this year's virtual Calcutta Run, who helped us achieve the 10,000km distance and raised a whopping €260,000 for The Hope Foundation and the Peter McVerry Trust

Staff from Paul Kelly & Co put their best foot forward

With him in spirit! Ciarán Ahern (A&L Goodbody) doing the Calcutta Run 5km route as part of his 100km target

Hilary Kavanagh (Law Society) and her daughter Áine

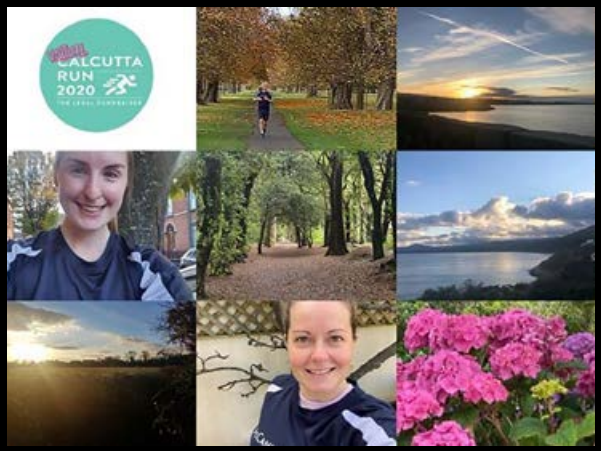
Rachel Hession (Law Society) enjoyed a cool dip after her virtual run

McKenna and Co staff

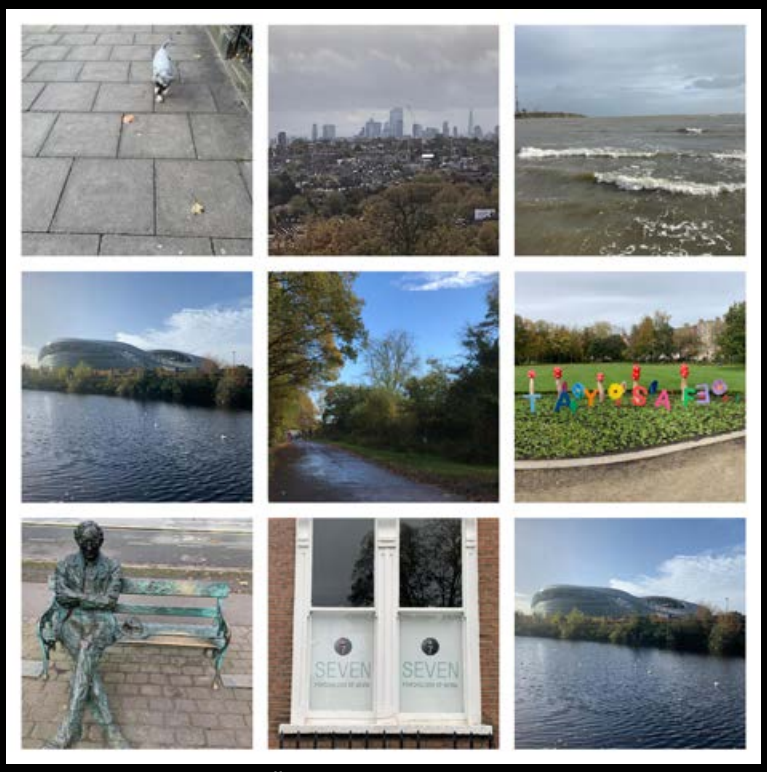
Calcutta Run committee member Michael Barr (A&L Goodbody) and Crunchie the dog enjoyed a tasty 7k walk for the Calcutta Run. Go Crunchie!

Cillian MacDomhnaill, Cathy Dowling and Mark Browne ran a 5km route to Blackhall Place

Italian participant Ferdinando Berto out on his daily walk. Thanks for the support!



McCann FitzGerald staff



SEVEN Psychology at Work staff enjoyed making local discoveries during their daily runs

Ciarán Lyng (A&L Goodbody) put us all under pressure with his 100km target

ENET Ireland staff enjoyed the sights of Ireland on their daily runs, walks, and cycles – and took the pictures to prove it


A large number of William Fry staff and their family members (shown on this page) took part in this year's virtual Calcutta Run, including Grainne Carr


Sean Mooney and Treasa Kelly


Anna Ní Uiginn


John Boyle


Ben Kennedy


Sergey Dolomanov

Andrea and Kyle Borain


Owen O'Sullivan with Zeb


Catherine Carrigy


Derek Hegarty


Mark Kershaw

Paul McNamara


John Sugrue


Craig Sowman

Staff from McKenna and Co Solicitors took part in a collective 30km run – and raised €500 from their company's bake sale

Teri Kelly (Law Society) reached dizzy heights when she performed a 1km cycle up the virtual slope of Alpe d'Huez using the Zwift training app

Matheson staff cycled and jogged every day on behalf of the virtual Calcutta Run. Thanks for the tremendous support!

Claire O'Mahony (Law Society) discovers the Phoenix Park during her 5km Calcutta Run

The whole team from the Calcutta Run's long-standing sponsors, The Panel, did their bit to make sure we went the distance from Dublin to Kolkata! Thanks for the support

Ciara O'Doherty designed her dad Joe's 22nd-year Calcutta Run t-shirt

CAHILL BECOMES 150TH PRESIDENT

The 150th President of the Law Society, James Cahill, has begun his term of office, which runs until 13 November 2021. He is joined by senior vice-president Michelle Ní Longáin and junior vice-president Barry MacCarthy.

James was born and raised in Castlebar, Co Mayo. One of five children, his dad John F Cahill was a solicitor, and his mother Carmel Caulfield a physiotherapist.

Qualifying in 1979, he has lived and practised law throughout his career in Co Mayo. Married to Katherine Killalea, also a Mayo-based solicitor, they have three children – Conor, Ellen and Fionnuala.

James has been active since qualification in the Mayo Solicitors' Bar Association and held the role of president for two years. He has been on the Law Society Council for 21 years.

Great challenge

"It is a great honour to serve as President of the Law Society of Ireland for the coming 12 months," he says. "To be leading the Irish solicitors' profession is a personal privilege. However, this is also a time of great challenge."

Outlining his priorities for his term in office, Mr Cahill said he would be focusing on continuing the work of supporting smaller practices across Ireland, leading the profession through the current pandemic, and helping firms prepare for business recovery.

PIC: JASON CLARKE PHOTOGRAPHY

President of the Law Society, James Cahill

COUNCIL ELECTION 2020 RESULTS

The scrutineers' report of the results of this year's Law Society's Council election declared the following candidates elected (the number of votes received by each candidate appears after each name): Flor McCarthy (1,868), Maura Derivan (1,595), Richard Grogan (1,583), Martin G Lawlor (1,515), Rosemarie Loftus (1,498), Brendan J Twomey (1,405) Christopher Callan (1,404), Áine Hynes (1,263), Eamon Harrington (1,261), Tara Doyle (1,238), Imelda Reynolds (1,194), Michelle Ní Longáin (1,189), Barry MacCarthy (1,141), Carol Plunkett (1,071), and Daniel E O'Connor (955).

As there was only one candidate nominated for each of the two relevant provinces (Connaught and Munster), there was no election for these provinces. The candidate nominated in each instance was returned unopposed, as follows: Martin J Crotty (Leinster) and Garry Clarke (Ulster).

Michelle Ní Longáin

Barry MacCarthy

URGENT PLEA TO LAWYERS FROM LORD MAYOR

The Lord Mayor of Dublin Hazel Chu has issued an appeal to Law Society members for donations to a fuel fund for those in need. The Mansion House Fuel Fund dates back to 1891, and was set up by Sir John Arnott in 1891 to assist the needy during a particularly harsh winter that year.

Traditionally, the money raised was used to buy coal for those without the means to heat their homes.

The fund is distributed with the help of charities such as St Vincent de Paul, Dublin Simon Community and the Peter McVerry Trust.

Live animal crib

The annual Lord Mayor's Christmas concert, which raises funds for the charity, will not take place this year, due to COVID restrictions. The live animal crib outside the Mansion House on Dawson Street is also in doubt for 2020.

The Mansion House Fuel Fund distributes cash grants without any distinction of creed. It was one of the first truly ecumenical charities in Dublin.

Donations from the legal profession can be sent to: Mansion House Fuel Fund, Dawson Street, Dublin 2, DO2 AF30.

LEGAL PROFESSION LOSES ONE OF ITS LEADING LIGHTS

The *Gazette* has been informed of the death at 1pm on Saturday 21 November of Dr Eamonn G Hall, solicitor (Ireland, Northern Ireland, England and Wales), notary public and commissioner for oaths, following a brave battle with illness. His funeral Mass was held on 24 November in the Church of the Nativity of the Blessed Virgin Mary, Chapelizod, Dublin.

Educated at St Macartan's College, Monaghan, Dr Hall was a graduate of University College Dublin with a BA degree, H Dip Ed (NUI Maynooth), LLB (NUI Galway), PhD (Trinity College Dublin) and was admitted to the roll of solicitors in 1974. Subsequently, he was admitted as a solicitor of Northern Ireland, and England and Wales.

He was principal of EG Hall & Co Solicitors, Notaries Public and Commissioners for Oaths, and was chief solicitor with Telecom Éireann/Eircom Group from 1984-2007.

Eamonn served as the chief examiner in constitutional law for the Society's Law School from 1981-2006 and, from its inception, was an examiner in constitutional law for the Qualified Lawyers' Transfer Examination. He was consultant on judicial review to the Law School and former consultant on criminal litigation and advocacy.

Law reporting

Dr Hall was a former secretary and president of the Medico-Legal Society of Ireland and a member of its council. He was a former chair of the Irish Society for European Law and served as its vice-president.

Eamonn was an elected member of the Incorporated Council of Law Reporting for Ireland in 1986 and was a member of its Council.

PIC: CIAN REDMOND

Eamonn G Hall with his wife Mary at the Law Society's room-naming ceremony in his honour in August

He was elected vice-chair of the Law Reporting Council in 1993 and served as its chair in 1997.

He was appointed by the Government to the first Information Society Commission (1997-2000), and was chair of the Legal and Government Affairs Committee of the commission (1997-2000).

He was also a fellow of the Society for Advanced Legal Studies, University of London; a former member of the Council of Convocation of the National University of Ireland; and a member of the Committee of Scrutineers at the Law Society of Ireland.

Lifetime contributions

To mark his lifetime's contribution to education in the Law Society of Ireland and to the solicitors' profession generally, the Society held a room-naming ceremony in honour of Dr Hall on 18 August.

At that time, director general Ken Murphy commented that "his contributions across an astonishing range of activities of the solicitors' profession have few equals. In addition, his generous contribution to law reporting in Ireland has been remarkable – he was the only solicitor ever to have chaired the Council of Law Reporting during its long history."

The director general added: "Eamonn served as a member of the Incorporated Council of Law Reporting for more than 30 years, working closely with leading members of the judiciary and the Bar in the production of the *Irish Reports* – both in print and, more recently, through his initiative, online.

"In a recently published book that contained many tributes to Dr Hall, Chief Justice Frank Clarke expressed the view that 'it would be impossible to overstate the contribution which Eamonn Hall has made to the important cause of law reporting in Ireland', adding that 'he is also the person who has played the greatest role in its modern evolution and, perhaps, survival'."

Central figure

Eamonn was a central figure in the work of the Faculty of Notaries Public in Ireland, serving as a member of its governing council and as its director of education from 2009. He was recently admitted as a fellow, receiving the faculty's medallion. The testimonial acknowledged Eamonn's immense contribution to the faculty's endeavours in the education and training of notaries and candidate notaries.

Eamonn's skills also extended to the journalistic field. He was chair of the *Law Society Gazette* Editorial Board for seven years and served on the board over a span of three decades.

Eminent author

He was a member of the editorial board of the *European Counsel 3000/Global Counsel 3000* (1997-2002), and was a visiting fellow and adjunct member of the Faculty of Law at UCD (2000-2008). In addition, he was a member of the board of directors of the Irish Centre for European Law at TCD.

An eminent author, he wrote *The Electronic Age: Telecommunication in Ireland* (1993) and was consultant editor of *The Irish Digest* (1994-99), published by the Law Reporting Council for Ireland.

With Daire Hogan, he was co-editor and contributor to *The Law Society of Ireland 1852-2002: Portrait of a Profession* (2002) – the seminal work on the history of the solicitors' profession.

He was co-author of the supplement to O'Connor's *The Irish Notary* (2007), and author of *The Superior Courts of Law: 'Official' Law Reporting in Ireland 1866-2006* (2007), as well as contributor for Ireland to *Brooke's Notary* (13th and 14th editions).

Awards

In 2004, he received the NUI Galway Award for Law, Public Service and Government. More recently, Eamonn chaired the annual Irish Law Awards and, earlier this year, his colleagues honoured him with a Lifetime Achievement Award.

We extend our deepest sympathies to his wife Mary, his son Alan, daughter Irene, extended family members, grandchildren, relatives, friends and colleagues.

Ar dheis Dé go raibh a anam dílis.

PC RENEWAL TO MOVE ONLINE

The practising certificate (PC) renewal for 2021 will move to an online-only model, the Law Society Council has decided. The unanimous decision was made at its meeting on 13 November.

All PC applications and payments for 2021 will only be accepted via the Law Society website. This includes applications for practising certificates, qualifying certificates, memberships, certificates of good standing, and applications by solicitors in the full-time service of the State.

No paper applications will be made available, and payment methods are limited to debit/credit card or bank transfer, with physical methods of payment (cheque, bank draft, postal order or cash) not accepted.

Solicitors need to provide the Law Society with a unique direct email address (not a generic firm email) to ensure they can log in and submit their PC form online.

The Society will provide detailed information on all of the steps required to complete an online application, with additional training offered to firm administrators (if required).

Assistance will also be provided to those solicitors who are having difficulty in the process.

This year, 66% of PC applications were completed online.

It was the Law Society's objective to move to a fully online model by 2023. The many difficulties caused by the pandemic have accelerated this process, which is necessary to ensure that the PC renewal process for 2021 runs smoothly and that members are issued their practising certificates in a prompt and orderly manner. The online process will also offer considerable savings over manual administration.

Members requiring assistance with specific issues can contact the Law Society at email: pc@lawsociety.ie.

FIRMS SHOWCASE DIVERSITY INITIATIVES

The Diversity in Law project, led by co-founders Tarisai Chidawanyika and Sylvia Julius, has partnered with a number of the larger law firms to run a series of virtual events to show how firms are taking action to change their organisational culture and create a truly inclusive and diverse legal workforce.

On 20 October, a one-hour session at McCann FitzGerald examined their application process and the culture of the firm. The session was organised by partner Audrey Byrne and led by partner Tom Dane, graduate manager Dianne Hennessy, and trainee Aishwarya Jha.

Arthur Cox's one-hour session on their application process was led by Eimear Power on 22 October.

And on 29 October, Matheson hosted a 30-minute session on their diversity initiatives, followed by a Q&A on their application process. That session was led by the graduate recruitment team of Carmel Mellet and Siofra McCann, and diversity and inclusion lead Niall Crowley.

PIC: CIAN REDMOND

Tarisai Chidawanyika

As we go to press, A&L Goodbody is preparing to host its 'Diversity in Law' session in early December, led by Lisa Doyle (graduate talent executive) and solicitor Heidi Tan.

SPECIAL GENERAL MEETING OF THE SBA

Notice is hereby given that a special general meeting of the Solicitors' Benevolent Association will be held remotely by videoconference on Monday 21 December at 11.30am for the purpose of considering and, if thought fit, adopting the new *Rules of the Association*, which have recently been approved by the Charities Regulator.

Members can inspect and/or download a copy of the new rules on the association's website, www.solicitorsbenevolentassociation.com.

You can register to attend the SGM by sending your name and email address to the secretary, Geraldine Pearse, at contact@solicitorsbenevolentassociation.com.

LEGAL PLANNER DELAY

Each year, the *Gazette* publishes its annual *Legal Planner*, which is normally included with the December issue. Due to pandemic-related difficulties, we have had to delay publishing the planner.

The vast majority of dates for Circuit Court sittings for 2021 are not currently available. We have been informed by the Courts Services that dates are expected to be finalised in the coming weeks.

We understand that additional court venues are still being sourced in order to allow for social distancing and jury trials, which is adding to the difficulty of confirming Circuit Court dates.

Our current plan is to include the *Legal Planner* with the January/February 2021 issue. We apologise for any inconvenience this might cause, which unfortunately is due to matters beyond our control.

WARM VIRTUAL WELCOME FOR SOCIETY'S NEWEST SOLICITORS

The Law School held its very first virtual parchment ceremonies for newly qualified solicitors, which were live-streamed on 10 and 11 November. The first virtual parchment recipient was Katie Lawless from Tipperary. Educated at TCD and Blackhall Place, she is an associate solicitor with Arthur Cox.

With COVID-19 preventing in-person events, the Law School decided to mark the hard work and commitment of 2020's newly qualified solicitors and devised the online graduation ceremony. Among the special guests to participate were President of the High Court Ms Justice Mary Irvine, then Law Society President Michele O'Boyle, and director general Ken Murphy.

First virtual parchment recipient, Katie Lawless


Ms Justice Mary Irvine


Director general Ken Murphy


Then Law Society President Michele O'Boyle

Unique contribution

Ms Justice Mary Irvine said that solicitors make a unique contribution to the welfare of society as a whole in providing the best possible service for the routine problems of clients.

"In my 25 years practising as a barrister, not once did I have a bad experience when dealing with a member of the solicitors' profession," she commented, adding that she did not offer such plaudits lightly.

As President of the High Court, Ms Justice Irvine said that she had oversight of the solicitors' profession. The Law Society had only had to invoke the court's jurisdiction in a tiny percentage of professional conduct cases, she said, even though there were almost 21,000 practitioners on the Roll.

She told the newly minted solicitors: "Your obligation is to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, can be trusted to the ends of the earth. That is the standard expected of you, and by which you will ultimately be held to account," she concluded.

Essential to democracy

Law Society President Michele O'Boyle told the newest members of the profession that an independent legal profession was an essential component of democracy. "It is vital that the public, to whom we owe a duty, has confidence in the independence and integrity of the legal profession," she said. "You are now the guardians and champions of the rule of law that our society is founded upon."

The president also urged the new solicitors to maintain a good work/life balance and to keep family and friends central in their lives, as well as enjoying fulfilling pastimes. "Do not let your work become your life. If you do so, you risk falling into ill-health," she warned.

Director general Ken Murphy welcomed the new solicitors to the profession. "Even though we can't be together in person, this is your Law Society, and we look forward to welcoming new colleagues to Blackhall Place soon," he commented.

Both ceremonies were streamed on the Law Society YouTube channel, where they can be found by searching for 'virtual parchment ceremony'.

ENDANGERED LAWYERS

BUZURGMEHR YOROV, TAJIKISTAN

Arrested in September 2015, as he had begun to represent 13 senior members of the recently banned Islamic Renaissance Party, Buzurgmehr Yorov (now 49) was sentenced to 23 years on charges of fraud, forgery, "arousing national, racial, local, or religious hostility", and extremism.

He had been detained for eight months before his trial and complained of beatings and solitary confinement. Before he was sentenced in October 2016, he read an 11th century Persian poem in court, which earned him another charge and an additional two years. With a third prosecution, his sentences amounted to 28 years. The various trials failed to respect international standards of due process, and his imprisonment was widely seen as politically motivated. In November 2019, his sentences were reduced by six years as part of a mass amnesty to mark the 25th anniversary of Tajikistan's constitution. He remains behind bars. According to his brother Jamshed, he contracted a serious case of COVID-19, but recovered.

Other independent lawyers in Tajikistan, including Buzurgmehr's brother Jamshed, have also been arbitrarily detained and imprisoned for spurious offences. Jamshed fled the country after being temporarily released and continues to campaign for the release of his brother and other colleagues.

Aside from Buzurgmehr Yorov's case, the situation is grim for the legal profession in Tajikistan. In 2015, the Tajik government introduced a law that requires all lawyers to renew their licences with the Justice Ministry — not an independent bar association or licensing body — and to retake the bar examination every five years.

"Tajik lawyers have reported that the exam includes questions on a broad range of subjects unrelated to law, such as history, culture, and politics," said human rights lawyer Steve Swerdlow, suggesting that the exam is being used to weed out lawyers prone to taking sensitive cases. It is reported that the number of licensed lawyers in Tajikistan has fallen by around half in only five years.

Lawyers for Lawyers, along with Freedom Now and two law firms, filed a petition in 2018 with the UN Working Group on Arbitrary Detention (WGAD) on Yorov's behalf. On 12 June 2019, WGAD made public its opinion that the deprivation of Yorov's liberty is arbitrary, violating a host of rights laid out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It recommended his immediate release. He remains imprisoned.

Alma Clissmann is a member of the Law Society's Human Rights Committee.

LSRA APPOINTEES CONFIRMED BY OIREACHTAS

The Legal Services Regulatory Authority (LSRA) has confirmed Dáil and Seanad approval for the reappointment of four serving authority members, and the appointment of one new member.

The appointment and reappointments, which took effect on 1 October, are:

- Simon Murphy (newly appointed – one of two members nominated by the Law Society),
- Eileen Barrington SC (reappointed nominee of the King's Inns),
- Angela Black (reappointed nominee of the Citizens Information Board),
- Joan Crawford (reappointment nominee of the Legal Aid Board), and
- Dr Don Thornhill (chair – reappointed nominee of the Higher Education Authority).

PIC: CIAN REDMOND

LSRA chair Don Thornhill

Chair Dr Don Thornhill said: "The members bring significant practical, academic and legal experience and expertise to the authority as it continues with its challenging work programme in fulfilment of its statutory mandate to regulate the provision of legal services, and ensure the maintenance and improvement of standards in the provision of such services, and promoting and protecting the public interest, including those of consumers."

The LSRA is the independent statutory body, established in October 2016, responsible for the regulation of legal services provided by solicitors and barristers. It is formed from the nominees of ten organisations listed in the *Legal Services Regulation Act 2015*. It has a lay majority. The names of nominees are approved by Cabinet and resolutions of both Houses of the Oireachtas. Its chief executive is Dr Brian Doherty.

NEW LEGAL COST ADJUDICATOR

Solicitor Barry Magee has joined the Office of the Legal Cost Adjudicator. He has worked in the private and public sectors in a wide range of areas, including private client, environmental, conveyancing, probate, judicial review, regulatory and administrative law. He also served as chair of the Refugee Appeals Tribunal/International Protection Appeals Tribunal.

The new costs system was set up under part ten of the *Legal Services Regulation Act* and has been in place since October 2019.

LAW DIRECTORY GOES GREEN

The Law Society is to significantly reduce the environmental impact of the annual hard-copy *Law Directory* by launching it as a mobile website and app. It will be available to download soon in both Android and Apple stores.

Hard copies will only be made available to those who express the desire to continue receiving the traditional paper copy (an advance notice of this change was included with each printed copy of the 2020 edition). Members will need to opt-in via their *Law Directory* profile page on the Law Society website if they also wish to receive the 2021 directory in hard copy.

The directory has been published since 1886 and represents a picture of the profession at a moment in time each year. The good news is that the digital directory will contain all the information in the traditional book, with the added value of providing the latest contact details of firms and solicitors in real time.

All members can access the digital *Law Directory* on their mobile phones by logging into www.lawsociety.ie/lawdirectory. Any questions about the digital or hard-copy directory should be emailed to lawdirectory@lawsociety.ie.

