



Up to standard

How to deal with bribery and corruption in a more globalised business world



Sauce for the gander

The secret marketing recipe for winning – and retaining – great clients



Advice for the advisors

Best practice in identifying and dealing with clients suffering with dementia

gazette

LAW SOCIETY

€4.00 OCTOBER 2017



SURFING THE CROWD?

Bringing litigation funding
into the 21st century

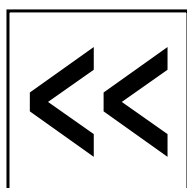
IMA
WINNER



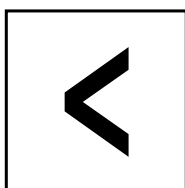


navigating your interactive

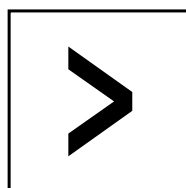
gazette
LAW SOCIETY



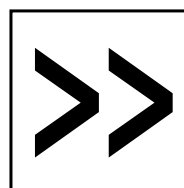
BACK TO
CONTENTS
PAGE



PREVIOUS
PAGE



NEXT
PAGE



NEXT SECTION/
FEATURE

... enjoy

IMPORTANT NOTICE FOR ONLINE READERS

In order to enhance your enjoyment of the online, interactive version of the *Gazette*, readers are strongly advised to download the magazine first to their computer or device.

Prior to downloading the *Gazette*, make sure that you are using the most up-to-date versions of your favourite browser, for example, [Internet Explorer](#), Safari, [Firefox](#) or [Chrome](#).



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

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

How it works

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

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

Eligible claims

Claimants may avail of the ADR Process if:

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

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



DO ANDROIDS DREAM OF ELECTRIC SHEEP?

When renowned sci-fi writer and director Jonathan Nolan – who is responsible for such movie and TV classics as *Person of Interest*, *Interstellar* and *Westworld* – is dreaming up another premise for artificial-intelligence-led futuristic drama, it's unlikely that he sees the legal world as his next big hook. Or maybe he should!

As president, you meet many people you might not encounter in normal circumstances, and have conversations that are well outside your comfort zone, including how the effect of technology on the legal professions is moving so fast that we are all struggling to keep up.

While the Society continues to explore a solution to the massive project of electronic conveyancing, artificial intelligence (AI) has entered the legal profession, and looks like it wants a massive say in how we operate.

As things stand, there is a number of providers who will offer advice online and will process at least some of their services without any human input. In other words, computer programmes will attempt to solve legal problems.

Vulnerable

It is easy to pour scorn on this and assume that our great legal brains can't be usurped by a robot with a bit of coding, but that would be naïve. The pace of progress that AI is undergoing is almost unfathomable, and lawyers are as vulnerable as any other profession.

We are already seeing ways in which our profession is changing. At a recent conference I attended in Scotland, a speaker made an excellent analogy with airlines. We don't tend to have any loyalty to any particular airline when buying flights, and we are now beginning to experience similar patterns with our clients.

While the concept of the family solicitor is still alive and well, particularly in smaller towns, more and more consumers are bringing different types of work to different firms, depending on the speciality and the value offered by the provider.

Where once the demarcation of a profession differentiated us from others in the service industry, this line is fading, and soon won't be visible at all. Clients want value, easy access, and outstanding specialist advice – and if they don't get it, they will go elsewhere (see Flor McCarthy's article on p36).

Disruptive advantage

This shouldn't be seen as a threat though. Every potential disruption can be turned to an advantage. Twenty years ago, email and the internet were still relatively esoteric concepts that hadn't really caught on. The fax machine still reigned supreme. Nowadays, the fax is heading the same way as Betamax – though it still has its uses in deterring cybercrime – but we didn't let that hinder us.

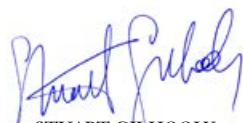
Instead, we embraced the new technology. We can provide advice or carry out transactions at a speed many multiples of just two decades ago.



EVERY POTENTIAL DISRUPTION CAN BE TURNED TO AN ADVANTAGE

Similarly, we can now use AI, paperless offices and online legal services to our advantage (see the comments of Chief Justice Frank Clarke on p9 of this *Gazette*). Many solicitors, be they in-house or based in traditional firms, don't use paper, dictaphones or even traditional mail anymore. They find the concept of a post room a little quaint.

But we can't just leave it to big firms and large industry to modernise and hope that the rest of us won't get left behind. If you are a technophobe or simply techno-sceptic, find someone who isn't and get informed. The world is changing fast, and the legal profession has to move with the times. [g](#)


STUART GILHOOLY,
PRESIDENT





44



36



48

COVER: SHUTTERSTOCK/
NUALA REDMOND

COVER STORY

30 **Two's company, fee's a crowd**

Crowdfunding litigation could increase access to justice and promote public-interest cases. But this would require changes to the rules of maintenance and champerty, writes Matthew Holmes

FEATURES

36 **Secret sauce**

Flor McCarthy measures and mixes the ingredients to deliver marketing's secret sauce

40 **Stiff competition**

While the *EU Damages Directive* fosters greater uniformity across the EU, the position of Irish claimants won't necessarily improve. Joanne Finn and Robert McDermott check the rules book

44 **Standard bearers**

Bribery and corruption continue to rate among the top economic crimes experienced by organisations globally. James O'Rourke refuses the sweetener

48 **Limestone cowboy**

The decision of the European Court of Justice in *Sweetman v An Bord Pleanála* has had major implications for development in Ireland. Tara O'Connor goes to the waters and the wild

52 **At full capacity**

Practitioners need to be aware of best practice in identifying and dealing with clients who may be suffering from dementia. Prof Brian Lawlor and Matthew Gibb advise the advisers

gazette

LAW