STREET LAW TRAINING MOVES ONLINE

A total of 32 PPC1 trainees have been selected from over 100 applicants to be part of this year's Street Law programme. Street Law places Law School trainees with local schools and community settings to teach pupils about the law. This year, trainees will bring the programme to 16 DEIS (Delivering Equality of Opportunity) schools and the Trinity Access Programmes 'Pathways to Law' initiative. Using best practice in civic education, the Street Law programme taps into people's inherent interest in the law and aims to promote legal literacy, equality, and access to law. It teaches high cognitive and social skills.

The volunteers have already taken part in online orientation sessions that will help them share their legal knowledge with transition-year students and other groups. John Lunney (course manager for Street Law) explains: "The focus of the orientation sessions has always been to build capacity in the group ahead of their teaching placement, expose them to the learner-centred teaching methodology that underpins Street Law, and build a community within the group.

"This group of trainees are at the forefront of online public legal education, and are gaining 21st century skills that will transfer to their work in the office."

IRLI IN AFRICA

TANZANIAN PROGRAMME TARGETS CHILD ABUSE

Staff from IRLI and local partner CDF discuss future collaboration over the new CSA project with magistrates in Mpwapwa

Irish Rule of Law International (IRLI) is to launch a new programme on investigating and prosecuting child-sexual abuse (CSA) in Tanzania, alongside local partner, Children's Development Forum (CDF)

The programme aims to improve the practices and protocols of CSA investigations and prosecutions in Tanzania. In Tanzania, more than one in four girls and more than one in seven boys experience some form of sexual violence before they reach the age of 18. Despite this, there is an underreporting of CSA and an inability of Tanzanian authorities to effectively investigate such matters. Ireland's own history of dealing with CSA – initial underreporting followed by waves of prosecutions in the 1990s – has provided Irish criminal justice institutions with the expertise in how to conduct these types of proceedings. IRLI hopes to harness these skills and, with the assistance of the Irish judiciary and the Garda Síochána, apply them to the Tanzanian context alongside CDF.

CDF already has a proven track record of advocating for the human rights of children at risk in Tanzania, including for children affected by child marriage and female genital mutilation. As such, they have developed the relevant expertise in dealing with child victims, as well as having already forged strong networks with relevant stakeholders in Tanzania. IRLI will work with CDF to develop CSA-specific training materials and deliver training courses to criminal-justice institutions in Tanzania, as well as to social welfare officers and medical personnel.

IRLI will also facilitate both technical and information exchanges between members of criminal-justice institutions across both jurisdictions. During police exchanges, training courses will be held on investigative best-practice for interviewing children and vulnerable persons. Prosecutors will be trained on evidentiary matters, including what constitutes sufficient evidence to prosecute a CSA matter. Judicial exchanges will centre on how to effectively handle CSA matters and evidence at trial, such as the possible use of video-link evidence for CSA complainants when giving their testimony.

IRLI envisages that the project will have a long-lasting sustainable impact, and that work on CSA cases will be used as a vehicle to improve the investigations of crimes committed against vulnerable persons, and victims of sexual and gender-based violence more generally.

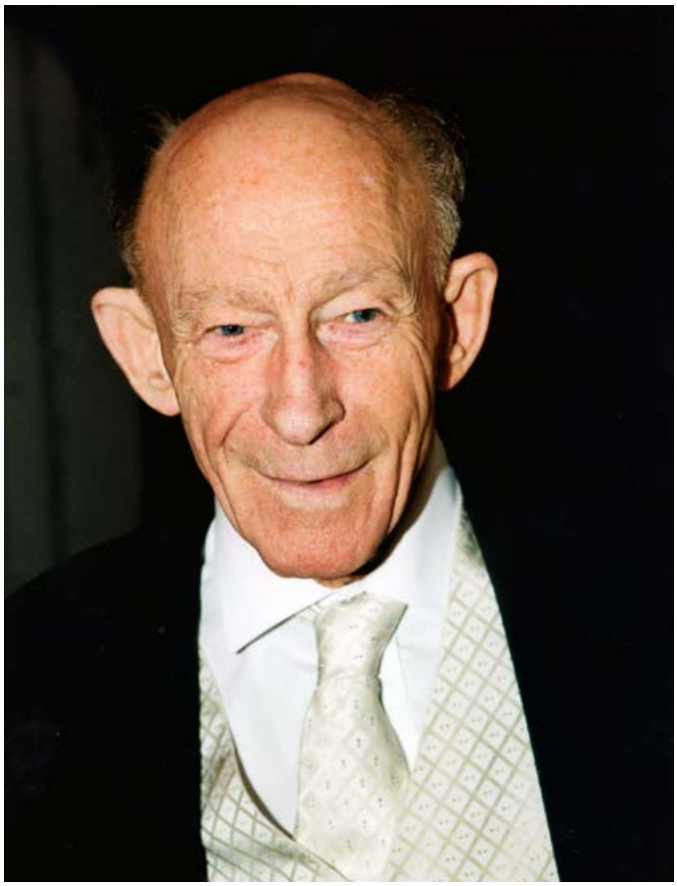
James Douglas is acting director of programmes at IRLI.

JOHN M O'CONNOR RIP

The recent passing of John M O'Connor, late of O'Connor Solicitors, 8 Clare Street, Dublin 2, brings to a close the life of someone who was the epitome of a gentleman and a scholar. Trustworthy, ethical, reliable and helpful are all words that most definitely relate to him.

I knew John as a friend and a colleague for over 60 years, and nobody was more willing to give of his experience and knowledge to those who sought it. I always regarded him as someone to whom I could turn at any time in the knowledge that I would, after doing so, feel unburdened of my concern, and knowing that such discussions would go no further.

John attended Belvedere College, UCD, and the Law Society before qualifying as a solicitor in 1954 and building one of Dublin's most successful practices. He had a long-standing relationship with the Law Society, being the solicitor who dealt with the purchase of the Society's premises in Blackhall Place. He also lectured for many years on wills and trusts to incoming members of the profession.



A skilled draftsman and teacher, he was always happy to share his precedents with fellow practitioners, and was a long-time member of the '64 Group', which focused on disseminating legal knowledge.

Being the caring person that he was, John took a deep interest in the Solicitors Benevolent Association, of which he was a trustee and which he chaired for many years, advocating for contributions to the profession's own charity – not only from solicitors' practices, but also from large corporates that operated legal departments.

He was actively involved, also, with a number of charities, such as the Meath Foundation, the McNamara Homes, and the Cúnamh adoption agency.

John was also a keen sportsman who enjoyed tennis, rugby and sailing his beloved *Ruadh* at the National Yacht Club in Dun Laoghaire. In this sphere also, his generosity of spirit was evident, as he was one of the founding members of The Shipman Association and was its secretary for over a decade.

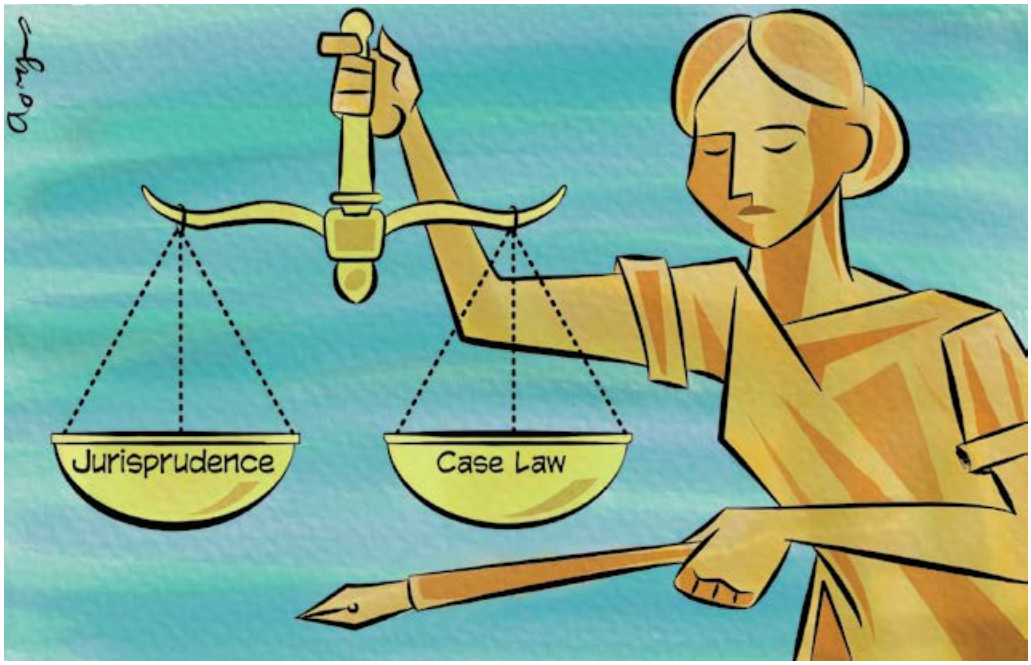
To his wife Mary, and to George, Ruth and John, our deepest sympathies.

Ar dheis Dé go raibh a anam dílis.

AFS

A ROSE BY ANY OTHER NAME

From: Bernard O'Connor SC, resident partner, Nctm (Brussels); professor, State University Milan



The review by James Meighan of Brice Dickson's book on the Irish Supreme Court (October 2020, p15) triggers a question that maybe your readers can help answer. Mr Meighan says that the book "plots the jurisprudence of the court". I ask if it is not more correct to refer to the 'case law of the court'?

The French word '*jurisprudence*' and the Italian word '*giurisprudenza*' refer to the opinions of judges expressed in judgments interpreting the civil code or, more simply, decisions of courts. In English, however, the word 'jurisprudence' refers to the science or philosophy of law. These are two very different concepts.

However, more and more, I see the word 'jurisprudence' being used in English-language texts when referring to the case law of international tribunals (WTO, ECtHR, CJEU), and now I see it used in relation to the case law of the Supreme Court by a lawyer brought up in the common-law tradition. I had thought that the use was a mistake by authors who were from the civil-law tradition. Now I wonder.

I ask your readers: is it correct or incorrect to use in English the word 'jurisprudence' in relation to the case law of tribunals or courts – international or not?

PS: On a technical point – in the penultimate paragraph, I am not sure that the Irish Supreme Court "conceded its ultimate authority to the Courts of Justice in the EEC". To the extent to which that assertion is correct, it is in relation to EU law only, and the concession is not to the Courts of Justice in the EEC, but to the Court of Justice in the singular.

PRACTICAL PROBATE

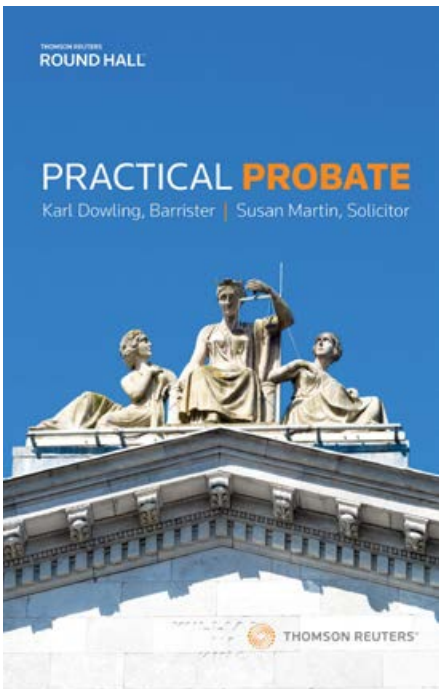
Karl Dowling and Susan Martin. Round Hall (2020) www.roundhall.ie. Price: €55 (paperback, incl VAT).

Practical Probate is presented as a concise collection of essential principles in probate practice to take account of changes introduced by the Probate Office.

In essence, it is a publication written in the style of the late Eamonn G Mongey's now out-of-print *Probate Practice in a Nutshell*, so could be considered an updated replacement.

The focus is on matters that solicitors come across in everyday practice. It is a timely publication, setting out the effect in practice of changes in probate procedures, with a practical chapter on enduring powers of attorney. It clearly summarises a checklist of the legal principles. Chapters cover such matters as estate planning, wills and the practicalities of extracting grants of probate, grants of administration with will annexed, and grants of letters of administration intestate. The book also deals with second or subsequent grants and estates with a farm element.

There is a helpful chapter on Probate Office procedure, dealing with such matters as caveats, citations, and applications by post. There is a chapter on non-contentious probate litigation in the High Court, detailing the issues that arise in practice.



The book was published just before the introduction of the new Statement of Affairs (Probate) Form SA2, but this is not problematic. A minor quibble is the index, but the chapters are so clearly set out that this is not an issue.

The book's practical approach means that it cannot deal with, nor could it deal with, some of the nitty-gritty issues that invariably develop in probate cases. It is, however, an extremely useful summary and roadmap for the issues that solicitors face on a day-to-day basis in practice, and it sets out the steps that need to be taken in probate practice. I see my copy becoming a much-thumbed reference book for a checklist each time a probate application is lodged.

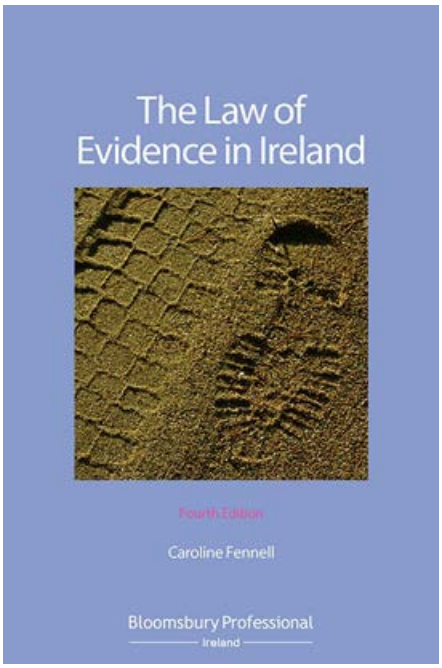
The checklists, sample will clauses, oaths, and other essential documents will be of assistance to practitioners. The book presents a nuts-and-bolts of probate practice and procedure in an easy-to-interpret format.

This is not a textbook to read through from start to finish, but an essential handbook for solicitors who carry on any probate practice. Its €55 price could save a lot of heartache.

Morette Kinsella is a member of the Law Society's Council, a member of the Probate, Administration and Trusts Committee, and has recently merged her practice with Parker Law Solicitors, Waterford.

THE LAW OF EVIDENCE IN IRELAND (4TH ED)

Caroline Fennell. Bloomsbury Professional (2020), bloomsburyprofessional.com. Price: €225 (paperback).



This fourth edition of *The Law of Evidence in Ireland* is a staple for every law student and practitioner in the country. The most recent edition would make a very welcome addition to any library. Criminal practitioners, in particular, must try and navigate through the rules of evidence in providing legal advice. The book sets out the current state of the law and is up to date with discussions of *Sweeney v Ireland* (2019), *DPP v FR and AR* (2019) and *DPP v McGrath* (2019). Case law of the European Court of Human Rights is included.

The strength of the book, as with the three previous editions, lies in placing the evolving law of evidence in its context of constitutional and human rights law. For example, there is an extensive discussion of the important 2017 case of *DPP v JC*, which explores the different perspectives displayed in the judgments delivered in that case. The author concludes that the development of the case law relating to the admissibility of improperly obtained evidence "represents a focus on reliability and probity, as a counterweight to concerns about breach of process, which is very far removed from a rights-based perspective on admissibility".

The book will be of use to practitioners for setting out the rules of evidence, but also for explaining their rationale and the policy arguments that will play a part in the future development of the law. For example, the discussion of journalistic privilege not only cites the relevant case law of our courts and explains the current state of the law, but goes further by discussing the approach of the Law Reform Commission and the case law of the European Court of Human Rights. It also includes the author's commentary on the importance of the case law under discussion. That 'added value' might allow a practitioner to craft a winning argument in a marginal case on the admissibility of evidence.

The book is a must for any practitioner with a court-based practice on either the criminal or civil side. g

Thomas Coughlan is principal of Thomas Coughlan & Co, Cork, and Michael McGrath SC is a Cork-based barrister.

If you ever go across the sea to IRELAND

'If you're Irish, come into the parlour, there's a welcome there for you.' The road to Irish citizenship, however, might not carry the same 'welcome on the mat' for many foreign citizens. **Carol Sinnott** finds out whether this is the place for you

CAROL SINNOTT IS AN IMMIGRATION LAW SOLICITOR AND THE PRINCIPAL OF SINNOTT SOLICITORS, DUBLIN

PIC: ALAMY/SHUTTERSTOCK/GAZETTE STUDIO

AT A GLANCE

- The conferral of Irish citizenship has many benefits
- Decisions to refuse and revoke citizenship applications have led to significant constitutional challenges
- Recent jurisprudence sheds light on refusals to grant citizenship

Irish citizenship can be acquired in a number of ways under the *Irish Nationality and Citizenship Acts 1956-2004*, as amended, including through naturalisation, which is the process by which the State may confer Irish citizenship upon a person as a privilege, not a right.

Immigration to Ireland has led to the most significant rise in applicants for citizenship through naturalisation. Certain other recent factors have contributed to the rise in citizenship applications, such as Brexit and the Trump administration, as many British and US citizens with Irish roots avail of their entitlement to join the foreign birth register.

The conferral of citizenship has many benefits, most notably the fact that an Irish citizen is also an EU citizen and is thereby entitled to all of the benefits derived from the EU directives on the right of citizens of the EU and their family members to move and reside freely within the territory of the member states.

Recently, a number of decisions to refuse and to revoke citizenship applications have been the subject of very significant constitutional challenges. For the purposes of this article, it is proposed to examine some recent jurisprudence concerning refusals for reasons of character of the applicant and failure of the applicant to meet the residency requirements, and to examine recent jurisprudence in the area of revocation of citizenship, which renders the road to citizenship less straightforward that it ever was.

Once a decision to refuse an application for naturalisation is made, there is no right of appeal, which means that the

PIC: SHUTTERSTOCK

only means of challenging a refusal is by way of an application for judicial review before the High Court.

Four green fields

The 2012 decision of the Supreme Court in the case of *Mallak v Minister for Justice* established that the minister is under a duty to provide an applicant with reasons for refusal, or at least to provide justification for not providing reasons. Before *Mallak*, the High Court position was that the minister did not need any reason for refusal, let alone provide one. The principle has since been extended by the case law referred to later in this article.

Section 15A(1)(b) of the *Irish Nationality and Citizenship Act 1956*, as amended, provides that the minister may, at her absolute discretion, grant the application if satisfied that the applicant is of good character. Recent case law has established that the minister is obliged to provide a proper rationale as to why character was called into question and, indeed, if the applicant is ultimately refused, the rationale for that refusal.

In the recent Court of Appeal case of *MNN v Minister for Justice*, the court found that the minister's decision did not provide the rationale for determining the basis upon which two road-traffic offences and another alleged incident led to a decision that the appellant had failed to meet the good-character requirement. The minister had made the decision without putting an incident and its subsequent strike-out order in its proper context. It was found that the minister did not consider the 'alleged incident' as more than alleged.

It was clear that the court could not decipher what view the minister took of the alleged incident, but it was also evident that the minister took some view, as otherwise there would have been no need to refer to the nature of the alleged incident when coming to the decision on the applicant's character. The court ordered that the minister's decision be quashed, and that the application be readmitted to the minister for consideration in accordance with the rules of natural and constitutional justice.

Erin go bragh

In another recent case, *Talla v Minister for Justice*, the applicant's citizenship application was refused on the basis that the minister was not satisfied of his 'good character' and referred to the applicant as having a "history of non-compliance with the laws of the State".

The applicant's judicial review application was dismissed by the High Court, and subsequently appealed to the Court of Appeal. The Court of Appeal was not satisfied that the minister had considered and weighed all relevant considerations, including the man's explanations for the motoring offences.

Mr Justice Haughton stated: "Notwithstanding that the minister has an absolute discretion in determining an application for a certificate of naturalisation, it is beyond question that the minister has a duty to act fairly and judicially in accordance with the principles of constitutional justice. It follows that, in addressing the condition that an applicant be of 'good character', the minister must consider and analyse

> ONCE A DECISION TO REFUSE AN APPLICATION FOR NATURALISATION IS MADE, THERE IS NO RIGHT OF APPEAL, WHICH MEANS THAT THE ONLY MEANS OF CHALLENGING A REFUSAL IS BY WAY OF AN APPLICATION FOR JUDICIAL REVIEW BEFORE THE HIGH COURT

all relevant material, and a failure to do so makes the lawfulness of the decision susceptible to judicial review.

"Put another way, the appellant had a legitimate expectation that the material favourable to him, including explanations for road-traffic offences, would be considered and weighed by the minister."

The court did note that a citizenship applicant must disclose previous convictions, even if 'spent convictions', and that the minister is entitled to have regard to what would otherwise be spent convictions in considering good character for citizenship applications. This is an important observation to be noted by applicants who are applying for citizenship, and who mistakenly believe that spent convictions are not of relevance to their application.

The court held that the minister, in particular, failed to express his rationale for deciding that the 'nature of the offences' meant that the applicant was not a person of 'good character'.

Back home in Derry

There has been a growing number of refusals in recent years based on national security concerns. In May 2019, the Supreme Court ruled in the case of *AP v Minister for Justice* regarding the refusal to grant naturalisation to a recognised refugee on national security grounds.

The minister provided no reason for the refusal, relying on certain provisions of the *Freedom of Information Act 1997*, as amended, and for reasons that the appellant's rights to know the content of the materials relied on was outweighed by "national security considerations" in maintaining confidentiality over the information concerned.

The argument was upheld by the High Court and the Court of Appeal. The Supreme Court held that the ultimate decision on whether the State's interests outweigh the requirement to provide documents is one that must be made by a court rather than a State authority. The court held that a failure to give more detailed reasons can only be regarded as justified if that failure impairs the entitlement to reasons to the minimum extent necessary. It held that the State did not abide by the principles of proportionality in impacting the rights of Mr P to the minimum extent.

On 1 October 2020, the Minister for Justice Helen McEntee announced the establishment of a single-person committee of inquiry, which will be served by retired High Court Judge John Hedigan. The committee is being established to review, upon request from the applicant, the material upon which the decision to refuse a certificate of naturalisation was made, in circumstances where the basis of refusal is, in whole or in part, predicated upon national security concerns.

Spancil Hill

Section 15(1)(d) of the *Citizenship Acts*, as amended, provides that a condition of naturalisation for applicants not relying upon marriage or civil partnership is that the applicant has had, immediately prior to the date of the application, one year's continuous residence in the State and, during the eight years preceding that period, a total residence in the State amounting to four years.

A refusal by the minister to accept that the applicant was continuously resident in the year prior to making the application was challenged in the 2019 case of *Roderick Jones v Minister for Justice*.

In July 2019, the High Court ruled that the then practice of the Minister for Justice in allowing applicants six weeks out of the country, for holiday or other reasons, and more time in exceptional circumstances, was not permitted by section 15(1)(d) of the *Citizenship Act* (as amended), but also that 'continuous residence' required presence in the State, uninterrupted by even a single night's absence over the 365 days of the year.

The Court of Appeal decision delivered in November 2019 provided a welcome clarification on the law governing absences from the State for persons applying to be granted a certificate of naturalisation.

The Court of Appeal overturned the continuous residency finding of the High Court. It found that the policy of the minister was not a rigid or inflexible policy, and that the policy was reasonable. The court found that the requirement of 'continuous residence' does not require uninterrupted presence in the State throughout the entirety of the relevant year, nor does it impose a complete prohibition on extra-territorial travel, as the High Court had suggested.

The court concluded that the minister was correct in finding that the applicant did not satisfy the continuous residency requirement, and noted that the fact that most of the absences from the State were not work related was 'material'. The court found

PIC: ALAMY

'Howaya, horse?' 'Not too bad, Trigger, not too bad.'

that the approach taken in the case was "reasonable", and held that the minister's policy was not unlawful.

While the decision provides significant clarity on the law, further clarity and reform is required in the area, particularly in relation to the six-week absence policy and what exceptional circumstances and work-related travel are allowed. The judgment takes us back to the position, pre July 2019, where absences of up to six weeks were permitted, with no guidelines related to work or allowable absences in exceptional circumstances.

Fiddlers' Green

There has been an increase in the revocation of Irish citizenship by the minister in recent years. The minister may revoke a certificate of naturalisation under section 19(1) of the *Citizenship Acts* for a variety of reasons, including:

a) The certificate was procured by fraud, misrepresentation, or concealment of material facts or circumstances,
b) A person may have shown himself to have failed in his duty of fidelity to the nation and loyalty to the State,
c) A person has been ordinarily resident outside of Ireland for a period of seven years without reasonable excuse, and has not during that period registered annually in the prescribed manner his intention to retain citizenship,
d) The person to whom it was granted is also under the law of a country at war with the State, or
e) A person has by any voluntary act, other than marriage, acquired another citizenship.

In the recent case of *UM (a minor) v Minister for Foreign Affairs and Ors*, the applicant's father procured citizenship in the State because his father had been present in the State as a recognised refugee for the requisite period, pursuant to the *Citizenship Acts*. However, his father's declaration of refugee status was revoked for reasons that it had been granted after false and misleading information had been provided to claim asylum.

The minister failed to accept that UM was an Irish citizen, and UM's application for an Irish passport was refused on that basis. Stewart J in the High Court held that residence procured in that way could not be deemed to be reckonable residence for the purposes of citizenship.

The Court of Appeal upheld the High Court's finding and found that the revocation of the applicant's father's declaration of refugee status meant that the declaration was not in force during the time he was physically present in the State and, therefore, his residence was not deemed reckonable for the purposes of his son's citizenship application.

The west coast of Clare

On 14 October 2020, the Supreme Court delivered its judgment in a highly significant case concerning the issue of revocation of citizenship. *Ali Damache v Minister for Justice* concerns the appellant, an Irish citizen since 2008, who is serving a sentence in the US after pleading guilty to having conspired to materially assist a terrorist group.

The appellant was served a revocation notice on the basis of having shown disloyalty to the State. No revocation decision had been made at the time the applicant instituted his judicial review proceedings. In 2019, the High Court dismissed the applicant's judicial review application, which primarily challenged the legality and constitutionality of section 19 of the *Citizenship Act*.

The Supreme Court concluded that, because of the drastic consequences a revocation of naturalisation might have, a high standard of justice must apply. The Supreme Court held that that process provided for in section 19 did not provide the procedural safeguards required to meet the high standards of natural justice applicable. In particular, an applicant must be entitled to a process that provides minimal procedural safeguards, including an independent and impartial decision-maker.

It held that section 19 was invalid, having regard to the provisions of the Constitution, and it allowed the appeal from the High Court decision. g

LOOK IT UP

CASES:

- *Ali Damache v Minister for Justice and Equality, Ireland and the Attorney General* [2019] IEHC 444
- *AP v Minister for Justice and Equality* [2019] IESC 47
- *Mallak v Minister for Justice, Equality and Law Reform* [2012] IESC 52; [2011] IEHC 306
- *MNN v Minister for Justice and Equality* [2020] IECA 187
- *Roderick Jones v Minister for Justice and Equality* [2019] IECA 285
- *Talla v Minister for Justice and Equality* [2020] IECA 135
- *UM (a minor) v Minister for Foreign Affairs and Trade, Passport Appeals officer David Barry* [2020] IECA 154; [2017] IEHC 741

LEGISLATION:

- *Freedom of Information Act 1997*, as amended
- *Irish Nationality and Citizenship Acts 1956-2004*, as amended (*Citizenship Acts*)

THE RELUCTANT LAWYER

The Law Society's new president is something of an enigma. Equally at home designing boats, replacing an engine, or solving a tricky conveyance, James Cahill talks to **Mark McDermott** about his year at the helm

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*

'High-seas honeymoon a six-storm ordeal'; 'Lost crew sail home'; and 'Cheers in Clew Bay' – just some of the headlines that made the news in November 1986, when James Cahill and his wife Katherine, along with her sisters Carmel and Fionnuala and a family friend Jarlath Cunnane, finally sailed into Clew Bay on board *Ricjak*.

In a subsequent interview, James commented: "We endured six storms after we left Boston, but nothing was as bad as the storm after we hit landfall at Slyne Head, off west Galway. The waves towered 35 feet above and the swells were as wide as football pitches. We were never before in such grave danger. We were near the coast and we thought we could be sunk."

"The mast was almost touching the waves," Carmel added. "Then one gigantic wave came right over us and completely submerged us."

They were blown up the coast in the darkness, past Achill Head towards Donegal Bay. "We were praying hard, I can tell you," James said.

ALL PICS: MICHAEL MCLAUGHLIN

> THE ATLANTIC DEALT THEM A ROTTEN HAND, SERVING UP SIX STORMS SHORTLY AFTER THEY LEFT AND EVENTUALLY SPEWING THEM UP IN IRELAND AFTER EVERYONE THOUGHT THEY HAD BEEN LOST AT SEA

The boat and its crew put in at Inishlyre Island, in sight of Croagh Patrick, at 5am, where they made contact with island friends who welcomed them home. From there, they phoned family members and friends to let them know they were safe.

Colourful kaleidoscope

Thirty-four years, almost to the day, I'm interviewing James Cahill, the Law Society's new president. I've known James for the best part of 14 years, having first come across him at the Law Society's annual conference in Dubrovnik in April 2006. But relatively early in the interview, I realise I don't know him at all.

James is a man with as many facets as a kaleidoscope. The most obvious labels to attach to him are 'James the solicitor', 'James the sole practitioner', 'James the Mayo man', and 'James the family man'. But how about 'James the welder', 'James the mechanic', 'James the builder', 'James the boat designer', 'James the sailor', or 'James with dyslexia'?

The second in a family of five – and the only boy – James was born in 1953 and reared in Castlebar, Co Mayo. His dad John qualified as a solicitor in 1935 and his mother Carmel was a physiotherapist.

PIC: MATT KAVANAGH

The crew members of *Ricjak* celebrate their safe return

His dad initially set up in partnership in Dublin immediately after the war but, within two years, ran into unexpected difficulties as a result of a dishonest partner. He describes the impact on his dad as being significant, but is incredibly proud of how he handled it.

Father's footsteps?

Was it expected that James would follow in his father's footsteps?

"No, absolutely not," says James. "He said to me when I was around 21 that he would not be leaving the firm to me and that, when the time came, he would be winding down the practice."

At any rate, James was entirely uncertain about the career he wished to follow. He had studied at UCD and tells how he had worked in an office for about 18 months, around 1979, before qualifying as a solicitor.

"I wanted to be self-employed and to work in the West of Ireland," he says. "My father had begged me to go and work in an office for six months, learn how to make a living, 'and, when you've done that, you'll be off my conscience. I don't care if you never walk into an office for the rest of your life'!

"That's the honest truth, that's what he said to me! He had the psychology right, so I agreed. As far as I was concerned, I'd spent a lifetime locked up in school, and wasn't going to be locked up again.

"But then I got so committed, met exactly the right people who had all sorts of problems on their hands, and I got stuck in and had great fun."

Main energy

His career wasn't the main focus of his life at that stage, though. His energy was directed towards a 43ft steel boat that he had designed

and was in the process of building. The goal was to get *Ricjak* built and to sail it around the world.

"I couldn't get this boat built, you know. No matter where I looked, I needed £1,000 here and a £1,000 there. I knew that my work as a solicitor wasn't going to help pay those bills, since payments were too erratic. A friend of mine was working for a large electrical contractors called MF Kent in Clonmel. They agreed that they would take me on for a power-station project in South Africa. They would pay me £23,000 into my hand, no tax, no nothing, working for a year. I'd be billeted at the power station doing electrical work, they'd give me an induction course, I'd be fed and watered, and I could work overtime anytime I wanted it.

"Well, things don't ever work out quite according to plan. Another opportunity presented itself. So I went to a man I was very friendly with in Mayo Sailing Club, Michael Browne, who is now an elderly retired solicitor. I told Michael of my dilemma. I'd given up my job, I was heading for South Africa in two-and-a-half weeks, and would he mind checking around discreetly with a few solicitors to see if there was anyone looking for somebody.

"He turned around and said, 'Well actually, I could do with somebody myself'."

Still needing money to finish his boat, he took to building trailers in the evenings and weekends. "Literally, I was out of the office and into my overalls."

It was around this time that he met his wife to be, Katherine Killalea, from Swinford in Mayo. James was still working for Michael Browne in Garvey Smith & Flanagan, largely doing work for Mayo County Council. A job came from a New York attorney. "In the course of a conversation with him, I told him my plans. I'd give whatever time I could to his job, but I was building a boat and was heading to the United States the old-fashioned way, via the Caribbean, and nothing was going to stop me.

"Katherine and I got married in August 1985. With the boat ready, we were planning to set sail for 12 to 18 months on an extended honeymoon. That summer was shocking," James recalls. "There was nothing but gales and I couldn't get out of the place, the weather was so bad. Anyway, we eventually got away in late September but, just before I left, a message came to my house from the lawyer in the United States, who I'd never met but who thought that the sailing trip was a great idea. Unbelievably, he had opened an account for me in the Bank of Ireland in New York and had deposited money in it and sent me a credit card. Other than that, I would have been leaving with £800 in my pocket!"

They set sail for Portugal and the Canaries with two of Katherine's sisters. Then it was onwards to the Caribbean and from there to Florida and up the east coast of the US. Eventually, they docked the boat in Georgia and travelled across the continent.

Upturned yacht

It would be the following November by the time they would see Ireland again. The Atlantic dealt them a rotten hand, serving up six storms shortly after they left Boston, via the Azores, and eventually spewing them up in Ireland after everyone thought they had been lost at sea.

Two boats had already tried to get to Ireland from the Azores and had been unable to make it – one had had to return due to damage. "I phoned an acquaintance who was working at a weather station in Valentia to say that we were coming," says James. "Around 12 days later, a fishing boat spotted an upturned yacht in Donegal

Bay, which happened to be the same colours as my own boat, and the guessing game started. The press, of course, were enquiring and contacted Valentia. In their estimation, we should have got up within 10 or 12 days – this was day 12 or 13 and they all jumped to the wrong conclusion. Unfortunately, due to the bad weather and the long voyage, our batteries were flat and we had no way of radioing anyone to let them know we were safe. Our families and friends were mighty relieved when we got the news to them."

On a high after their safe return, James admits to finding it very difficult to get back in the saddle. "I was getting invitations from sailing clubs all over the country to give talks." The fun eventually came to an end though and, with money he'd been paid for doing a radio interview with the *Gay Byrne Show*, he used it to prime his new business and opened Cahill and Cahill to the world on New Year's Day 1987.

"I had been active in the Mayo Solicitors' Bar Association from day one and was friendly with all the solicitors. I went around to their offices asking them for any files that might have been causing them difficulty."

The "load of files" he collected convinced him that he could make headway with the new business, with the promise to his colleagues that he would return the files if he got busy, unless he managed to finish them first. "In that way, I was relatively busy from the beginning," he says.

Today, Cahill and Cahill is a general legal practice that consists of James and another solicitor, Keith Finnan, who are supported by three administrative staff.

James' self-designed, self-built *Ricjak*

How does it feel?

What does it mean to him, becoming the 150th President of the Law Society? His response is slow in coming, and I detect a certain emotion in his reply: "As a person who never saw myself as a lawyer, in that time-honoured sense of the word, it shows that there is tremendous scope for different types of people within the community of solicitors in this country. It's a reflection of the openness in the profession, and I think that's a wonderful testament, notwithstanding the imperfections that any organisation has. My parents would be delighted if they were here to see it. The fact that somebody like me could manage to achieve this height – it's wonderful!

"I feel extraordinarily privileged, not only to be president, but to have been a solicitor over the years in circumstances where I wasn't exactly the ideal candidate, one might say, because of my reading difficulties. For me personally, it will bring my career to a lovely conclusion – that at least I'll be able to say that I achieved that position."

During his term, James plans to focus on encouraging greater friendship in the profession. "Many solicitors and their staff are feeling desperate, isolated and lonely," he said. "Friendship, allied with mindfulness and mental health, contain the vitally important ingredients for personal development. These are needed to underpin a healthy work/life balance and a positive personal life."

Overdue recognition

He is also keen to mark the long service of more than 1,570 solicitors around the country. "I plan to celebrate and honour all solicitors who have been on the roll for 40 years and more by presenting them with a celebration package that will include a bronze plaque.

"Recognising the important role that our younger solicitors will play, it is key that we value the solicitors of the future by engaging with our students. I will be actively seeking the involvement of young solicitors in Law Society activities so that they will feel invested in the workings of the profession. The gala dinner next autumn will focus on our younger solicitors."

James is conscious that 2021 will mark the 100th anniversary of the Law Society representing solicitors in the 26 counties.

> I FEEL EXTRAORDINARILY PRIVILEGED, NOT ONLY TO BE PRESIDENT, BUT TO HAVE BEEN A SOLICITOR OVER THE YEARS IN CIRCUMSTANCES WHERE I WASN'T EXACTLY THE IDEAL CANDIDATE, ONE MIGHT SAY

Many bar associations share the same longevity. The new president will be encouraging them to start compiling their associations' histories. In addition, he looks forward to attending meetings of the Law Society with the presidents, secretaries and PROs of the bar associations, regarding them as good sounding boards.

He is animated about the establishment of the Society's new Practice Support Task Force. This will act as a champion for the wider profession in the work of small practices, and will support members and member services generally. "The goal will be to identify the issues affecting smaller firms, and to act as a sounding board for the challenges facing them," he says. "The task force will consider and advocate to the Society's Council for initiatives that will support firms in running their businesses, and will help them towards commercial success."

SLICE OF LIFE

■ *Family life*
My wife is Katherine Killalea (who is also a Mayo solicitor). We have three children: Conor runs his own business in Galway, Ellen has a doctorate in biomedical engineering and is currently at sea in the Atlantic, and Fionnuala is a doctor in the Mater Hospital.

■ *Most influential person?*
My father. As well as running his firm, he was chair of the Municipal Authorities of Ireland from 1961-1962 and of Castlebar UDC. He represented Ireland on the Local Government Committee of the Council of Europe and, in 1962, was elected to its standing committee. The same year, he was appointed to the Conroy Ground Rents Commission. The Government adopted his minority report, which passed into the *Landlord and Tenant (Ground Rents) Act 1967*.

■ *Favourite author*
One of the first books I read that galvanised me to consider a nautical life was *Sailing Alone Around the World*, by Joshua Slocum. He was the first man to sail singlehandedly around the world in 1895 to 1898. Because he had spent his life at sea on ships, he wrote in short, pithy sentences.

■ *Current pastime*
My pastime is making things. When I bought this place, which was built in 1875, there were 12 houses on it. I have been refurbishing them every weekend for the last 30 years.

■ *Favourite alternative job*
I would love to have been a yacht designer but there was no possibility of ever making a living at it. That said, I'm the only person in these islands to design, build, and sail a boat across an ocean.

■ *Favourite holiday destination?*
Adventure on the high seas.

■ *Something surprising about you*
I played the violin and later the melodeon and harmonica, which I still play. I have a good ear for music.

Overwhelming demands

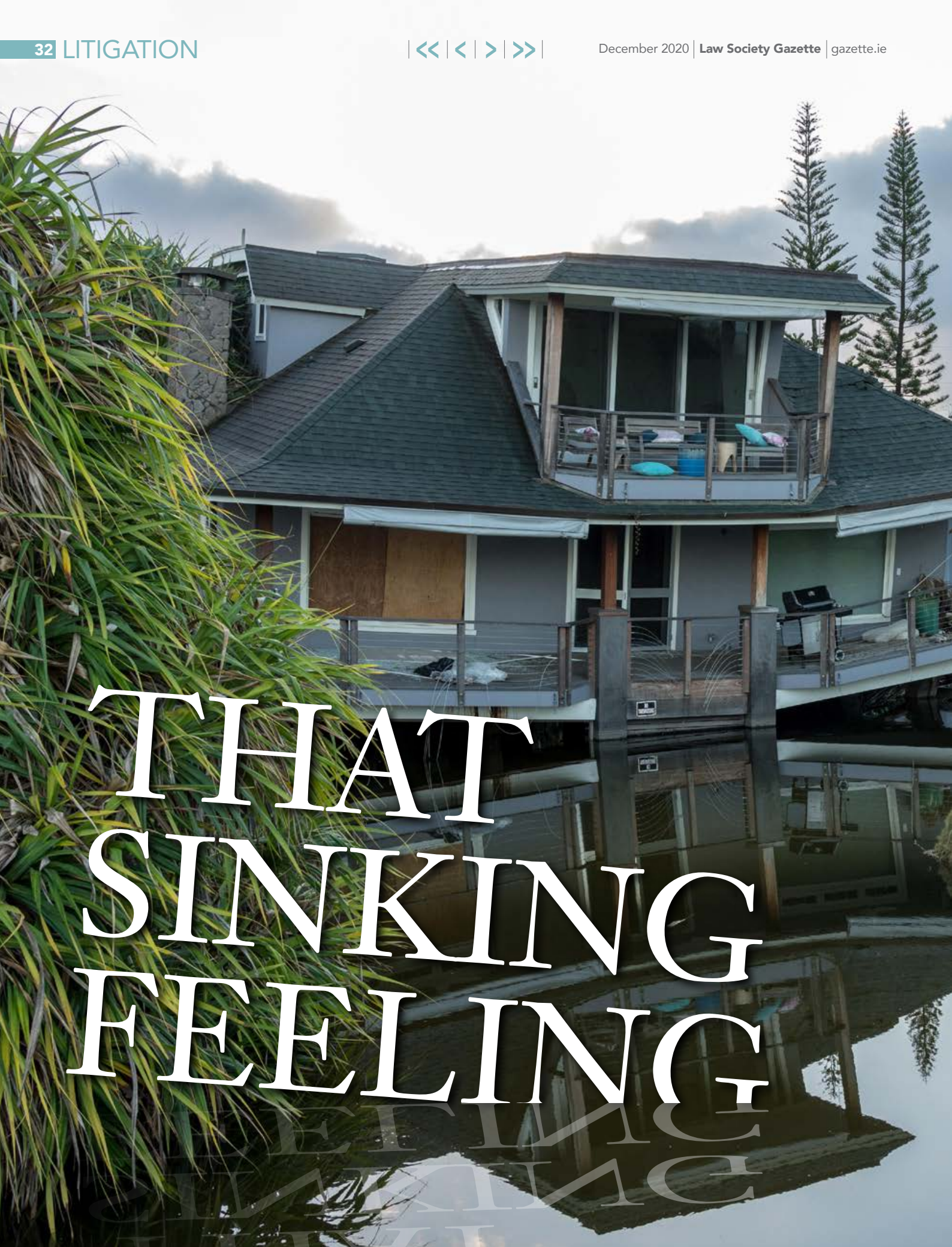
He believes that solicitors are overwhelmed by the increasing demands of practice – particularly those being increasingly pushed on them by Government, local government, and external agencies.

"The demands on solicitors are coming from every possible direction. Obligations and responsibilities are being foisted on us with little or no consultation. It's not a badge of honour to be landed with more obligations and responsibilities. The obligations being imposed on us are onerous and often carry significant sanctions. We must consider the longer-term effects on our practices, our PI insurance, the regulatory risks, and the effect on the upcoming generation of solicitors.

"We are the target for powerful institutions that offload their responsibilities and, by stealth, channel them in our direction. We must be consulted and agreements reached. I believe that it's time to call a halt. The message has to be 'enough is enough'. Solicitors will not lie down and allow endless obligations to be heaped on us."

Will his stint as Law Society President signal has 'last hurrah'?

"I'm a sailor masquerading as a lawyer," he smiles. "My plan is to sail around the world. I have the boat already organised for it. Nothing will stop me, other than bad health. I'm planning to circumnavigate the world. Two years from now, I hope to be on my way to South America. I'll be heading to Argentina for starters. From there, I plan to head around Cape Horn, and who knows where after that!" g



THAT SINKING FEELING

AT A GLANCE

- It appears that climate change – in particular, prolonged dry and/or hot weather – has resulted in a considerable increase in subsidence claims
- Where potential signs of subsidence in a building (for example, cracks appearing in walls) occur, the owner should immediately have the matter professionally investigated and, if warranted, make a claim without undue delay

Considerable uncertainty still surrounds the question of when claims for subsidence accrue, and when they become statute-barred. **Patrick E Keane** lays the foundations

PATRICK E KEANE IS A DUBLIN-BASED SENIOR COUNSEL

PIC: ALAMY

Subsidence is, typically, the downward movement of a site on which a building stands – where, for example, the soil beneath the building decreases in volume, causing the building's foundations to become unstable. There are many causes of subsidence, including leaking drains and tree roots. Subsidence cracks tend to be more vertical than horizontal.

It appears that climate change, and in particular prolonged dry and/or hot weather, has resulted in a considerable increase in such claims, since drought results in a decrease in soil volume, making clay soil particularly vulnerable. Subsidence claims appear likely to increase in the future.

The *Brandley* case

Considerable uncertainty still surrounds the question of when claims for subsidence accrue, and when they become statute-barred.

In the Supreme Court case of *Brandley v Deane*, McKechnie J dealt with the situation where a claim for subsidence was already statute-barred in contract, but the question remained whether it was also statute-barred as a tort. Dealing with when the cause of action accrued, he stated (at paragraph 2 of his judgment): "This area of the law has been bedevilled with misdescription, lack of clarity, and confusion between terms which are quite different, and with their interchangeable use when it is ill-judged and inappropriate to do so."

He was of the view that there were five distinct possible starting points from which the clock might run for limitation purposes, namely:

- The date of the wrongful act,
- The date that the damage occurs,
- The date that the damage is manifest,
- The date of discoverability, and
- The date on which the damage is actually discovered.

In the case in question, the foundations of the two houses involved were completed in March 2004, when the first-named defendant (Mr Deane, the consulting engineer) issued his certificate of compliance with planning permission and building regulations. The second defendant was the contractor who laid the foundations. The houses were completed between September 2004 and January/February 2005. In December 2005, the plaintiffs observed that cracks had appeared in each of the houses, but the plaintiffs did not issue their proceedings until 30 November 2010.

The High Court judgment in the *Brandley* case dismissed the plaintiffs' claim, since it was held that discoverability could not be the relevant starting date. But in the Court of Appeal, Ryan P, giving the judgment of the court, took the view that the High Court judgment was in error, in that negligence without the accompaniment of damage or loss was not actionable.

He stated: "The plaintiffs did not suffer damage at the time when the defective foundations were installed. When the defective foundation was put in, the only complaint that the plaintiffs could have had was that the foundation was defective."

Ryan P found that the damage resulting from the defective foundations happened in December 2005.

Supreme Court appeal

The defendants/appellants obtained leave to appeal to the Supreme Court on three points, which could be summarised as the question of when time runs for the purpose of the *Statute of Limitations* in property damage claims.

The appellants relied, among other things, on the Supreme Court decision in *Gallagher v ACC Bank* in support of the contention that it was not necessary for a plaintiff to await the full quantification of losses before commencing an action for damages.

PIC: SHUTTERSTOCK

McKechnie J pointed out that, in negligence, some actual damage beyond what can be regarded as negligible must occur before the tort can be said to be complete. Accordingly, the occurrence of a wrongful act resulting from an established breach of duty will not itself constitute a cause of action.

The parties agreed that the discoverability test was irrelevant. McKechnie J regretted the irrelevance of the test in cases such as *Brandley*: "As a result, as matters presently stand, this court cannot provide for any manner of discoverability test in cases of this nature, even though the introduction of such a test would greatly enhance the clarity of the law and also defeat the harshness and injustice which persists under the current scheme. That, as above stated, is a most regrettable state of affairs."

Accordingly, it was held that the time limit on negligence actions begins to accrue on the date on which damage manifests itself, and not the date on which the damage is discovered. The cause of action will not accrue until actionable damage has been caused. It is not the defect that needs to be capable of discovery: it is the subsequent physical damage caused by that defect.

McKechnie J continued: "In my view, time begins to run from the date of manifestation of damage, which means it runs from the time that the damage was capable of being discovered and capable of being proved by the plaintiff."

Implied in that conclusion is the further finding in *Brandley* that a cause of action in negligence is not complete until actionable damage has occurred.

A useful summary of the views in McKechnie J's judgment are contained in his approval of the judgment in the 1996 New Zealand case of *Invercargill City Council v Hamlin*: "The plaintiff's loss occurs when the market value of the house is depreciated by reason of the defective foundations, and not before. If he resells the house at full value before the defect is discovered, he has suffered no loss. Thus, in the common case, the occurrence of the loss and the discovery of the loss will coincide … In other words, the cause of action accrues when the cracks become so bad, or the defects so obvious, that any reasonable homeowner would call in an expert. Since the defects would then be obvious to a potential buyer, or his expert, that marks the moment when the market value of the building is depreciated, and therefore the moment when the economic loss occurs … The measure of the loss will then be the cost of repairs, if it is reasonable to repair, or the depreciation in the market value if it is not."

In *Brandley*, the parties had agreed that the discoverability test was not applicable. But, to many, it may appear that, between damage being discoverable and being manifest, there is a distinction without an obvious difference. Understandably, McKechnie J expressed the view that the introduction of a statutory discoverability test in such cases would be desirable.

Limitation periods

From the point of view of a litigant, there may be some difficulty in understanding why different periods of limitation should apply, firstly, in the case of breach of contract and, secondly, in the case of a tort (other than one that is actionable, *per se*).

In the case of a breach of contract, the limitation period accrues on the date of the breach.

In the case of a tort, the cause of action is not complete until the plaintiff has suffered consequent loss.

In the *Gallagher* case referred to above, O'Donnell J dealt with the illogicality of different limitation periods applying in contract as distinct from tort: "Where appropriate, the policy of the law should be to minimise rather than expand the disparity between the running of time in contract and tort cases, at least when the wrongdoing

> FROM THE POINT OF VIEW OF A LITIGANT, THERE MAY BE SOME DIFFICULTY IN UNDERSTANDING WHY DIFFERENT PERIODS OF LIMITATION SHOULD APPLY, FIRSTLY, IN THE CASE OF BREACH OF CONTRACT AND, SECONDLY, IN THE CASE OF A TORT

alleged is identical … The suggestion that contract and tort should, where possible, offer the same answers to the same question is not simply a case of seeking an unobtainable elegance of pattern: rather it is a question of seeking to achieve a fair and predictable result."

The *Gallagher* case concerned a failed investment, and O'Donnell J pointed to the further illogicality of different limitation periods for contract and tort: "In theory, a wronged plaintiff should be able to maintain all claims arising out of the same transaction, but that would only be possible on this hypothesis by initiating the contractual claim, then delaying it, and then seeking to amend it to include the tort action alleged to have accrued. Even more oddly, if, as was suggested in argument in this case, the cause of action in tort might accrue at a point during the investment period when, to use a phrase fraught with its own difficulties, it was clear that the investment was doomed to fail, then it would follow that that point could only be determined with certainty after the case had been heard and decided."

There should not be a distinction in accrual of a cause of action in tort as between a doomed-to-fail investment (as in *Gallagher*) and a doomed-to-fail foundation of a house, though that distinction favours a plaintiff in the latter.

Insurance claims

In many subsidence claims, the dispute (unlike in *Brandley*) will be between the householder and the insurer.

In those cases where the insured failed to notify a claim for subsidence to the insurer within the time specified by the policy, the insurer may seek to avoid liability on the basis of that delay. There is no point in having subsidence insurance, if it is not availed of where necessary. Accordingly, the insured should ensure that a claim for subsidence is made at the earliest relevant time.

But in the event of a dispute between the insured and the insurer in relation to whether the claim was made in time, and where the insured is a 'consumer' for the purpose of the *Consumer Protection Code 2012*, as amended, the insured should rely on his or her relevant rights under that code and/or under the *Consumer Protection Act 2007*, as amended.

Furthermore, depending on the terms of the relevant insurance contract – and, again, where the insured is a 'consumer' – the insured may have relevant rights where the term or terms invoked by the insurer to avoid payment under the policy are 'unfair terms' within the meaning of the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*.

Paragraph 3.2 of the regulations provides: "For the purpose of these regulations, a contractual term shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer."

An unfair term in a contract concluded with a consumer by a seller or supplier is not binding on the consumer (paragraph 6.1). Among the grounds on which relevant terms may be deemed unfair is where the insured was purportedly irrevocably bound by the said unfair terms, without having had any real opportunity of becoming acquainted with same before the conclusion of the contract (schedule III, paragraph 1).

It is important to note that, where an insured alleges its entitlement to avoid payment under a policy on the basis of an exclusion or exemption from liability under the policy, the onus of proof in that regard is on the insurer. (See the 2005 judgment of Geoghegan J in *Analog Devices BV and Others v Zurich Insurance Co and Another*.)

Where potential signs of subsidence in a building (for example, cracks appearing in walls) occur, the owner should immediately have the matter professionally investigated and, if warranted, make a claim without undue delay. g

LOOK IT UP

CASES:

- *Analog Devices BV and Others v Zurich Insurance Co and Another* [2005] IESC 12
- *Brandley v Deane* [2017] IESC 83; [2016] IECA 54
- *Gallagher v ACC Bank PLC* [2012] IESC 35; [2012] 2 IR 620
- *Invercargill City Council v Hamlin* [1996] AC 624
- *Noble v Bonner and Others* [2019] IEHC 590

LEGISLATION:

- *Consumer Protection Act 2007*
- *Consumer Protection Code 2012*
- *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995* (SI 27/1995)

PIC: SHUTTERSTOCK/GAZETTE STUDIO

CAN'T TAKE IT WITH YOU

The pandemic has brought pension schemes into the spotlight. **Stephen Gillick** looks at death-in-service benefits and highlights the impact that COVID-19 has had on them

STEPHEN GILLICK IS A PARTNER IN MASON HAYES & CURRAN AND CHAIR OF THE LAW SOCIETY'S PENSIONS SUBCOMMITTEE

AT A GLANCE

- Many employers provide a death-in-service benefit to employees through full or partial pension-scheme membership
- The manner in which the pandemic exploded over the course of a couple of weeks meant that procedures had to be adopted and protocols reviewed to ensure that benefits could continue to be assessed and paid
- As the period of initial panic passes, now is the time for all concerned to review how the payment of benefits operated, and what changes are required

t is not uncommon for pension schemes to provide benefits that are payable when a member dies. Typically, these benefits consist of lump-sum payments or pensions that are payable to the member's spouse or other dependants.

Death-in-service benefits had taken something of a back seat to concerns relating to the employer contribution, regulatory guidance, and the State-pension age debate. However, death benefits have come into sharp focus during the past few months, as employers and trustees wrestle with the impact of the COVID-19 pandemic on pension schemes.

Killed by death

Many employers provide a death-in-service (DIS) benefit to employees through full or partial pension-scheme membership. The DIS benefit will be payable to a member's dependants in the event of his/her death, and it is usually insured with a life company.

Where the insured member dies in service before their normal retirement age, a lump sum not exceeding the greater of €6,350 or four times the deceased member's final remuneration may be provided to their dependents. In addition to the lump sum, an approved scheme may also provide a pension to a spouse, civil partner or specified dependant. The pension


PIC: SHUTTERSTOCK

payable can be an amount not exceeding the maximum aggregate pension that would have been approved for the member if they had retired on ill-health grounds on the date of death. A spouse or civil partner's (but not a dependant's) pension may be deferred instead of being taken immediately.

In recent years, we have seen a trend whereby employers are offering employees the opportunity to trade a spousal or dependant's pension in exchange for a higher lump-sum payment. Often the lump sum offered is in excess of ten times salary. Exercises such as these operate as a risk-reduction opportunity for employers. This is because lump sums are more predictable and cheaper to provide than spousal or dependants' pensions, which are more expensive and riskier due to their unknown cost and duration of payment. A higher lump-sum payment may be more attractive to some employees, but would also result in a payment of tax, as the approved Revenue limit for the payment will be breached.

Gimme shelter

The manner in which the pandemic exploded over the course of a couple of weeks meant that procedures had to be adopted and protocols reviewed to ensure that benefits could continue to be assessed and paid.

Scheme administrators had to ensure that staff were well briefed on up-to-date DIS procedures. These procedures had to be amended quickly and often to maintain compliance with the ever-developing situation. Difficulties arose with access to facilities and documentation.

Many schemes had set protocols that needed to be met, and the circumstances created by the pandemic had the potential to result in delays to payments. For example, on receiving notification of the death of a member, scheme administrators should immediately check to see if the member provided a letter of wishes or nomination form. The deceased member's death certificate should also be requested from the solicitor acting for the deceased's estate. It should also be quickly established whether or not there is a pension adjustment order on record for the deceased.

COVID-19 created obvious difficulties in completing each of these tasks, and mechanisms whereby they could be accomplished in a timely basis needed to be designed.

> FAILURE TO TAKE APPROPRIATE DECISIONS IN A TIMELY MANNER WILL ONLY COMPOUND ALREADY DIFFICULT CIRCUMSTANCES – AND COULD ALSO RESULT IN COSTLY LITIGATION

Just got paid

An immediate concern was whether the pandemic might result in payments being refused due to the wording of the underlying insurance policies. This was especially the case where, in the opening weeks of the health emergency, the likely death rate was unknown and represented a huge risk to insurance companies.

Where a scheme's DIS benefit is provided through an insurance policy, the trustees have to check to see whether the policy is affected by a pandemic-type event and whether it contains an 'event-limit' clause, as an event limit will cap the total losses payable under a policy.

An event limit clause is typically expressed either on a per-occurrence basis or on an

WE HAVE NOT SEEN ANY DIS PAYMENTS BEING REFUSED AS A DIRECT RESULT OF THE PANDEMIC. THE OUTCOME MAY HAVE BEEN DIFFERENT IF THE PANDEMIC HAD RESULTED IN A HIGHER DEATH RATE WHICH, THANKFULLY, HAS NOT BEEN THE CASE TO DATE

aggregate basis. An immediate concern for pension-scheme trustees was whether such clauses might result in the failure of the insurance companies to pay the DIS benefits. An immediate action required the trustees to obtain clarification from insurers and confirm if DIS benefits were affected.

We have not seen any DIS payments being refused as a direct result of the pandemic. The outcome might have been different if the pandemic had resulted in a higher death rate which, thankfully, has not been the case to date.

It will be interesting to see how the insurers amend their policy documentation in the coming months and years to take account of their experience of the pandemic, and lessons they may have learned. Employers and trustees will need to become aware of any such changes and communicate these to employees, as appropriate.

Double trouble

The manner in which letters of wishes are stored and the contents recorded should be reviewed. Consideration needs to be given as to whether they are stored securely and in a way that facilitates access to the relevant individuals. It also needs to be determined where the data is recorded, whether as hard-copy documentation or retained electronically. Letters of wishes should be reviewed on a regular basis to ensure that they accurately reflect the wishes of the members. The employer should facilitate employees in this exercise.

COVID-19 exposed the difficulty in accessing hard-copy documentation and the need, where possible, for documentation to be stored electronically. It is important to retain original hard-copy documentation to prevent future disagreements, as scanned documentation is often of a lesser standard of legibility.

The pandemic also resulted in many trustee groups meeting on a more informal basis due to social-distancing requirements. It is of crucial importance that all considerations concerning the payment of a DIS payment are done on a formal basis and full minutes recorded. A decision of the trustees concerning a DIS payment that is done informally or without due consideration could be challenged by other potential beneficiaries.

Good times, bad times

COVID-19 resulted in employees being temporarily or permanently laid off from work. Employees who are permanently laid off are no longer entitled to DIS benefits, but more careful consideration needs to be given to employees who are affected by temporary arrangements.

Trustees should be apprised of relevant provisions in the scheme governing documentation in order to establish if DIS benefits remain payable for scheme members during periods of temporary absence or leave.

DIS provisions are typically found in the scheme rules, and the precise employment status of employees who are temporarily absent from work will need to be confirmed by the employer. If employees are no longer covered for DIS benefits during such periods of leave, this should be clearly and quickly communicated to them so that the employees concerned can make alternative private arrangements should they so wish.

As well as dealing with the tragedy of the death of a family member, the dependents of a deceased employee will need to meet certain immediate costs, such as funeral expenses, and in many instances will face unforeseen financial upheaval.

It is in the interests of the scheme's employer, trustees and administrators to establish the deceased member's status at the date of death to ensure that his or her dependents are identified, and that the procedure is completed as quickly and as painlessly as possible.

Money

There are many pitfalls that exist when one considers the payment of DIS benefits. COVID-19 has exposed problems that need to be identified and solved by employers and pension-scheme trustees. As the period of initial panic passes, now is the time for all concerned to review how the payment of DIS benefits operate and what changes are required.

All parties need to be sure that the underlying benefit documentation is fit for purpose, and that all employees are fully aware of the benefits that they are entitled to, and how future pandemics may affect future benefit payments.

The beneficiaries must be at the heart of all decisions taken by trustees and employers. Failure to take appropriate decisions in a timely manner will only compound already difficult circumstances – and could also result in costly litigation at a later stage. g

Are we experiencing the level of sustainable wellbeing that we need to live a fulfilling and healthy life? If not, then something's not right and we need to talk about it. **Katie da Gama** visits Q

KATIE DA GAMA IS A LAWYER AND LEADERSHIP DEVELOPMENT CONSULTANT IN DUBLIN

THE WORLD IS NOT ENOUGH

AT A GLANCE

- Feeling alone and fearing the judgement of others
- Feeling guilty when you 'have it all'
- The problems that continue to exist in the legal community
- The importance of firms providing staff support
- The freedom to be able to seek help

I have been spending some time recently thinking about what it means to experience wellbeing as a lawyer. I started out in my legal career in the late '90s and what is clear to me is that, when it comes to the discussion around mental health and wellbeing, a lot has changed for the better in the intervening 20 years. We really have come a long way since then, and the stigma that used to shroud the topic and prevent lawyers from even discussing what it means to have mental health is carefully being lifted with the support of organisations, charters and academia, as well as full conferences dedicated to illuminating the conversation.

In one of my earliest jobs, I worked with a senior colleague who was incredibly knowledgeable in his field, very well-respected in the legal community, and someone who gave generously of his time whenever I asked a question or needed his help. He was a colleague that I looked up to, and I recall thinking to myself at the time that I aspired to be like him when I 'grew up' and became a successful senior lawyer.

For your eyes only

One day, I arrived at the office and my colleague was no longer there. His office had been taken over by other people, and I was told that I'd be working with someone else from then on. It was only a number of weeks

PIC: ALAMY

later that I discovered that he had become unwell and, although I didn't know it at the time, had had a serious mental breakdown.

What was most shocking to me about the situation was that I had always experienced him as someone who 'had it all' – he was successful, had many accomplishments to his name, and always came across to me as composed, calm, organised and unflappable. I couldn't fathom how 'someone like that' could be grappling with his mental health.

In the weeks and months that followed, very little was spoken about our colleague, and it was almost as if he had never been part of the organisation. As far as I am aware, he did not return to his role. In my naivety and in my position as one of the most junior people in the team, I didn't feel able to ask any questions, and I certainly didn't know what was best to do in the circumstances, so I put my head down and carried on with my work in an effort to suppress the unnerving feelings about what had happened, and why.

Never say never again

Fast-forward 20 years, and thoughts of my colleague came flashing back when I made the decision to examine my own mental health. I realised something that felt familiar and overwhelming – a sense of being alone with my feelings, of fearing the judgement of others if they knew my thoughts, and of the guilt for experiencing these feelings when I was in a privileged leadership position. I wondered whether my colleague had felt something similar.

I had worked hard during my career as a lawyer. I had put in the hours, passed all the exams, achieved my billing target most years, gone to all the CPD conferences, and small-talked my way through countless business-development events. I had 'made it' to a senior level of the profession and had, in my own mind at least, become what I had aspired to be all those years ago. However, just as my colleague from my early career may have felt, I knew I wasn't experiencing the level of sustainable wellbeing that I needed to live a fulfilling and healthy life. Something wasn't right – and yet I didn't know what that was.


PIC: ALAMY

With professional help and guidance, I began to understand what wellbeing meant for me, and I also learned that it holds a different 'truth' for everyone – one size most definitely does not fit all. Some people will absolutely thrive on the cut-and-thrust of a life in the law, the striving for the perfect legal argument or 'knock-out' contract clause, the intellectual stimulation of debating and the 'highs' of winning.

Others will be sustained by the financial rewards, the friendships of close colleagues, and the collegiality of their teams. But for a number of lawyers, like me, the years of putting on the professional mask, rarely showing weakness or vulnerability, being afraid of making a mistake, and hiding their authentic selves and their emotions takes its toll on health and wellbeing. For these people – to allow talented and dedicated lawyers to thrive in their chosen profession – something more is needed: an honest appraisal of the culture of law and a commitment to examine and develop ways in which all who want to are empowered to succeed both professionally and personally.

You only live twice

At the recent inaugural 'Business of Wellbeing' event hosted by the Law Society (see the November *Gazette*, p50), more than 450 participants listened to many perspectives on wellbeing, and they witnessed the power of discussion, as well as the benefits of casting light on a previously hidden area of life as a lawyer.

The personal stories shared by the speakers were inspirational; the thinking around mental health and wellbeing was innovative and refreshing, and the feeling coming away from the event was one of accomplishment. The lid had been lifted on an increasingly important theme for lawyers.

And yet, with all of the initiatives that have been developed, and the many support systems that exist for lawyers, I was struck by the fact that, although much has been achieved, there is still much to do. Significant problems continue to exist within the legal community, and more is needed to ensure that the lawyers of today and tomorrow belong to a profession that continues to be honest about the challenges it faces, and is robust in leading through the change that is required.

In its 2019 survey of members' mental health and wellbeing, the Law Society found that solicitors in Ireland reported experiencing considerably lower feelings of wellbeing than the EU average population score. Over 78% of respondents confirmed that they regularly experience significant stress at work, nearly half indicated that their mental health had been affected to a significant degree by their role, and 25% acknowledged that their job was overwhelming and negatively affecting their lives.

SIGNIFICANT PROBLEMS CONTINUE TO EXIST WITHIN THE LEGAL COMMUNITY, AND MORE IS NEEDED TO ENSURE THAT THE LAWYERS OF TODAY AND TOMORROW BELONG TO A PROFESSION THAT CONTINUES TO BE HONEST ABOUT THE CHALLENGES IT FACES

> FOR EVERY €1 INVESTED IN THIS WAY, AN AVERAGE RETURN OF €6 IS ACHIEVED, WITH SOME INVESTMENTS PROVIDING AS MUCH AS A €10 RETURN, AND SOME INITIATIVES BEING COMPLETELY FREE OF COST BUT OF SIGNIFICANT BENEFIT

The psychologists who led the study reported that one of the challenges for the profession is "the stigma and fear of being judged critically in the workplace" – very real barriers to seeking help. They went on to say that "some workplaces, through ultra-competitive culture or normalising the overloading of staff, can become, inadvertently but actively, hostile towards those who may need help".

Quantum of solace

What is encouraging, though, is that investment in mental-health and wellbeing supports (ranging from employee-assistance programmes, to training mental-health 'first-aiders', as well as fostering a supportive culture with open conversations around the subject) is good for business, in a financial sense.

The latest reports show that for every €1 invested in this way, an average return of €6 is achieved, with some investments providing as much as a €10 return, and some initiatives being completely free of cost but of significant benefit. So, while it's the right thing for organisations to do, it also makes good business sense.

Fewer talented lawyers leave organisations that have an embedded culture of wellbeing. Individuals are far more likely to feel fulfilled in their roles and, therefore, encourage and mentor others in their teams. Costs of recruitment can be reduced and profitability and sustainability (including formal sick-leave and productivity) are shown to be stronger in those businesses where people feel they belong and can be themselves.

The living daylights

Many organisations and individuals are already leading the way. Following the release of the Law Society's commissioned report, it launched the Wellbeing Hub "to contribute to the improved wellbeing, resilience and emotional and psychological health of its members". The hub signposts reputable and independent wellbeing supports, services and training. For example, it flags LegalMind, a confidential, independent, and low-cost mental-health support, that is available to solicitors at any time of the day or night. It also contains the Professional Wellbeing Charter for the solicitors' profession, alongside many other and varied resources.

In the educational space, the emphasis on the psychological wellbeing of trainees is a central component of learning, and the fact that there is access for trainee lawyers to psychotherapy, both group and individual, is to be actively celebrated.

Beyond the Law Society, it is also clear that law firms and individuals within those firms, as well as other organisations, are making a difference. The fact that wellbeing is now more frequently seen on the agenda of management committees and departmental meetings is a welcome change. The more the conversations are normalised, the greater the chance that people in need will come forward asking for help.

Diamonds are forever

The power to change the narrative around mental health and wellbeing for lawyers is within each one of us. We, both acting alone and in collaboration with others, can shine the brightest of lights on the topic. We can share our stories, be candid about the challenges, and have unashamed conversations around mental health. We can examine our behaviours, become more aware of cultural impacts, and be mindful of what our colleagues and friends may be experiencing. Above all, we can choose how we show up, and how we support those around us.

The legal profession is a strong and fiercely determined group of individuals. We achieve momentous results for our clients, we have diverse talents, and there is huge potential for change. If we put our collective legal minds to the challenge of ensuring the mental health and wellbeing of our colleagues, the likelihood of success is extremely high.

I have been spending some time recently thinking about what it means to experience wellbeing as a lawyer. For me, it's about belonging. It's about being in an environment (whether a profession or business) that not only allows me to be – but really values me – for being me; an organisation, a role or workplace that embraces my vulnerabilities and idiosyncrasies and openly supports me – not in spite of those, but because of them.

I look on my legal career with pride, and I know that I wouldn't be me without it. Having refocused my work, I am now in the very privileged position to stand alongside many lawyers, law firms, and organisations, supporting them through their own exploration of what wellbeing means, and I continue to learn from those around me about how we can best ensure that it remains firmly on the agenda for all lawyers. gg

SMELLS LIKE TEAM SPIRIT

General counsel must establish a legal team's reputation, as well as its influence, this year's online In-House and Public Sector Conference heard. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH THE *LAW SOCIETY GAZETTE*

HAVING A FRIEND AT WORK IS ONE OF THE GREATEST PREDICTORS OF INTENTION TO REMAIN IN THE ORGANISATION. GIVE YOUR EMPLOYEES OPPORTUNITIES TO CONNECT WITH OTHER PEOPLE

This year's In-House and Public Sector Conference, on 5 November, focused on teamwork and teambuilding – and the role of the in-house legal function in facilitating this.

Speaking online, Amanda Shantz (MBA director, TCD) said that great teamwork leads to great results.

In-house lawyers need to establish their team's internal reputation as well as its influence outside of the immediate legal department, she pointed out. The nature of teamwork is dramatically changing in today's organisations – teams are now far more fluid, with more flexible configurations, and with multiple people on multiple teams working across the business.

'Team' can be a verb

Shantz described 'teaming' as a means to gather experts from different divisions into temporary groups to tackle current problems and identify emerging opportunities.

'Teaming' should be used when the situation is complex and uncertain and requires rapid change and movement. The quality of collaboration will make or break the success of a project, and different teams must be able to interact well with each other, she continued.

Who makes up the team – in terms of age, personality, or gender – doesn't make a lot of difference to team performance. Instead, research shows that teaming succeeds when three conditions are met:

- Equal contributions from all members. Although not every team member needs to contribute to each and every meeting, this may mean that extroverts need to stop talking, while introverts should be encouraged to contribute to group discussions.
- 'Empathetic perspective-taking', or actively trying to step into the shoes of another. This means thinking through the other person's goals, motives, and needs, and responding in a way that ensures the other person feels capable of meeting their goals and needs.
- 'Psychological safety'. This is a key predictor of good teamwork, and means being comfortable making yourself vulnerable in front of the people with whom you work.

These conditions lead to high-quality relationships. And that's important, because having a friend at work is one of the greatest predictors of intention to remain in the organisation, Shantz pointed out: if you want people to stay, give your employees opportunities to connect with other people.

Informal interaction, which leads to relationships being strengthened and good team-building, will be more difficult in the post-virus world. Therefore, teamwork should be supported with easy online coordination and communication, such as an intranet or chatrooms, Shantz said. Clear lines of communication are incredibly important in our 'new normal', and mutual understanding is more likely in a team that is having fun.

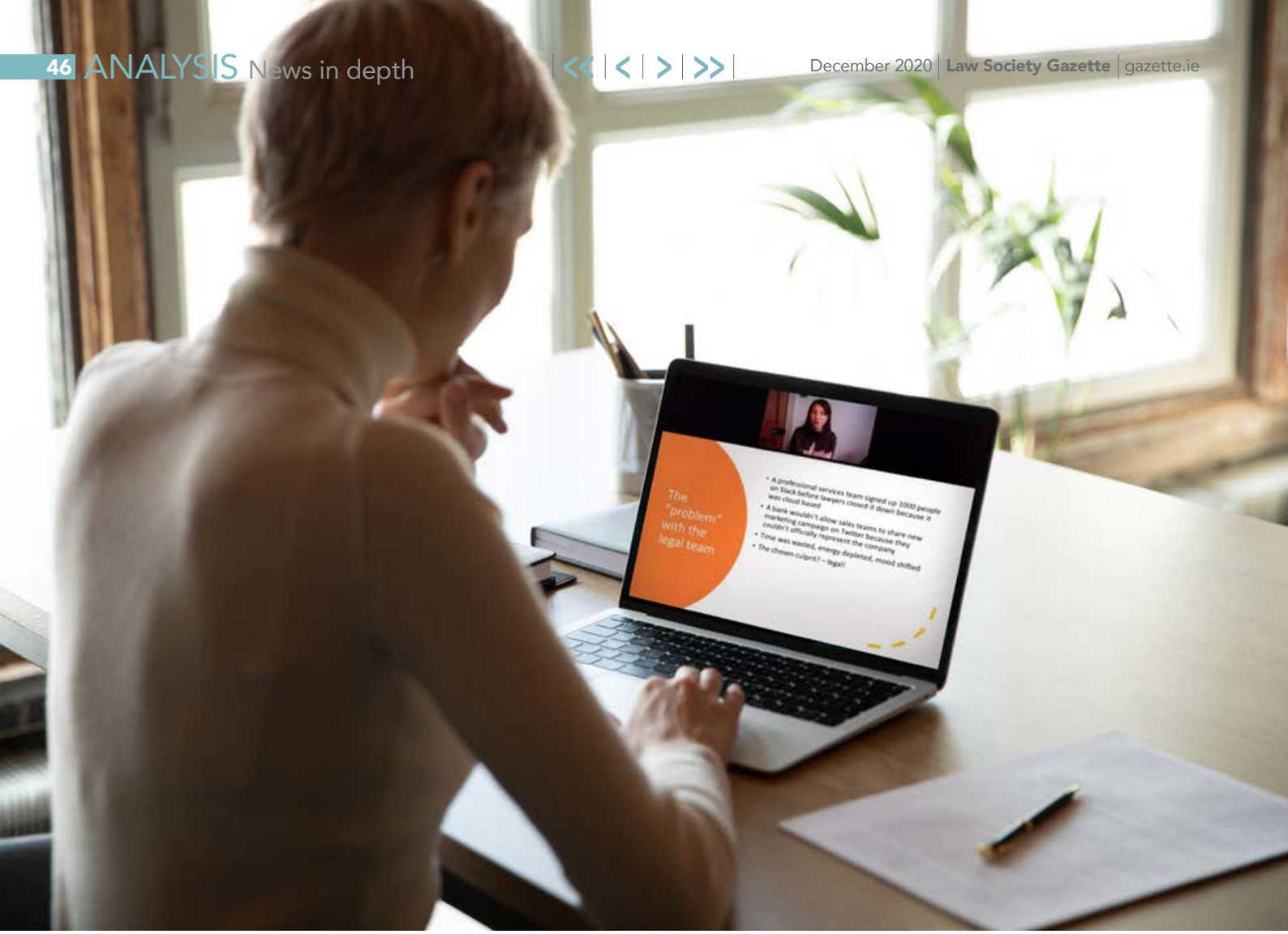
Make sure virtual culture mirrors real-life culture, and make webchat platforms easy to use, without too many rules, she advised. Communicate the purpose of the online forum and list the reasons to encourage interaction.

"Collect good-news stories and broadcast them to the rest of the team, and during webinars, require people to turn their cameras on," she said, describing blank screens as a 'nasty habit' that destroys the communication environment.

Teaming with talent

Internal legal departments have historically had a 'stewardship' role of protecting the business from risk, but are now being asked to operate differently and to creatively contribute to the business, with a customer-centric mindset. This stewardship role has led some legal internal functions to be viewed as holding back energy and innovation, because of law-

PIC: ALAMY


The "problem" with the legal team
• A professional services team signed up 1000 people on Slack before lawyers closed it down because it was cloud based
• A bank wouldn't allow sales teams to share new marketing campaign on Twitter because they couldn't officially represent the company
• Time was wasted, energy depleted, mood shifted
• The chosen culprit? – legal!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WILLIAM FRY
A Guide to Legal Professional Privilege for In-house Counsel

yers' adherence to regulation and proper procedures.

To offset this, a legal representative should aim to be at business initiative meetings, so that legally correct decisions can made without time being wasted. If 'legal' shuts down an initiative that is already up and running, it leads to time wasted, energy depleted, and mood shifting, Shantz said. That's why it's important for legal to be present at meetings, often right from the start. She described this approach as 'horseback law' – ride up and make a quick assessment of major decisions from the outset.

That said, a person who always has the 'right' answer will shut down idea-generation – humility should be combined with curiosity to get the most out of people. This doesn't mean that you need to agree with everything: "if you disagree with a proposition, say 'walk me through the steps of how you got to that conclusion', rather than dismissing it out of hand," Shantz suggested.

The bodyguard

Nicholas Donnelly, head of the legal unit at the Department of Justice, said that he sees the legal team's role as that of 'dynamic bodyguard', asking questions that lead to solutions rather than to further problems.

He added that the legal remit is a limited resource, and it is important to manage the expectation that legal should be involved in every meeting – rather, legal should step in and out as required. "If you are there for every meeting, there is a tendency to rely on the lawyer to manage things. Very often, you're doing a service by *not* being there, but by standing back."

Méabh Gallagher, director of corporate governance and legal counsel at Aer Lingus, said the airline had a 'just culture', in that aviation safety is about the balance between impunity and a blame culture, to enhance safety and prevent accidents.

"It's a really fascinating area, for companies to think about what culture they want to foster, that span between creativity and psychological safety, and appropriate consequences," she said. It's important to strike a balance in terms of learning from failure, without cover-ups, since legal teams deal with failure all the time,

Privileged position

William Fry partner Derek Hegarty addressed the conference with a guide to legal professional privilege for in-house counsel.

The courts have established that privilege provides a limited exception to the general obligation to disclose all relevant material to the other parties to proceedings. Legal-advice privilege only applies to confidential lawyer/client communications for the purpose of giving or receiving legal advice. A claim of legal-advice privilege over records of other communications will generally fail, and disclosure will have to be made.

Where legal advice is shared extensively, this can render the confidentiality aspect less clear, so caution should be exercised as to how correspondence is handled, he said. "This can present particular challenges for in-house counsel, particularly those working in larger institutions, as the advice they provide can be circulated to a large number of recipients, which could form the basis of a challenge by adversaries."

In-house counsel should consistently reinforce the message that the circulation of privileged material must be minimised, and only sent to those with a reasonable requirement for it, Hegarty advised.

He said that there is a misconception in some organisations that, once a document has been sent from or to a legal advisor, then it is protected from disclosure. "That is not the case," he said and, further, it can be difficult to distinguish between legal advice and legal assistance, which is usually not protected.

Simply introducing a lawyer into an email chain will not render that correspondence privileged, he warned.

Laura McGovern (Competition and Consumer Protection Commission) said that, from a regulator's perspective, the CCPC can conduct searches of business premises and has broad powers to compel the provision of documents. Privileged and non-privileged materials are often intermingled, but tech solutions allow the quarantining of privileged material while investigators probe non-contentious documents.

"At the CCPC we will not accept sweeping or unsupported assertions that a large volume of documents is protected by legal privilege," she said, while Derek Hegarty advised: "Bear in mind the relationship."

Hegarty said that organisations should distinguish the right to refuse a request, from whether that right should actually be exercised.

Hugh O'Reilly, legal counsel to An Post, said it is important to mark legal advice, clearly and visibly, as privileged and confidential. "I put the legal advice as an attachment, rather than as part of an email chain," he elaborated.

Seminar chair Anna Marie Curry of Bord na Móna concurred that forwarding emails to an entire team could be dangerous in terms of confidentiality.

However, Derek Hegarty pointed out that modern business practice involves trainees and legal secretaries, all involved in a chain of communication. Common law also recognises that lawyers cannot conduct all of their business in person, and this can permit the seal of privilege to apply in circumstances where legal business is conducted through intermediaries and subordinates. g

THERE IS A MISCONCEPTION IN SOME ORGANISATIONS THAT, ONCE A DOCUMENT HAS BEEN SENT FROM OR TO A LEGAL ADVISOR, THEN IT IS PROTECTED FROM DISCLOSURE. SIMPLY INTRODUCING A LAWYER INTO AN EMAIL CHAIN WILL NOT RENDER THAT CORRESPOND-ENCE PRIVILEGED

COVID'S TAXING TIMES

The recent budget continued unprecedented levels of intervention and financial support for affected businesses and workers in the wake of COVID-19, say **Daryl Hanberry** and **Bridget Doherty**

DARYL HANBERRY IS A TAX PARTNER AND BRIDGET DOHERTY IS TAX MANAGER AT DELOITTE

KEENLY PLACED TAXATION MEASURES CAN SERVE AS A POSITIVE MECHANISM, FOR DOMESTIC AND FOREIGN-DIRECT INVESTORS ALIKE, IN FACING THE WIDE-RANGING ECONOMIC VARIABLES UNLEASHED IN IRELAND IN 2020

Budget 2021, followed by more detailed measures in the *Finance Bill* on 22 October, was framed on the assumption that there would be no bilateral trade deal between the EU and Britain, post-Brexit, and that there would be no COVID-19 vaccine in Ireland next year.

In his budget-day speech, Minister Donohoe said the Government was able to respond "swiftly and assertively" to the economic uncertainty of COVID "because of the decisions of recent budgets".

That said, there is no doubt that keenly placed taxation measures can serve as a positive mechanism, for domestic and foreign-direct investors alike, in facing the wide-ranging economic variables unleashed in Ireland in 2020.

Key measures

Some of the measures affecting individuals and employees in Budget 2021 and the *Finance Bill* include the following:

Consideration shown to proprietary directors who actively work in affected businesses – the blanket exclusion of proprietary directors from the Employment Wage Subsidy Scheme (EWSS) had been widely criticised by business owners. The *Finance Bill* amends the *Emergency Measures in the Public Interest (COVID-19) Act 2020* to include proprietary directors within the EWSS from 1 September 2020.

Warehousing of unpaid taxes arising from COVID-19 – in the July Jobs Stimulus Package, the Government announced that it would defer unpaid VAT and PAYE debts arising from COVID for a period of 12 months after the business reopens; therefore, no interest will be charged during this time. In addition, a lower interest rate of 3% per annum will apply to the repayment of the warehoused debts after that date.

The *Finance Bill* provides that these warehousing provisions will apply to excess Temporary Wage Subsidy Scheme Payments (TWSS) received by an employer, which must be refunded to Revenue. The inclusion of the excess TWSS payments in the tax warehousing arrangements will provide a measure of relief for employers in these difficult times.

It is important that taxpayers continue to file returns for all taxes and maintain current tax payments, in order to avail of the reduced interest rates.

COVID Restrictions Support Scheme (CRSS) – the scheme is available to affected self-employed individuals (sole traders or partners in a partnership) and companies that carry on a trade from a business premises located wholly within a geographical region for which COVID restrictions are in operation. Generally, this refers to restrictions at Levels 3, 4 or 5 of the Government's Plan for Living with COVID.

The support for those qualifying is a maximum weekly payment of €5,000 for each week that their business is affected by the COVID restrictions.

Protective measures for those on the minimum wage – there were no changes to income-tax credits or bands, but the minister did announce that the 2% USC rate threshold is to be increased from €8,472 to €8,675. The weekly threshold for the higher rate of employer's PRSI of 11.05% also increases from €394 to €398.

These changes are to ensure that those on the minimum wage are not adversely affected, from a tax perspective, and that there is no incentive to reduce working hours for a full-time minimum-wage worker.

Remote working supports – the minister announced that the existing regime whereby workers may claim a tax deduction for utility expenses (light/heat) would now be extended to include the cost of broadband. This will have minimal impact for employees. He also highlighted the tax-free allowance of €3.20 per day, which may be paid tax-free by employers to employ-

PIC: ALAMY

ees who are working from home.

The area of remote working becomes more complex when one considers that many employees are currently working in overseas jurisdictions for their Irish employers.

If this arrangement continues for a significant period of time or becomes a permanent arrangement, this will lead to administrative complications in terms of corporate tax permanent establishment issues, payroll and social security withholding obligations, and immigration requirements.

Housing: stamp-duty refund – the stamp-duty refund scheme allows those acquiring land for the purposes of residential development to claim a refund of 5.5% of the 7.5% stamp duty paid on purchase, giving an effective rate of 2%. Previously, development of the land must have been commenced by 31 December 2021. This has now been extended to 31 December 2022, while the time period allowed to complete the build has now extended from two years to two-and-a-half years.

These extensions will serve as a welcome injection of cash-flow and time for those striving to meet Ireland's housing market needs.

Missed opportunities

Capital Gains Tax (CGT) – it is notable that no steps were taken to reduce the CGT rate to make investing in a business in Ireland more attractive. At 33%, Ireland has one of the highest rates of CGT among developed econo-

THE EXISTING REGIME WOULD NOW BE EXTENDED TO INCLUDE THE COST OF BROADBAND. THIS WILL HAVE MINIMAL IMPACT FOR EMPLOYEES

LAW SOCIETY OF IRELAND

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mies. While some minor amendments to Entrepreneur Relief were announced, the €1-million lifetime limit has not been adjusted.

KEEP – unfortunately, the *Finance Bill* did not make any amendment to the Key Employee Engagement Programme (KEEP) to encourage a wider uptake of the scheme, or make any broader changes to the taxation of share schemes for domestic and foreign multinational corporations who do not fall within the criteria for KEEP.

SARP – the Special Assignee Relief Programme is a valuable relief that encourages skilled individuals to relocate to Ireland by providing an income-tax exemption for earnings in excess of €75,000 up to a cap of €1 million.

It was disappointing that the *Finance Bill* did not include any measures in relation to the various employment-related COVID concessions that have been introduced over the last few months. As a result of remote working arrangements, individuals may now find it difficult to avail of some of the technical conditions of the relief, and it is uncertain whether any relaxation of these conditions will apply.

Finance Bill: 'Back to work, you!'

Marginal rate of tax – tax giveaways were never likely to feature in Budget 2021 but, as our marginal rate remains at 52%, Irish employees still have one of the highest personal tax burdens in the EU.

Economic landscape

Budget 2021 comprised a total package of over €17.75 billion, and saw €270 million specifically allocated to taxation measures, most of which went on VAT-rate cuts for the hospitality sector.

> AS OUR MARGINAL RATE REMAINS AT 52%, IRISH EMPLOYEES STILL HAVE ONE OF THE HIGHEST PERSONAL TAX BURDENS IN THE EU

PERRIGO'S PAUSE

The High Court has refused Perrigo Pharma's application for judicial relief challenging the Revenue's notice of amended assessment of corporation tax liability. **Brian Duffy** and **Robert Kearns** press rewind

BRIAN DUFFY AND ROBERT KEARNS PRACTISE IN TAX AT WILLIAM FRY

THE COURT WAS UNABLE TO MAKE ANY FINDING THAT REVENUE MUST HAVE KNOWN THAT IP DISPOSALS FORMED PART OF PERRIGO'S TRADE AND, AS SUCH, THIS GROUND COULD NOT SUSTAIN A CLAIM FOR LEGITIMATE EXPECTATION

On 4 November 2020, the High Court refused an application for judicial review relief in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* ([2020] IEHC 552). (See the November *Gazette*, p42.)

Perrigo had challenged the validity of a notice of amended assessment issued by the Revenue Commissioners in November 2018. The transaction that gave rise to the controversy between the parties involved the 2013 sale to Biogen of Perrigo's 50% interest in intellectual property (Tysabri IP). Following a tax audit, Revenue concluded that the disposal should have been treated as a capital disposal and have been subject to tax at 33%, rather than the 12.5% rate applicable to trading transactions.

Perrigo instituted the proceedings on the grounds that the assessment was (a) a breach of Perrigo's legitimate expectations; (b) so unfair as to amount to an abuse of power; and (c) an unjust attack on its constitutionally protected property rights.

The case, based on legitimate expectation, has a number of aspects to it. It is based on four separate categories of representation alleged to have been made by Revenue over a period of more than ten years. The burden of proof was on Perrigo to establish that representations were made to it by Revenue that gave rise to the expectation that outright disposals of IP would be regarded as trading.

Legitimate expectation

In *Glencar Exploration plc v Mayo County Council (No 2)* ([2001] IESC 64; [2002] 1 IR 84), the Supreme Court confirmed that there are three matters that must be established to mount a claim based on legitimate expectation:

1) The public authority must have made a statement or adopted a position amounting to a promise or representation,
2) The representation must be addressed or conveyed either directly or indirectly to an identifiable person or group of persons, and
3) The representation must create an expectation "reasonably entertained" by the person or group that the public authority will abide by the representation.

The Shannon Certificate

The first category of representation related to the Shannon Certificate issued by the Minister for Finance on 20 February 2002, which enabled the certificate holder to avail of a special 10% rate of tax for approved trading activities that were carried out in the Shannon Airport area. Under the tax acts, the minister could not grant such a certificate unless the operations of the certificate holder were trading in nature.

Perrigo argued that part of its trading activities included disposals of IP, and that receipt of the certificate was confirmation that disposals of IP were trading in nature and covered by the special tax regime. Perrigo argued that, in the life-sciences industry, the term 'exploitation of IP' was commonly understood to include disposals of IP.

The court did not accept this line of argument. It was the court's view that the certificate made clear that the question of whether the certificate holder was trading was an issue to be determined after the operations in question had taken place. Therefore, the issue of the certificate by the minister could not be taken as a representation that Revenue accepted that disposals of IP formed part of Perrigo's trading activities, and therefore the certificate could not ground a claim for legitimate expectation.

Tax Briefing 57

The second category of representation was based on a Revenue tax briefing (TB 57). When the Shannon and IFSC special tax regimes were coming to an end, tax practitioners and Shannon and IFSC-certified companies sought clarity and assurances from the Revenue in respect of the rate at which profits would be taxed in the future. Revenue

PIC: SHUTTERSTOCK

Perrigo's paws

published TB 57 in October 2004 to reduce the number of queries that Revenue would have to manage about the issue.

Perrigo placed emphasis on two sentences from TB 57 in which the Revenue stated that trading activities already meeting the requirements of the IFSC and Shannon regimes "will qualify for the 12.5% tax rate".

The court concluded that, on a fair reading of TB 57, it could not be suggested that the Revenue was representing that any activity carried on by the holder of a certificate would be treated as trading and, as such, this ground could not sustain a claim for legitimate expectation.

Dealings between the parties

The third category of representation was alleged to arise as a consequence of the course of dealings between the parties. Until January 2013 and the introduction of the self-assessment regime, the Inspector of Taxes issued a taxpayer with a notice of assessment.

In this context, Perrigo characterised the inspector's role as being "interposed between the return and the liability to tax", where the Revenue, by not subsequently amending the assessment, was declaring itself satisfied with the contents of the tax return.

The court did not accept this argument, noting that every taxpayer faces the prospect of a tax return being reopened and examined by an inspector within the relevant four-year period. Therefore, it could not be suggested that the non-objection by Revenue in the past could be said to give rise to an implied representation that the ongoing transactions would not be subject to the possibility of an adverse assessment by the Revenue.

In addition, Perrigo made the case that, between 1997 and 2005, it accounted for corporation tax at the 10% rate on its trading activity, which included disposals of IP. Perrigo argued that the financial statements submitted with its tax returns clearly showed that IP was treated as trading stock.

Revenue accepted that corporation-tax returns were submitted, along with financial statements and tax computations over the years, but, as the company was loss-making, the Revenue did not carry out a review of the treatment of IP until September 2016. Also, while not determinative of the 'trading' issue, the Tysabri IP was held as an asset for sale under IFRS 5 – the accounting standard that applied to non-current assets held for sale.

Critically, the court was unable to make any finding that Revenue must have known that IP disposals formed part of Perrigo's trade and, as such, this ground could not sustain a claim for legitimate expectation.

The court held that, on the basis that the three aspects of Perrigo's case did not amount to a representation that could ground a claim for legitimate expectation, it was not possible to come to the conclusion that the combination of the certificate, TB 57, and the course of dealings between the parties would give rise to a different conclusion.

The other aspects

Regarding Perrigo's argument that the assessment was so unfair as to amount to an abuse of power or an abuse of Perrigo's constitutional rights, the court concluded that, in circumstances where there was no basis for Perrigo to have a legitimate expectation that an amended assessment would not be issued, it could not be suggested that the Revenue (by issuing an amended assessment) acted so unfairly that it amounted to an abuse of process. For the same reasons, the argument based on abuse of Perrigo's constitutional rights also failed.

Perrigo has a right to appeal the decision to the Court of Appeal. With €1.64 billion at stake, it may choose to exercise this right. The judicial review proceedings were concerned with the process of issuing the amended assessment and, as such, the High Court was not the forum for Perrigo to make the case that disposals of IP formed part of its trade.

Perrigo has appealed the amended assessment to the Tax Appeals Commission (TAC) and the question whether the disposal of the Tysabri IP constituted a trading or a capital transaction is a matter that will be resolved in due course before the TAC. The outcome of that is far from certain. g

REFORM SCHOOL

The LSRA has issued two new reports, on legal education and on the unification of two branches of the profession. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH THE *LAW SOCIETY GAZETTE*

THE LAW SOCIETY HAS WELCOMED THE PUBLICATION OF BOTH REPORTS AND WILL STUDY THEIR CONTENT IN DETAIL. THE SOCIETY'S INITIAL REVIEW OF THE RECOMMEND-ATIONS IN THE TWO REPORTS WAS THAT 'THEY CONTAIN NO SURPRISES'

The Legal Services Regulatory Authority (LSRA) has issued two new reports – the first on setting standards for legal education; the second on the potential unification of the solicitors' and barristers' professions – though it concludes that this appears to be premature, for the time being at least.

The reports were published on 19 November and have been submitted to the Minister for Justice.

The Law Society has welcomed the publication of both reports. Director general Ken Murphy confirmed that their contents will be studied in detail. However, he observed that an initial review of the recommendations in the two reports was that "they contain no surprises".

Education reform

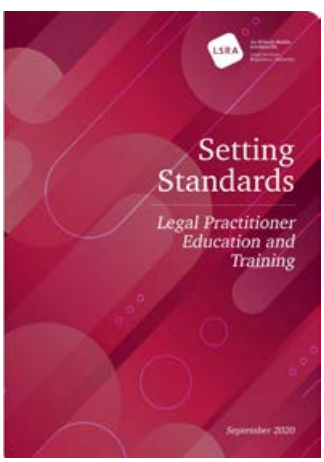
Setting Standards: Legal Practitioner Education and Training recommends reforms to define the competence and standards required to practise as a solicitor or barrister. It also recommends the establishment of a statutory framework to accredit existing providers of legal practitioner education and training, as well as allowing, for the first time, new providers to be accredited to provide professional training for solicitors and barristers.

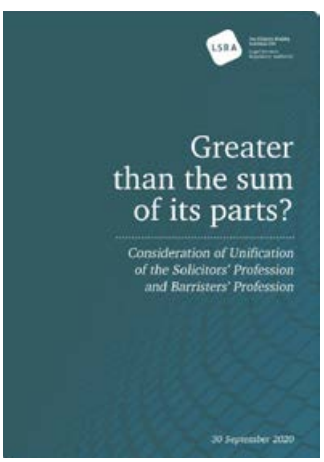
The report makes 12 important recommendations for the reform of legal education, with two in particular being central: (a) the development of clear definition of the competence and standards required to practise as a solicitor or barrister, and (b) the introduction of a statutory framework to establish a new and independent Legal Practitioner Education and Training Committee. The committee would be statutorily required and empowered to:

- Set the competency framework for legal practitioner education and training,
- Develop a common set of competencies and standards for admission to professional legal training,
- Ensure that existing providers of legal education and training adhere to the standards required by the competency framework on an ongoing basis,
- Scrutinise and accredit new providers of legal education and training, based on set criteria established by the committee,
- Monitor the quality of legal education and training,
- Encourage innovation in the provision of legal education and training,
- Encourage diversity in legal education and training, and
- Engage with key stakeholders in legal education and training.

On the report's two central recommendations, Ken Murphy welcomes one, but questions the other: "Externally approved competency standards make sense. Indeed, the Society's Law School has previously requested Quality and Qualifications Ireland (QQI) to engage with it in such a process."

He found it a little disappointing, however, that the LSRA had not taken on board the Society's concerns about the proposed setting up of a new entity, the Legal Practitioner Education and Training Committee. "The role of this proposed new statutory body, in the Society's submission to the LSRA, could easily be undertaken by QQI, now that the latter's role has been strengthened in legislation as recently as 2019," he remarked. "The creation by legis-





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lation of a new quango to perform this role, it still seems to us, would be disproportionate, unnecessary and costly."

Unification 'premature'

In the second report, *Greater than the Sum of Its Parts? Consideration of Unification of the Solicitors' Profession and Barristers' Profession*, the LSRA concludes that, at this stage in its regulatory timeline, it would be premature to recommend that the two branches be unified: "Having considered the views of respondents to this consultation and having analysed arrangements in other jurisdictions, there is a lack of compelling evidence to support a recommendation that the profession be unified."

The LSRA observes that, regardless of the exact form it may take, the introduction of a formally unified legal profession in Ireland could reasonably be expected to have far-reaching consequences – not only for legal practitioners themselves, but also for consumers of legal services, the operation of the courts, and the wider administration of justice: "This is not to say that there is not an ongoing case for the authority to continue to examine areas of legal-services provision where structural improvements and efficiencies are warranted. This work is fundamental to the fulfilment of its statutory objectives under the act."

The matter will be looked at again within five years, when the LSRA anticipates that the landscape for legal services' provision will have evolved sufficiently in order for the question to be reconsidered.

Ken Murphy welcomed the LSRA's key recommendation 'that the solicitors' profession and barristers' profession should not be unified at this time'. While it is "no surprise", he remarked, "the report's conclusion is well-reasoned, wise and utterly persuasive".

Changing landscape

Pending, proposed, and potential reforms will change the landscape for legal-service-delivery in the years ahead and will have an impact on the regulatory framework for barristers and solicitors, the LSRA says. "The impact of these reforms would be to introduce new methods of legal-service delivery, as well as expanding the scope of existing models," it continues.

The report says that: "Relaxing the rules on barristers forming partnerships with other barristers and/or solicitors will offer more flexibility to legal practitioners, allowing them to work together and provide different and more efficient and competitively priced legal services to consumers.

"Legal partnerships, by allowing barristers and solicitors to work together within one business entity, mean that consumers can visit a solicitor and barrister operating in the same premises as a 'one-stop shop' for the provision of legal services."

The authority has also undertaken to give further consideration to the introduction of multi-disciplinary practices (MDPs) – another business model contemplated by the *Legal Services Regulation Act*. The report notes that the introduction of legal partnerships should assist it in further considering the introduction of MDPs.

New business structures

The report adds that the act contains a number of provisions that "have the potential to substantially alter the rules of the legal profession by lifting existing restrictions on barristers, allowing them to operate in new business structures and further facilitating movement between the profession of barrister and solicitor."

In addition, section 212 of the act (commenced on 7 October 2019) provides that a barrister whose name is entered on the Roll of Practising Barristers may take up employment, and as part of that employment provide legal services for his or her employer, including by appearing on behalf of that employer in a court, tribunal or forum for arbitration.

Profession of conveyancer

The report also notes that section 34(1)(c) of the act requires the authority to report on the creation of a new profession of conveyancer.

It says the introduction of a new profession of conveyancer in Ireland could have a significant impact on the solicitors' profession, as conveyancing work is among what are referred to as 'reserved legal services' that can only be provided by solicitors. g

THE DAY AFTER TOMORROW

The publication of new Irish legislation, as well as a seminal Supreme Court decision, are highly relevant to the EU and international policy framework regarding the governance of climate action, says **Katrina Donnelly**

KATRINA DONNELLY IS A SOLICITOR WITH ARTHUR COX AND IS A MEMBER OF THE LAW SOCIETY'S EU AND INTERNATIONAL AFFAIRS COMMITTEE

THE COURT CONSIDERED THAT THE NATIONAL MITIGATION PLAN DID NOT JUST FALL SHORT, IT FELL 'WELL SHORT' OF THE SPECIFICITY REQUIRED BY STATUTE

News from the EU and International Affairs Committee. Edited by TP Kennedy, Director of Education

Tackling climate change requires radical transformation across all sectors. There is broad agreement about what needs to happen – decarbonise power and transport, increase energy efficiency of buildings, increase sustainability in manufacturing and industry. But achieving this requires long-term decision-making around infrastructural development, effective regulatory and market design, well-targeted taxation and allocation of public funds, and regulation conducive to sustainable private finance.

Climate governance provides a framework for setting the targets to be met, requiring the formulation of policies and plans to elaborate how it is proposed to meet those targets, and monitoring progress. Long-term policy needs to be spelled out with a level of certainty and specificity that is adequate to enable the necessary projects to be planned, financed and delivered.

Ambitious direction

Climate governance at both EU and domestic level is undergoing change, as might be expected, given that there is now a dramatically increased level of ambition in tackling climate change.

At EU level, the 2019 *Communication on the European Green Deal* outlined an all-sector approach to reducing emissions and decoupling economic growth from resource use in order to reach zero net emissions of greenhouse gases in 2050. The commission was to present an impact-assessed plan to increase the existing 2030 target of reducing emissions by 40% to at least 50% (as against 1990 levels).

Having carried out that assessment, the commission published a communication on *Stepping up 2030 Europe's Climate Ambition* in September 2020. This was a keynote part of the state-of-the-union address, and it carried a stark message: the current policy and legal framework would not be enough to enable the EU to reach its 2050 goals and to meet its commitments under the *Paris Agreement*.

Accordingly, the commission proposed to increase the 2030 emissions reduction target to *at least 55%* and the parliament is seeking to raise this further. This will also result in new EU targets for renewable energy and energy efficiency. A revision of key EU legislation is underway (including the *ETS Directive*, the *Effort Sharing Regulation*, the *Land Use Regulation*, the *Renewables Directive*, the *Energy Efficiency Directives*, and the *Energy Taxation Directive*).

In terms of climate governance, not only will the *Energy Union Governance Regulation* be revised to factor the new target into member states' current climate policy-planning and reporting obligations, but a new regulation is also in train, colloquially referred to as the *European Climate Law*. It seeks to establish a "framework for the irreversible and gradual reduction of greenhouse gas emissions and enhancement of removals by natural or other sinks in the union". It would bind EU institutions and member states to take necessary actions to achieve carbon neutrality by 2050, and would require the commission to monitor progress and take appropriate enforcement action where targets are not being met.

In Ireland, the Programme for Government and the 2019 Climate Action Plan set a target of reaching a carbon-neutral economy by 2050. The Programme for Government elaborates strategies aimed at reducing emissions by an average of 7% each year from 2021 to 2030, which equates to a reduction of 51% over the


PIC: SHUTTERSTOCK

Whether we weather whither the weather

decade. It commits to meeting at least 70% of electricity demand by renewable power by 2030. Ireland has also delivered its National Energy and Climate Plans for 2021-2030 in accordance with the *EU Governance Regulation*.

Governance framework

The focus of this article is on two significant developments in Ireland that are highly relevant to the EU and international policy and legal framework: first, the publication of the *Climate Action and Low Carbon Development (Amendment) Bill* and, second, the Supreme Court's decision in *Friends of the Irish Environment CLG v Government of Ireland, Ireland and the Attorney General* ([2020] IESC 49).

The Programme for Government committed to introducing a climate action bill within the first 100 days of Government. The *Climate Action and Low Carbon Development (Amendment) Bill 2020*, published on 7 October, would make significant amendments to the *Climate Action and Low Carbon Development Act 2015*.

The bill's key provision would oblige the State to "pursue the transition to a climate resilient and climate-neutral economy by the end of 2050". 'Climate neutral economy' means "a sustainable economy, where greenhouse gas emissions are balanced or exceeded by the removal of greenhouse gases".

This obligation is called the 'National 2050 Climate Objective' and would replace the 2015 act's 'National Transition Objective'.

The bill sets out a detailed framework for climate governance to achieve the national 2050 climate objective. This is summarised below:

- *Carbon budgets* – five-year carbon budgets would be proposed by the Climate Change Advisory Council (CCAC), finalised by the minister, and approved by the Government. (In the 2015 act, the minister is defined as the Minister for the Environment, Community and Local Government. The bill is brought forward by the Minister for Environment, Climate and Communications.) A 'carbon budget' is the total amount of emissions permitted during the budget period. A first budget period would commence at the start of 2021 for a period of five years. At any given time, there would be visibility of the current budget, plus budgets for two subsequent periods – and that 15-year perspective is called a 'carbon-budget programme'. After a carbon budget is approved, a 'decarbonisation target range' would be set, which is the "target range of greenhouse gas emissions that are permitted in different sectors of the economy within the limits specified in the carbon budget".
- *Strategic and planning framework* – the bill would require the minister (or in the case of the sectoral adaptation plan, each of the relevant ministers) to make the following, and submit them to Government for approval:
  a) *Annual revisions of the Climate Action Plan*, to enable the State to pursue the national 2050 climate objective. This would be a roadmap of actions, including sector-specific actions, and would take into account the carbon budget programme. It would address policy and measures for the first five years; then, for the next five years, policies and, if feasible, measures; and then, for the final five years, *potential* policies.
  b) *Long-term climate action strategies* to specify the manner in which it is proposed to meet the national 2050 climate objective. These may include projected emissions reductions and the enhancement of carbon sinks for a minimum of 30 years; projected emissions reductions and enhancement of carbon removals by sector; and an assessment of potential opportunities in relevant sectors. These would have to be made not less than once every ten years (or five years if the minister thought it appropriate). They would have regard to article 15 of the *EU Governance Regulation*, which

requires member states to submit long-term strategies with 30-year perspectives to the commission.

c) *National adaptation frameworks* that focus on reducing vulnerability of the State to the negative effects of climate change and on availing of any positive effects.

d) *Sectoral adaptation plans* to specify the adaptation policy measures that each minister, having regard to the national adaptation framework, proposes to enable adaptation to the effects of climate change in the sector(s) concerned.

The last two of these are already provided for in the 2015 act. However, the bill would provide an expanded list of matters to which the minister and Government must have regard in finalising these documents (in the areas of international and EU commitments, Government policies, climate justice, emissions data, science and technology, CCAC recommendations, and more).

Compared with the 2015 act, the bill frames the CCAC's advisory and reporting roles in line with the more detailed governance framework proposed.

In addition to the CCAC's reporting obligations, what other oversight would be provided? A new section on climate reporting would require ministers to attend and report on progress before a joint committee of the Oireachtas, following which the committee could make recommendations to which the relevant minister would be required to respond.

The overriding obligation in respect of the National 2050 Climate Objective is on the State. Apart from Oireachtas oversight, what else does the bill say about compliance with the framework? Ministers, in the performance of their functions, would be required to have regard to the carbon budget and take account of the decarbonisation target range. Local authorities would be required to make five-year plans to specify mitigation and adaptation measures. Relevant bodies, in the performance of their functions, would have to take into account the plans/strategies, the National 2050 Climate Objective, and the objective of mitigating emissions and adapting to the effects of climate change. ('Relevant bodies' are prescribed bodies and public bodies, as defined in the *Freedom of Information Act* – these are numerous entities.) A minister could direct a relevant body to adopt measures for the purpose of compliance with the framework, and could require relevant bodies to report on measures taken and progress made.

> THE PURPOSE OF REQUIRING THE PLAN TO BE SPECIFIC WAS TO ALLOW ANY MEMBER OF THE PUBLIC TO KNOW ENOUGH ABOUT HOW THE GOVERNMENT INTENDED TO MEET THE NTO. THIS WOULD INFORM THE VIEWS OF THE REASONABLE AND INTERESTED MEMBER OF THE PUBLIC AS TO WHETHER THE POLICY COULD BE CONSIDERED EFFECTIVE AND APPROPRIATE

And the Supreme Court?

In July 2020, in *Friends of the Irish Environment*, the Supreme Court quashed the National Mitigation Plan, which had been made pursuant to the 2015 act.

What is the statutory background relevant to this case? The 2015 act required a 'national mitigation plan' to be made for the purpose of enabling the State to pursue and achieve the transition to a low-carbon, climate-resilient and environmentally sustainable economy by the end of 2050 (the national transition objective, or NTO).

Section 4 sets out the matters that should be specified in the mitigation plan. The overriding requirement is that it must specify the manner in which it is proposed to achieve the NTO. It should *specify the policy measures* needed to achieve the NTO, and measures are required to be specified by reference to various sectors. There must be a new plan at least every fifth year (which the court considered to mean that there should be a series of rolling plans, rather than a series of five-year plans).

Section 4 also requires a proposed plan to be published, and submissions invited from interested parties. The court considered this to be significant – there was a clear statutory policy of transparency and public participation, such that the public was entitled to know how the Government intended to meet the NTO.

A National Mitigation Plan was published in July 2017. There were numerous responses during the consultation period. The plan envisaged an increase in emissions over an initial period while, at the same time, committing to achieving zero net carbon emissions by 2050.

Why quash the plan?

The court ordered the quashing of the plan on the basis that it failed to comply with its statutory mandate and was therefore *ultra vires* the 2015 act. The key conclusion was that the 2015 act "requires a sufficient level of specificity in the measures identified in a compliant plan that are required to meet the National Transitional Objective by 2050 so that a reasonable and interested person could make a judgement, both as to whether the plan in question is realistic, and as to whether they agree with the policy options for achieving the NTO which such a plan specifies. The 2015 act as a whole involves both public participation in the process leading to the adoption of a plan, but also transparency as to the formal Government policy, adopted in accordance with a statutory regime, for achieving what is now the statutory policy of meeting the NTO by 2050. A compliant plan is not a five-year plan but, rather, a plan covering the full period remaining to 2050. While the detail of what is intended to happen in later years may understandably be less complete, a compliant plan must be sufficiently specific as to policy over the whole period to 2050 […] the plan falls well short of the level of specificity required to provide that transparency, and to comply with the provisions of the 2015 act."

The court considered that the plan did not just fall short, it

fell "well short" of the specificity required by statute.

How did the court gauge the level of specificity? The starting point was to consider the purpose of the act as a whole, and the court considered this to be public participation and transparency. The public-participation purpose was met by the requirement to consult. It was to the transparency purpose that the specificity mandated by section 4 was directed. The purpose of requiring the plan to be specific was to allow any interested member of the public to know enough about how the Government intended to meet the NTO so as to inform the views of the reasonable and interested member of the public as to whether the policy could be considered to be effective and appropriate.

The court then looked at the plan itself. The court placed significant weight on the views of the CCAC, which had indicated that Ireland was off-course in terms of its commitments to addressing climate change. The court characterised some of the policies in the plan as "excessively vague or aspirational" or requiring the carrying out of further research. The court found this unsatisfactory, adding that, even though measures might have to be adjusted over time because of developments in knowledge, data or technology, a best current estimate as to how the NTO was going to be achieved needed to be made now. Too much had been left to further study or investigation for the reasonable and interested observer to know how it was intended to achieve the NTO.

There was no dispute between the parties that Friends of the Irish Environment (FIE), an incorporated association, had standing to challenge the vires of the 2015 act. Two other preliminary issues are worth noting:

- *The question of whether the plan met the requirements of section 4 of the 2015 act was justiciable.* The Government contended that the substantive policy content of the plan could not be judicially reviewed. The court, however, noted that there was legislation and "where the legislation requires that a plan … does certain things, then the law requires that a plan complies with those obligations … The choices as to how the NTO might be achieved may well be policy choices, and real questions might arise at to the extent to which those choices might be justiciable. However, whether the plan does what it says on the 'statutory tin' is a matter of law and clearly justiciable."
- *The challenge to the* vires *of the plan did not amount to an impermissible collateral attack on the 2015 act.* FIE's claim was simply an assertion that the legislation required a particular level of specificity to be met in the formulation of the plan. It did not suggest that there was any problem concerning consistency of the act with the Constitution.

Rights-based claim?

During the course of this litigation, there were submissions that the plan failed to vindicate rights under the Constitution and the *European Convention on Human Rights*. Because a basis to quash the plan had already been identified, it was not necessary to deal with these aspects of the case. However, the court did consider that it should state its view on two issues that could be relevant to future challenges by corporate NGOs in the environmental field in respect of any future plan – standing; and whether there was an unenumerated/derived right to a healthy environment.

Did FIE have standing to mount a rights-based claim? No – the rights on which FIE sought to rely were personal rights that FIE, as a corporate entity, did not enjoy. (FIE sought to rely on the Constitutional right to life, right to bodily integrity, and right to an environment consistent with human dignity. It sought to rely on articles 2 [right to life] and 8 [private and family life] of the convention.) The court discussed the leading authorities, commenting that Irish rules relating to standing are flexible, but not infinitely so.

Is there an unenumerated or derived right to a healthy environment under the Irish Constitution? The lower court had considered that there was a right to an environment consistent with human dignity, as had the court in *Friends of the Irish Environment v Fingal County Council* ([2017] IEHC 695). However, the Supreme Court held that such a right is impermissibly vague: "It either does not bring matters beyond the right to life or the right to bodily integrity, in which case there is no need for it. If it does go beyond those rights, then there is not a sufficient general definition (even one which might, in principle, be filled in by later cases) about the sort of parameters within which it is to operate."

That said, the court was keen to acknowledge that there may well be cases, which are environmental in nature, where constitutional rights and obligations are engaged. It stated that, while questions of general policy do not fall within the remit of the courts under the separation of powers, if an individual with standing to assert personal rights were to establish that those rights had been breached in a particular way, then the court would be bound to vindicate such rights and uphold the Constitution. Therefore, in an appropriate case, it might well be that constitutional rights would play a role in environmental proceedings.

Forward momentum

The bill is a Government priority, with chief whip Jack Chambers citing it as one of the bills in the current legislative programme that will help to rebuild the economy and regenerate society. Compared with current legislation, and for the first time, it enshrines the State's commitment to moving to carbon neutrality by 2050, and it provides a more developed governance framework to support the very significant level of action that is required.

The Supreme Court's judgment will help to add momentum to the increasing sophistication of climate policy in Ireland. Development of energy and climate policy is iterative and collaborative, but requires enough detail and specificity to enable long-term investment decisions to be made. Given that, in terms of infrastructural development, a decade is a short period of time, and that the court stressed that the plan should cover the entirety of the period to 2050, it already seems clear that a similar expectation would arise in respect of the various documents specified in the bill, given that they are to be made "for the purpose of enabling the State to pursue the national 2050 climate objective". g

REPORT OF LAW SOCIETY COUNCIL MEETING

13 NOVEMBER 2020

The president extended a warm welcome to the newly elected and newly nominated Council members, Tara Doyle, Martin Lawlor and Tony O'Sullivan.

Taking office

The outgoing president, Michele O'Boyle, paid tribute to the Law Society committee members and staff for their enormous work and commitment to the Society, particularly during the past year. Reflecting on her term in office, she considered that, while no one could have anticipated the challenges presented by the pandemic, it had been her privilege to undertake the role.

James Cahill was formally appointed President of the Law Society. He thanked the Council for bestowing on him the great honour of serving as the 150th president, and he paid tribute to Michele O'Boyle for her leadership during trying times.

Mr Cahill explained that his presidency would focus on nurturing friendship in the profession, a theme that he saw as being closely allied to mindfulness and mental health. He described his plans to honour all solicitors on the Roll for 40 and more years, to engage further with the solicitors of the future, and to encourage bar associations to document their histories with the assistance of the Law Society Library.

The president will also establish a new Practice Support Task Force, populated by Council members, with the goal of assisting solicitors in meeting the increasing demands of practice.

Senior vice-president Michelle Ní Longáin and junior vice-president Barry MacCarthy also took office and expressed their commitment to the Council and their support for the president.

Online PC renewal

The Council had a discussion on a proposal from the Regulation of Practice Committee that all PC renewals would be brought online, commencing with the 2021 PC renewal.

The associated cost savings, as well as the mitigation of both control and data-security risks, were appreciated by the Council. The meeting also emphasised the need to ensure that members of the profession were assisted in becoming familiar with the online system.

Pro Bono Pledge

The *Pro Bono* Pledge is a collaborative initiative that aims to articulate the shared responsibility of lawyers to promote access to justice and provide *pro bono* legal assistance to those in need. The pledge, which is coordinated by the Public Interest Law Alliance (a project of FLAC), enables solicitors and firms to take a voluntary pledge to engage in *pro bono* work.

While the opportunities presented by the programme, in quantifying the extent of such work across the profession and in creating referral networks among solicitors, were welcomed by the Council, the meeting was careful to emphasise that the initiative in no way represented a substitute for the introduction of a comprehensive civil legal-aid system in the State.

It was agreed that the president would participate in the launch of the pledge at the end of November, together with the Minister for Justice and the Bar Council.

AGM report

As required by the bye-laws, the Council adopted the following motion, which had been approved at the previous evening's AGM: "That the Law Society implement the recommendations set out from pages 99-111 of the International Bar Association (IBA) Report titled, *Us Too? Bullying and Sexual Harassment in the Legal Profession*. That the Law Society commission a profession-wide survey in similar terms to that carried out by the IBA on bullying and sexual harassment. That this survey be commissioned within three months of 12 November 2020." g

MENTAL HEALTH AND CAPACITY TASK FORCE

MEDICAL REPORTS IN APPLICATIONS TO REGISTER AN ENDURING POWER OF ATTORNEY – NEW HIGH COURT PRACTICE DIRECTION

The President of the High Court has issued a new Practice Direction HC 99 regarding the content of medical affidavits and medical reports in support of applications to register an enduring power of attorney. This has effect from Monday 16 November 2020 and is printed in full below.

Richard Hammond SC, Chair, Mental Health and Capacity Task Force

PRACTICE DIRECTION:
ENDURING POWERS OF ATTORNEY

I, Mary Irvine, President of the High Court, hereby issue the following practice direction in accordance with s11(12) of the *Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020*. This practice direction, which concerns the content of medical affidavits/medical reports in relation to Enduring Powers of Attorney, will come into force on 16 November 2020.

Any certificate, or medical report relied upon as a certificate, for the purposes of s9(4) the *Powers of Attorney Act 1996*, shall henceforth include the following information:

1) The date, place, duration and circumstances in which the medical examination was carried out,
2) The nature and duration of any prior relationship between the medical practitioner and the respondent,
3) The nature of the examination carried out and details of the test and/or capacity tools deployed for the purpose of concluding whether the donor is or is becoming incapable of managing his or her affairs,
4) Whether in the opinion of the registered medical practitioner, the donor is or is becoming incapable of managing his or her affairs,
5) Where the medical practitioner is of the opinion that the donor is or is becoming incapable of managing his or her affairs, he/she should state:
   i) The nature of the respondent's illness/condition,
   ii) The likely date of onset of that illness/condition,
   iii) The symptoms pertaining to that illness/condition,
   iv) The evidence relied upon in making their diagnosis, and
   v) Whether the illness/condition is permanent or likely to improve.

This practice direction will remain in force until further notice.

Mary Irvine, President of the High Court, 23 October 2020

CONVEYANCING COMMITTEE

IMPLIED EASEMENTS

1. The Conveyancing Committee received a request from a solicitor for guidance in relation to the following situation. A row of ten terraced houses in a city was built 50 years ago. The houses front onto a public road, but the drain serving all ten houses was laid along the rear of the houses to the last house in the row, and then connects through its driveway to the public sewer, which is located in the public road. The solicitor making the enquiry wanted to know if it was necessary for his client to seek a grant of a wayleave from all the relevant neighbours or to seek to register a wayleave through the PRA or apply to the Circuit Court for an order, and then seek to register the same.

2. There are a great many examples where a wide variety of houses in a row or terrace, or in a building estate, both old and new, are served by drains that do not have the benefit of a formal grant of easements, or where the easements granted by the first deed of sale are incomplete.

3. The solicitors' profession has accepted up to 1 December 2009 that, as a matter of practice, houses such as are detailed in paragraphs (1) and (2) above would have been deemed to have an implied easement at common law in relation to any drain running from the house through other private property to the point of connection into a public sewer.

4. The issue of implied easements at common law was considered by the Court of Appeal in 2017 in the case of *Palaceanne Management Limited v AIB* ([2017] 2 IR 675). Ryan P (President of the Court of Appeal), in his judgment in the appeal in the *Palaceanne* case, reviewed the British and Irish case law on the topic.

One of those cases was *Conneran & Anor v Corbett & Sons Ltd & Anor* ([2004] IEHC 389), where Laffoy J approved and adopted paragraph 6.059 of *Wylie on Irish Land Law* (3rd edition), which said: "As regards the rule that a man may not derogate from his grant, the philosophy here is that, when a man transfers his land to another person, knowing that it is going to be used for a particular purpose, he may not do anything which is going to defeat that purpose and thereby frustrate the intention of both parties when the transfer is made. Usually application of this principle creates property rights in favour of the grantee, which takes the form of restrictions enforceable against the grantor's land."

In the *Palaceanne* case, Ryan P held: "In the events that have happened in this case, I think that it is irresistible that a right arises by necessity or by implication of law or under the Rule in *Wheeldon v Burrows*."

5. The Rule in *Wheeldon v Burrows*, which had been the subject of some academic criticism, was abolished on 1 December 2009 and replaced by subsection (2) of section 40 of the *Land and Conveyancing Law Reform Act 2009*. Section 40 is very clear. The question is whether that subsection would apply retrospectively to subdivisions that took place many years before.

The wording of section 40 is, as follows:

"40(1) The rule known as the Rule in *Wheeldon v Burrows* is abolished and replaced by subsection (2).

(2) Where the owner of land disposes of part of it or all of it in parts, the disposition creates by way of implication for the benefit of such part or parts any easement over the part retained, or other part or parts simultaneously disposed of, which

a) Is necessary to the reasonable enjoyment of the part disposed of, and

b) Was reasonable for the parties, or would have been if they had adverted to the matter, to assume at the date the disposition took effect as being included in it.

(3) This section does not otherwise affect:

a) Easements arising by implication as easements of necessity or in order to give effect to the common intention of the parties to the disposition,

b) The operation of the doctrine of non-derogation from grant."

6. Since 1 December 2009, the Rule in *Wheeldon v Burrows* has been abolished, so the committee has had to consider what the net effect of this change is. Based on the presumption that a statute is not retrospective, the committee takes the view that section 40 operates only in respect of transactions entered into since 1 December 2009. The committee is of the view that the provisions of section 40 will apply to all situations where implied easements arose from a deed entered into after 1 December 2009.

7. The committee takes the view, in the case of the example raised by this query, that easements would be implied at common law by the doctrine of non-derogation from grant under the Rule in *Wheeldon v Burrows*, or as easements of common intention where the deed dates from prior to 1 December 2009, with section 40 replacing the Rule in *Wheeldon v Burrows* as an available method of implication where the deed was executed after that date. This should also apply in all situations, such as those detailed in the paragraph (2) above, where an easement arose by implication prior to the 2009 act. Implied easements run with the land, originally by virtue of section 6 of the *Conveyancing Act 1881* and, after 1 December 2009, by virtue of section 71 of the 2009 act, unless a contrary intention was expressed in the deed.

8. Implied or deemed easements are not capable of registration under the 2009 act. If someone was forced to seek a court order to confirm an implied or deemed easement, they may be able to register the court order confirming the easement if they wished.

9. The committee is of the opinion that it would be reasonable for a solicitor to presume, in the example given in the query at paragraph (1) above, that implied easements arose from the deeds of sale of each house. Similarly, if houses in a housing estate are sold without grants of easement for drainage or with inadequate grants of easements, it would be reasonable to presume that implied easements arose in favour of each house upon its sale, unless there is something in the deed of sale that is inconsistent with such easements being implied.

10. However, in the case of one-off properties, a solicitor needs to exercise more caution, and it would be prudent to seek an explanation for the circumstances that would justify the implication that an easement was intended, and for this to be backed up with a statutory declaration.

11. This practice note only deals with implied or deemed easements, which must not be confused with easements arising by prescription, and a separate practice note on prescriptive easements will issue shortly.

CONVEYANCING COMMITTEE

REPLIES TO QUERIES RE MANAGED DEVELOPMENTS

When acting for a vendor of a property in a managed development, a solicitor needs information from the management company to reply to the relevant requisitions on title. If there are outstanding service charges, a management company or its managing agent often seeks a solicitor's undertaking regarding the arrears prior to providing the replies.

The basis of this stance by a management company is that the title deeds often make provision of services dependent on payment of service charges. Particularly in a circumstance where there are substantial arrears, a sale is often the only opportunity for a management company to collect moneys due to it, and so, while facilitating a sale, it will require an assurance that the arrears will be paid.

As always, when faced with a request for an undertaking, a solicitor should always, in the first instance, request their client to discharge the arrears due. An undertaking should only be furnished if there is a good reason why the client cannot discharge the arrears.

A solicitor is under no obligation to give any undertaking, and a client cannot instruct a solicitor to give an undertaking. If the client is not in a position to pay the arrears before closing, and if the solicitor is willing to consider giving an undertaking and is satisfied that there will be sufficient funds available, then the following should be noted:

- Any undertaking should make reference to a specific amount and should be qualified by the proviso that the particular sale closes within a specified time limit and the proceeds come into the hands of the solicitor,
- A solicitor's undertaking is binding even if it does not include the word undertaking,
- An undertaking should indicate when it will be complied with – if there is no express provision, it is implied that the undertaking will be performed within a reasonable time, and
- The client's authority and indemnity should be obtained in writing.

In a situation where a vendor client is not in a position to discharge service-charge arrears prior to the sale closing, then the purchaser's solicitor will ordinarily request an undertaking from the vendor's solicitor regarding payment of the arrears. The same considerations apply to such an undertaking, and the undertaking to the purchaser/purchaser's solicitor should be consistent with any undertaking provided to the management company.

In circumstances where the vendor is a mortgagee or receiver, these undertakings may be offered by the vendor, and it is a matter of contract between the parties as to whether or not to accept such an undertaking.

The committee is also aware of requests from management companies for undertakings from vendors' solicitors to provide contact details for the purchaser, and a refusal to provide information in the absence of such an undertaking. It is the view of the committee that there is no basis for this position. A vendor's solicitor is generally not in a position to undertake to provide such information about a third party, and such an undertaking should not be sought. Section 8(3) of the *Multi-Unit Developments Act 2011* creates an obligation on the 'unit owner' to provide certain details, such as his or her name, his or her address, the names of the tenants in the unit, particulars of any habitual occupiers of the unit other than tenants, and such other contact particulars as the owners' management company may reasonably request. The management company is, of course, entitled to this information about the new owner, and the requisitions require a letter addressed to the management company to be provided on closing, advising it of the change in ownership. The relevant details can be provided in this letter with the agreement of the purchaser.

GUIDANCE AND ETHICS COMMITTEE

TEN STEPS IN MANAGING DATA AND DATA PROTECTION IN YOUR FIRM

The compliance requirements related to data protection have dramatically increased, and firms must have an in-depth understanding of their duties and responsibilities or risk potentially crippling financial penalties. The *General Data Protection Regulation* (EU) 2016/697, the *Data Protection Act 2018*, and other legislation govern the area of data protection in Ireland.

1. Data protection policy. Have a data protection policy and staff protocols in your firm to show how your firm complies with the legal requirements for managing personal data. There is no standard content that a data-protection policy must have. However, it should include high-level principles and rules for your firm, and should set out the procedures and practices employees should follow.

2. Know what personal data you hold and the principles of processing personal data. Understand what constitutes personal data (article 4 GDPR) and the lawfulness of processing personal data (article 6 GDPR). Know what personal data you hold. Make an inventory of it, and update the inventory on an ongoing basis. When processing data, understand the principles of data protection (article 5 GDPR), namely:

- Lawfulness, fairness and transparency,
- Purpose limitation,
- Data minimisation,
- Accuracy,
- Storage limitation,
- Integrity and confidentiality, and
- Accountability.

3. Staff training. Ensure staff are adequately trained to recognise when they are working with personal data, and aware of the need to comply with the firm's policies when working with personal data. It is also critical to ensure that staff are aware of the need, without fear of repercussion, to immediately communicate any potential data breach to management. There isn't a 'one-size-fits-all' approach for staff awareness training. It should be tailored to your firm and its requirements, and should

be an ongoing process in which employees can be shown how risks arise and how the firm's policies and processes can help in that process.

4. Map data flows. Article 30 GDPR states that you must maintain a record of processing activities under your responsibility. To achieve this, your firm should create a data-flow map. A data-flow map shows you what data is collected and processed, and shows the flow of data from one location to another. When mapping data flows, identify the type of data collected and its source, determine the lawful basis for processing, identify who you share the data with and where the data is stored, and how long to retain the data for.

5. Data security. Security is a risk-based approach – implementation of technical and organisational measures to provide security must be appropriate to the risk. Have systems in place to ensure the confidentiality and security of data. Exercise caution when sending emails. In particular, when email addresses automatically populate, it is critical to ensure the correct address is selected.

6. Management of paper and electronic files. Well-maintained filing and document-management systems will help your firm to remain compliant with the GDPR regulations and avoid security risks. Electronic file management is the practice of importing, storing, and managing documents and images as computer files. Have an e-communications policy in place, and ensure IT systems are robust to ensure that electronic files are managed securely. Ensure you have an adequate data-recovery strategy in place. Have a policy in place regarding the storage and management of paper records.

7. Data retention and destruction of paper and electronic files. Know the mandatory periods of retention, having regard to statutory and regulatory limitations – have a retention policy in place for retaining files for operational or regulatory compliance need. Inform clients that you operate a retention policy. It is good practice to categorise each file. Do not retain data for longer than necessary. Review data quality and remove duplicate data and obsolete data. Further information, including a table outlining statutory retention periods, can be found in the practice note on data retention and destruction of paper and electronic files. If keeping copy pleadings, advices, court outcomes, etc, as precedents, ensure you delete all personal data from same. GDPR states that personal data may only be kept in a form that permits identification of the individual for no longer than is necessary for the purposes for which it was processed.

8. Legal privilege. Legal professional privilege confers on a client a privilege of exemption from disclosure of communication that may otherwise be required to be revealed. The statutory data protection regime and legal and professional confidentiality requirements are separate and complementary. Further guidance on legal professional privilege is available in the recent practice note published by the Guidance and Ethics Committee on the topic (see July 2020 *Gazette*, pp56-61).

9. Data breach. A firm must have in place procedures to deal with breaches (detect, report, record and investigate). In the event of a breach, carry out an immediate risk assessment, as time is of the essence: certain breaches must be reported to the Data Protection Commissioner within 72 hours (article 33 GDPR). Identify the source and extent of the breach and establish how to remedy it. Address the breach. The specific actions you may need to take may vary based on the nature of the breach, and implement a short-term security fix to prevent further access to your data. Test the fix to ensure that the method of attack cannot be used again. Keep records of data breaches and what steps were taken to remedy the breach. Data subjects must be informed of high-risk data breaches without delay. Personal data breaches and failure to report same attract fines (article 34 GDPR). Investigate how the breach happened and learn from it, and put measures in place to ensure it does not happen again.

10. Data subject access requests. Know the different aspects to the right of access under article 15 GDPR and what data can be requested. It is good practice to have in place a subject access requests (SAR) procedure. You have one month to answer a SAR. This time can be extended by a further two months depending on the complexity of the SAR (article 15 GDPR).

Further reading, guidance and templates can be found on the Law Society website under GDPR guidance and templates and practice notes.

GUIDANCE AND ETHICS COMMITTEE

TEN STEPS TO A MORE INCLUSIVE WORKPLACE

1. Diversity v inclusivity. The first step is taking a look at the terms 'diversity' and 'inclusivity'.

'Diversity' means understanding that each person is unique and recognising our individual differences. Diversity in the workplace means having a wide range of individuals that come from various racial, ethnic, socio-economic and cultural backgrounds and have different opinions, lifestyles, skills, experience and interests. Everyone is different and has a different opinion and experience that makes them unique. Diversity of opinion is critical to success in the workplace. Workplace diversity is not solely about hiring an array of different individuals, it is also about making those individuals feel included and equal. It is about equality of opportunity, fairness, and appreciation for the ways in which differences make us stronger and smarter.

'Inclusivity' means creating an environment where employees are appreciated and made to feel included. An inclusive workplace is one that values employees' differences and makes each person feel respected and accepted. This type of workplace celebrates diversity by promoting a culture of trust and respect among employees, clients, and our community. This workplace also makes sure each individual has equal opportunities afforded to them and that the decision-making has been fair and transparent.

Diversity and inclusivity are essential for the day-to-day running of a firm – not only are they an important factor in the well-being of the employees, but they also provide a huge range of benefits for the firm. These benefits include increased productivity

among employees, faster problem solving, more reasoned decision making, higher employee morale, and reduced employee turnover.

2. Evaluate. The second step is to take a look at how inclusive the firm is. This is done by carrying out a comprehensive evaluation of the firm and examining the firm's data in relation to recruitment, gender pay gaps, age, headcount, training, and development. The length of service and progression within the firm must also be considered. Surveys can be carried out anonymously with the employees to find out what the key concerns are within the firm in relation to the firm's inclusivity. These surveys will help establish any barriers the firm has and will encourage openness among the employees. From these evaluations, a strategy can be developed on how to make the firm a more inclusive workplace, where necessary.

3. Feedback. Feedback from these evaluations is a very important step and must be taken seriously. It should be effective and transparent. The best way to incorporate more inclusivity in your firm is to identify employees' needs and preferences. This is achieved most effectively through the use of surveys, evaluations, and consistent feedback. The feedback will also lead to a better understanding of the employee, improved decision-making throughout the firm, and increased employee satisfaction levels. Feedback highlights any room for improvement within the firm.

4. Adopt policies. The next step is to ensure all of the firm's policies are up to date and that all employees are aware and educated on each of the policies. Prevention strategies must be implemented in order to build empathy, respect, and resilience within the firm. The firm should at all times act in accordance with its obligations under equality and disability legislation and educate all employees in this regard. An effective inclusion policy not only focuses on compliance with Irish legislation, but also adds value to the firm by contributing to employee engagement and wellbeing. Inclusion must be embedded into the policies, practices, and the overall culture of the firm.

5. Integrate inclusivity into your firm's core values. The fifth step in creating a more inclusive workplace is to recognise and value the differences in the people the firm represents and employs. The firm should reflect the values and characteristics of the community in which it works. The firm should commit to promoting gender equality, diversity, and inclusion for the benefit of all solicitors, trainees, clients, and members of the public by pledging the firms name to the Law Society's *Gender Equality, Diversity and Inclusion Charter* – the *GEDI Charter*. By signing the charter, the firm is publicly committing to taking the necessary steps to promote gender equality, diversity, and inclusion in the workplace.

The Law Society states that "the signatories to this charter will treat all individuals and groups of individuals fairly and equally and no less favourably, specific to their needs, in areas of gender, civil status, family status, sexual orientation, religion, age, race, class, disability or membership of the Traveller Community". The firm should strive to create a culture of mutual respect, equal opportunities, and inclusion.

Inclusivity can be integrated into the firm's core values by developing and encouraging initiatives that contribute to the local community and wider society, such as sponsorship programmes. These initiatives can help to remove bias and recognise talent within the community.

6. Educate. Step six involves educating the employees about inclusion in the workplace and on how to understand and support all employees to encourage an inclusive culture in your firm. Employees can be educated through the use of cultural training and diversity workshops that the firm can arrange. As mentioned earlier, developing a strategic prevention programme can help negate conflict before it arises. It is important to organise training and information sessions with facilitators who have lived experiences, as they will be highly knowledgeable on how to support vulnerable communities.

7. Commit to change. Committing to change involves appointing a champion or ally who is responsible for instilling a diverse and inclusive workplace culture. An ally is someone who is not a part of a vulnerable or underrepresented community, but will take action to create a safe and welcoming workspace to support that community and advocate on their behalf. This designated person should create a team environment where all employees can speak up, be heard, and feel welcome within the workplace. To ensure employees from all groups are heard, an ally can invite members of the underrepresented groups to write for the firm's newsletters, speak at staff meetings, or take on other high-visibility roles.

8. Communication. Step eight of creating a more inclusive workplace is communication. It is important to communicate your expectations to your employees and colleagues. Try to adopt an open-door communication channel for inclusion concerns. Not everyone may be comfortable speaking up against ongoing discrimination, so try to make your office an environment free from unconscious bias and discrimination. Foster a culture where every voice is welcome, heard, and respected. Welcome diverse thinking within your firm. Different people from different backgrounds and generations have sometimes very different perspectives on all sorts of issues. Diverse thinking can lead to more rounded and reasoned legal advice.

9. Celebrate differences to make everyone feel included. One way to show employees, clients, and the community that the firm respects diversity and inclusion is to show that your firm celebrates difference. This can be achieved by recognising and acknowledging days and events that are of significance to other communities, such as Pride Month. This will foster a feeling of belonging and raise employee morale throughout the firm. Celebrate regardless of differences.

10. Reflect everyone's needs and preferences at everyday functions. The final step in creating a more inclusive workplace is to reflect everyone's preferences and needs when organising work functions and events. This can be achieved by including food and beverages that everyone can eat and drink. This shows that your firm respects the dignity and desires of the employees. It is important to remember that not everyone celebrates birthdays or events, so it is essential to ask in advance what each employee prefers. Make sure all the employees know that the events are optional, as some may not feel comfortable attending. These are some simple ways to ensure events and work functions are as inclusive as possible. Show respect towards everyone, regardless of differences. g

TECHNOLOGY COMMITTEE

TIPS FOR ZOOM AND VIRTUAL MEETINGS

Ever wondered why back-to-back Zoom calls are so much more tiring than face to face? A major factor is the discomfort at listening to voices transmitted through microphones.

This amplifies high frequencies and picks up environmental noises, which our brains struggle to decode. To be heard over the internet, we also often need to raise our voices as if we are giving a presentation, which in itself is tiring.

Quick fix 1: To help you and your listeners, use a headphone microphone and use the mute button when you are not speaking. If how you sound is of great importance in a particular meeting, consider briefly recording yourself in advance so that you can gauge/remind yourself how loudly you should speak.

Sometimes we find that a Zoom meeting worked fine yesterday, but today the audio is choppy. You later learn that three other devices in your house were streaming content during your call, which has put pressure on the bandwidth.

Quick fix 2: Check that the maximum bandwidth is available for your call.

You might be on a call and one of the other participants sounds as if they are speaking in a tunnel (or indeed they may be saying the same about you). This can be the result of reverberations around a room.

Quick fix 3: Introduce materials into the space that will absorb sound. Something as simple as adding a throw or scattering a few cushions around can reduce the echo.

Smartphones and webcams have wide-angle lens – they are great for capturing a landscape, but result in distorted faces when too close to the face.

Quick fix 4: Try to move back from the camera. If you also need to see the small screen of a laptop, consider investing in a separate webcam. This will come on a lead that can be plugged into the laptop and the camera can be placed elsewhere (ideally at eye level). Changing the position of the camera will also allow you to broadcast a view of your face that is not dominated by your chin, as is usually the case when using a laptop. While you are at it, try to have a light set in front of you, rather than behind or to the side, to reduce shadows.

Settings tips

Set your audio to 'mute' and your camera to 'off' in settings. Only once in the meeting should you switch them on. This gives you control, and avoids the need to hunt for the settings if unexpected circumstances arise in your environment.

You can hide non-video participants to reduce clutter on your screen – settings > video > meetings, and tick 'hide non-video participants'.

The host can create a waiting room that requires the host to admit participants. This allows for increased security and also allows for the introduction to the group ("Hi Mary, I've seen that you've just joined"), so that when people are speaking, they know who is 'in the room'. This also prevents participants being in the room before the host arrives. If you do not want to create a waiting room, then the option to use the sound notification when someone joins or leaves can be helpful.

Function tips

- *(Pro or corp accounts only.)* You can allow an assistant to schedule Zoom calls by going to 'meeting settings/other' and go to 'assign scheduling privilege'.
- You can mute and unmute yourself with the space bar. The host can mute everyone on the call at once – Cmd+Ctrl+M (macOS) or Alt+M (Windows). To quickly invite someone to a meeting, use Cmd+I (macOS) or Alt+I (Windows). This will bring you to the invite window and you can use the link from there to paste into an email. Quickly share your screen by using Cmd+Shift+S (macOS) or Alt+Shift+S (Windows) Other shortcuts are available here: https://support.zoom.us/hc/en-us/articles/205683899-Hot-Keys-and-Keyboard-Shortcuts-for-Zoom.
- There is also the option to have participants automatically on mute when they join the meeting. This allows the host to introduce them and allow them to speak, which will avoid them interrupting the flow of the ongoing conversation.
- *(Business, Education or Enterprise users only).* You can co-host meetings. Go to 'meeting settings' and choose the 'co-host' option. Once your co-host has joined the meeting, go to their window. Choose 'manage participants'. When you hover over the proposed co-host's name, you can select 'more' and choose 'make co-host'.
- *(Business, Education or Enterprise users only).* You can obtain automatic transcription of the audio of a meeting if you have recorded it to the Cloud. Obviously, permission should be obtained from participants. To enable, go to 'meeting settings/recording' – see https://support.zoom.us/hc/en-us/articles/115004794983-Automatically-Transcribe-Cloud-Recordings.
- Download the Zoom app for your phone and also the Zoom plug-in for Outlook. There is also a Zoom Chrome Extension and Zoom Firefox add-on, which allow you to schedule a Zoom meeting via your Google Calendar. These can be accessed directly in your Zoom meetings settings.
- The host should consider creating a checklist for tailoring the meeting, depending on the type (for example, participant audio on/off).

Attend and manage meetings

Whether to use the following functions and options will depend on the type and size of the meeting and whether you are the host of the meeting – for example, internal meetings, client meetings, and public style meetings (such as running CPD seminars).

Zoom Business allows you to pre-allocate people into separate 'rooms'. They can be useful (a) to make sure that only the people needed for particular discussions are in those discussions, and (b) to create breakout rooms that can also then feed back into the larger group.

Hosts should let participants know at the beginning of a meeting what the etiquette will be (for example, "we will be using the raise-hand option, given the numbers on this call, and I will unmute your mic as appropriate").

- Raise hand – the meeting organiser needs to enable the 'non-verbal feedback feature' to allow participants to raise their hand. Participants must have Zoom version 4.0.25513.0228 or later to use this function. Go into the list of participants to raise your hand.

- Given that the murmur of assent cannot take place in Zoom, when asking whether there is general consensus and to avoid people having to nod vigorously to demonstrate agreement, encourage/ask people to use the 'thumbs-up' or other nonverbal signs options (some must be enabled, see above).

For recurring meetings, consider using the same link for those meetings, so that your participants can store the meeting link where it suits them rather than having to rely on finding the relevant email or diary entry.

Zoom meetings increase the burden on hosts to manage discussions. It is harder for participants to take the floor in Zoom meetings, and it is harder to take the 'talking stick' from people. This is to the benefit of some meetings, as they become more structured as people are called upon to speak, and the host can use the mute/unmute button to manage this – but it can also reduce the opportunity for collaboration. Given that Zoom meetings limit the ability to have wide-ranging and quick-moving discussions, the chat function can be used to allow topics to be raised in an unobtrusive way. The host can use this to manage the speakers by calling on people who made the comments to elaborate. g

REGULATION

NOTICE: THE HIGH COURT

In the matter of Kathleen Doocey, a solicitor practising as KM Doocey, Solicitors, at American Street, Belmullet, Co Mayo, and in the matter of the *Solicitors Acts 1954-2015* [2020 no 40 SA]

Take notice that, by order of the President of the High Court made on 16 November 2020, it was ordered that the name of Kathleen Doocey be struck from the Roll of Solicitors.

John Elliot, Registrar of Solicitors, Law Society of Ireland
24 November 2020

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LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for Professional Education and Lifelong Learning

LAW SOCIETY OF IRELAND

DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
ANNUAL CONFERENCES				
10 December	**Annual Human Rights Conference** Online, On-demand	1 General (by eLearning)	Complimentary	
OTHER COURSES				
Available Now	**Safety, Health and Welfare at Work Masterclass** Online, On-demand	Mixed (subject to course completion)	Complimentary	
Available Now	**LegalED Talks – COVID-19 CPD Support Initiative** Online, On-demand	Mixed (subject to course completion)	Complimentary	
Available Now	**GDPR in Action 2020: Data Security and Data Breaches** Online, On-demand	1 hour Regulatory Matters (by eLearning)	€95	
Available Now	**Employment Law Online Masterclass 2020- Practical Solutions to Common Problems** Online, On-demand	7.5 Management and Professional Development Skills (by eLearning) or 7.5 General (by eLearning)	€210	€255
Available Now	**GDPR in Action: Modules 1, 2 & 3** Online, On-demand	5 General (by eLearning)	€95	
Available Now	**Termination of Employment Contract** Online, On-demand	3 General (by eLearning)	€95	
Available Now	**Pre-Contract Investigation of Title** Online, On-demand	3 General (by eLearning)	€95	
Available Now	**Fintech - Law and Regulation in Ireland** Online, On-demand	3 General (by eLearning)	€95	

For a complete listing of upcoming courses visit http://www.lawsociety.ie/cpdcourses or contact a member of the Law Society on

P 01 881 5727 **E** Lspt@lawsociety.ie

WILLS

Butterly, Mary (deceased), late of 450 Carnlough Road, Cabra, Dublin 7. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 19 February 1992, please contact Justin Hughes Solicitors, 89 Phibsborough Road, Phibsborough, Dublin 7; DX 149005 Phibsborough; tel: 01 882 8628/882 8583, email: info@justinhughes.ie

Campbell, Patrick Joseph (deceased), late of 54 Deerpark Road, Castleknock, Dublin 15, who died on 1 August 2020. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Denis McSweeney Solicitors, 16 Herbert Place, Dublin 2; tel: 01 676 6033, email: info@denismcsweeney.com

Costigan, Majella (deceased), late of Apartment 93, Custom Hall, Lower Gardiner Street, Dublin 1, who died on 7 May 2020. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Michael J Breen & Co, Solicitors, Main Street, Roscrea, Co Tipperary; tel: 0505 22155/22747, email: law@mjbreensolicitors.ie

Dillon, Gabriel (deceased), late of Rhode Bridge, Rhode, Co Offaly. Would any person having knowledge of a will executed by the above-named deceased, who died on 1 March 2020, please contact FG MacCarthy, Solicitors LLP, Loughrea, Co Galway; tel: 091 841 529, email: law@fgmaccarthy.com

Dunne, Francis (deceased), late of Ballyruin, Ballyroan, Portlaoise, Co Laois. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 3 April 2020, please contact Rolleston McElwee, Solicitors, 4 Wesley Terrace, Portlaoise, Co Laois; tel: 057 862 1329, email: dholland@rmclaw.ie

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €152 (incl VAT at 21%)
- **Title deeds** – €304 per deed (incl VAT at 21%)
- **Employment/miscellaneous** – €152 (incl VAT at 21%)

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for Jan/Feb 2021 *Gazette*: 15 January 2021.**

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

Fogarty, Pauline (deceased), late of 19 Ash Street, The Coombe, Dublin 8, and formerly of 5 Martello Mews, Sydney Parade, Dublin 4, who died on 13 December 2019. Would any person having knowledge of a will executed by the above-named deceased or purported to have been made by the above-named deceased or if any firm is holding same, please contact Daragh Quinn, Sheridan Quinn Solicitors, 48 Pembroke Road, Dublin 4; tel: 01 676 2810, email: daragh.quinn@sheridanquinn.ie

Kealy, Rosemary (Rosemarie, otherwise Rose Mary) (deceased), late of 9 Forest Park, Rivervalley, Swords, Co Dublin, and formerly of 214 Ratoath Road, Cabra, Dublin 7, who died on 24 June 2020. 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 Early & Baldwin, Solicitors, 27/28 Marino Mart, Fairview, Dublin 3; tel: 01 833 3097, fax: 01 833 8043, email: info@baldwinlegal.com; ref: MOD/12678

Leonard, Richard (deceased), late of 62 Hawthorn Park, Swords, Co Dublin, who died on 2 August 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Anne Leonard, tel: 086 345 4913 or email: annecleonard@yahoo.com

McDermott, Brendan (deceased), late of Portrun, Ballymurray, Co Roscommon, and The Esther Rantzen Centre, 2 Little Albany Street, London, who died on 19 October 2020. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Dolores Gacquin, Byrne Carolan Cunningham LLP Solicitors, 'Oak House', 39/41 Mardyke Street, Athlone, Co Westmeath; tel: 090 647 8466, email: info@bccsolicitors.ie

O'Connor, Deirdre (deceased), late of Annagowlan, Ashford, Co Wicklow, who died on 5 February 2013. Would any person having knowledge of a will made by the above-named deceased please contact Brendan Sharkey, Reddy Charlton Solicitors, 12 Fitzwilliam Place, Dublin 2; tel: 661 9500, email: solutions@reddycharlton.ie

O'Donnell, Helen Christina (deceased), late of 4 Silverton, 132 Ranelagh Village, Dublin 6, who died on 19 October 2020. Would any person having knowledge of any will made by the above-named deceased please contact McCullagh Higgins & Company, Solicitors, 1/2 Cois Mara, Dungarvan, Co Waterford; DX 75006; tel: 058 44166, email: info@mccullaghhiggins.com

Reynolds, Hubert (deceased), late of 63 Beech Park, Lucan, Co Dublin, who died on 19 May 2020. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Tony Reynolds, solicitor, 4/5 St Mary's Terrace, Dunboyne, Co Meath; tel: 01 825 2630, email: tony@trlaw.ie

Robinson, Ann (deceased) (née Stephenson), formerly of Faithlegg, Co Waterford, who died on 11 September 2020. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Julie Bermingham, solicitor, MW Keller & Son Solicitors LLP, 8 Gladstone Street, Waterford; email: julie@mwkeller.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rent) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the property known as 'The Old Mill', Tea Lane, off Grattan Street, Portlaoise, in the county of Laois: an application by Margaret Bowe

Take notice that any person having an interest in the freehold estate or any superior interest in the following property: being all that and those 'The Old Mill, Tea Lane, off Grattan Street, Portlaoise, in the county of Laois, and as more particularly described in an indenture of lease dated the year 1800 and made between Henry Plunkett (the lessor) of the first part and Jane Booth (the lessee of the other part), certain lands, hereditament and premises, including the above-mentioned premises were demised unto the aforesaid lessee for the term of 390 years from 1 May 1801 and subject to yearly rent of ten guineas, then currency, and to the covenant on the part of the lessee and conditions therein respectively reserved.

Take notice that Margaret Bowe, being the person currently entitled to the lessee's interest in the premises, intends to apply to the county registrar for the county of Laois for the acquisition of the freehold interest and all intermediate interests in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of the title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Margaret Bowe intends to proceed with this 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 Laois for such direction as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversions in the aforementioned are unknown or unascertained.

Date: 4 December 2020

Signed: Bolger White Egan and Flanagan (solicitors for the applicant), 8 Lismard Court, Portlaoise, Co Laois

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of an application by Shirley Cahill of 1 Burton Terrace, Gardiner's Hill, Cork, and in the matter of the property now known as 1 Burton Terrace, Gardiner's Hill, Cork

Take notice any person having a freehold interest or any intermediate interest in all that and those the property known as 1 Burton Terrace, Gardiner's Hill, in the city of Cork (hereinafter called 'the property'), the subject of a lease dated 16 March 1963 made between Pauline Lee of the one part and Donal Cremin of the other part for a term of 31 years from 29 September 1962 and subject to the yearly rent of IR£1 thereby reserved, and to the covenants by the lessee and conditions therein contained.

Take notice that Shirley Cahill intends to submit an application to the county registrar of the county and city of Cork for the acquisition of the freehold interest in the property, and that any party asserting that they hold a superior interest in the property are called upon to furnish evidence of such title to the property to the undermentioned solicitors within 21 days of this notice.

Take notice that, in default of such notice being received, the applicant, Shirley Cahill, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Cork 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 property are unknown or unascertained.

Date: 4 December 2020

Signed: FitzGerald Legal & Advisory LLP (solicitors for the applicant), 6 Lapps Quay, Cork

In the matter of *the Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 1 Crescent Villas, O'Connell Avenue, Limerick: an application by Arnold Leahy of Cappanalaght, Cratloe, Co Clare

Take notice that any person having any interest or any estate in the following property – all that and those the offices and building and lands known as 1 Crescent Villas, O'Connell Avenue, situate in the parish of St Michael and city of Limerick, held under an indenture of lease or sublease made 16 May 1908 between Patrick Kennedy and Patrick S Pearse of the one part, and Sydney A Jaffe of the other part, for a term of 980 years from 16 May 1908 at an annual rent of £13 – should give notice of their interest in the property to the solicitors named below within 21 days of the date of this notice, and take notice that Arnold Leahy intents to submit an application to the county registrar for the county of Limerick for acquisition of the freehold interest in the aforesaid property and all intermediate and superior interests in the property, and any party asserting that they hold a

freehold superior or intermediate interest in the aforesaid property are called upon to furnish evidence of the title to the aforementioned premises to the below named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Arnold Leahy 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 Limerick for such directions as may be appropriate on the basis that the persons beneficially entitled to any freehold interest, superior interest or intermediate interest in the aforesaid premises are unknown or unascertained.

Date: 4 December 2020

Signed: Michael Nugent & Co (solicitors for the applicant), 6 Sandford Road, Ranelagh, Dublin 6

In the matter of the *Landlord and Tenant (Grounds Rents) Acts 1967-2019* and in the matter of an application by Shelbourne Medical Properties Limited in respect of licensed premises at Hassett's Cross, Limerick V94 FT95, and bungalow adjoining at Shelbourne Road, Limerick V94 F8Y4

Take notice any person having any interest in the fee simple or fee farm grantor's interest or any intermediate interest in all that and those the lands and premises comprising the licensed premises at Hassett's Cross, situate at Sexton Street North, Shelbourne Road, in the parish of St Nicholas, electoral division of Castle A, in the city of Limerick, and the site with bungalow erected thereon adjoining, situate at Shelbourne Road, in the parish of St Nicholas, electoral division of Castle A, in the city of Limerick, all of which property is now comprised in Folio 70771F of the register of freeholders, county of Limerick, held under a fee farm grant dated 8 August 1863 and made between Benjamin Lefroy of the one part and Thomas Travenor of the other part.

Take notice that Shelbourne Medical Properties Limited, a private company limited by shares, having its registered office at 53 O'Connell Street, Limerick, intends to submit an application to the county registrar for the county and city of Limerick for the acquisition of the fee farm grantor's interest and any intermediate interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) is called upon to furnish evidence of the title to the aforementioned properties to the undersigned solicitors within 21 days from the date of this notice.

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

Date: 4 December 2020

Signed: JR Sweeney LLP (solicitors for the applicant), Morehampton House, 8 Merrion Road, Ballsbridge, Dublin D04 YOP4

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* (as amended) and in the matter of an application by Waterford Intellectual Disability Association Company Limited by Guarantee, with a registered address at Spring Garden, Ashley Drive, Cherrymount, Waterford, and in the matter of the property known as 'Marian House', Summerville Avenue, Co Waterford

Take notice that any person having an interest in the freehold estate of the property known as 'Marian House', Summerville Avenue, in the city of Waterford, being the property the subject of a lease made between Winifred Mary White, Gertrude Christine White, Lucy Dorice White, Juliet Rachel Boyd, Margery Smith, Geraldine Holmes Webber, Kenneth Coleby White, and Cyril Hunt Hardman of the one part, and Peter Kevin O'Gorman of the other part, for a term of 105 years from 1 November 1952, subject to the yearly rent of £6.12 shillings thereby reserved, and to the covenants by the lessee and conditions therein contained.

Take notice that Waterford Intellectual Disability Association Company Limited by Guarantee intends to submit an application to the county registrar for the city of Waterford for the acquisition of the freehold interest in the aforesaid property, and that any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of the title to the aforesaid property to the undermentioned solicitors within 21 days from the date of this notice.

Take notice that, in default of any such notice being received, the applicant, Waterford Intellectual Disability Association Company Limited by Guarantee, will apply at the end of 21 days from the date of this notice to the county registrar for the city of Waterford for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold premises are unknown or unascertained.

Date: 4 December 2020

Signed: Nolan Farrell & Goff (solicitors for the applicant), Newtown Lodge, Newtown, Waterford

PRO BONOBO

YOU SQUAWKIN' TO ME?

Five foul-mouthed parrots have been separated at an English-zoo after learning to swear, RTÉ reports.

Billy, Elsie, Eric, Jade and Tyson joined Lincolnshire Wildlife Park's colony of 200 grey parrots in August. But soon after, they started encouraging each other to swear.

"We are quite used to parrots swearing, but we've never had five at the same time," a spokesman said. "Most parrots clam up outside, but for some reason these five relish it.

"We haven't had one complaint," he said. "When a parrot tells you to f**k off, it amuses people very highly. It's brought a big smile to a really hard year."

COCK-A-DOODLE-DON'T

The police chief of Madugang village in the Philippines has been killed during a raid on an illegal cockfight, the BBC reports.

Christian Bolok, who was in his mid-30s, was trying to grab a cock when a gaff – one of the steel blades attached to the birds' legs – severed his femoral artery, according to the Governor Edwin Ongchuan. Provincial police chief Colonel Arnel Apud told AFP that the accident was "a piece of bad luck that I cannot explain. This is the first time in my 25 years as a policeman that I lost a man due to a fighting cock's spur."

Police have been cracking down on illegal cockfights because the gatherings have been blamed for helping to spread coronavirus. Officers arrested three farmers who had been taking part in the illegal fight. Seven cocks were seized, along with a pair of gaffs and around €9 in cash.

CLOTHES DO NOT MAKETH THE MAN

A top QC in England has come under fire for suggesting that trainee barristers should have "well-polished shoes" and a "proper hair cut", *Legal Cheek* reports.

In a tweet, Richard Atkins appeared to back the views of recently deceased High Court judge Robert Johnson.

An obituary of the judge stated that he "expected his pupils to have their hair properly cut and to wear well-polished shoes. 'Even if you don't know any law … you can at least look like a barrister'," he is reported to have said.

Barrister David Wolfson said: "A barrister isn't meant to 'look like' anything. A barrister should 'be' many things – courageous, fair, determined, reliable, honest and (at least) competent. I believe you can be all of those things, even if your shoes aren't well-polished."

And another responded: "Wait a minute! We're supposed to get fully dressed for court these days? I thought that ended in March? #tophalfonly #dontstandup".

ROBOT WOLVES DEAL WITH BEAR NECESSITIES

Robot wolves have been deployed to scare bears away from the Japanese town of Takikawa, *The Guardian* reports.

Two 'Monster Wolf' robots were installed after bears were discovered roaming neighbourhoods in September. Apparently, no one has seen a bear since.

The Monster Wolf has four legs, a shaggy body, blond mane and red, glowing eyes. When its motion detectors are activated, its head moves, lights flash, and it emits wolfish howling sounds and machinery noises.

"Oh no! It's The Bearminator."

There have been dozens of bear attacks in 2020, two of them fatal, prompting the government to convene an emergency meeting in October to address the threat.

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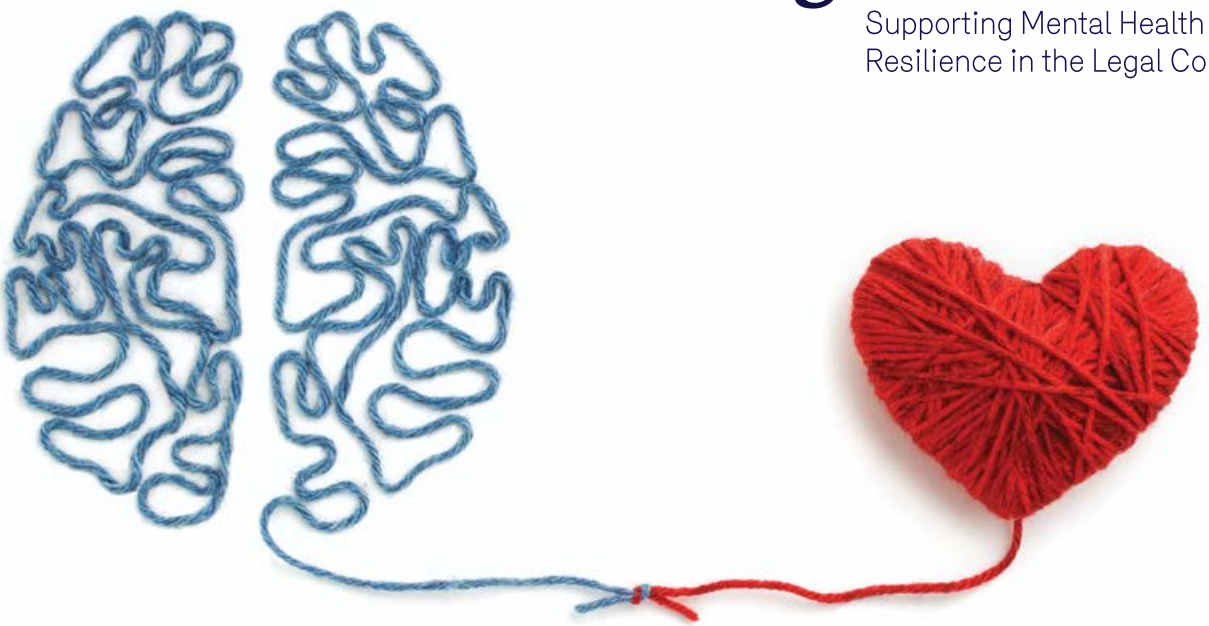

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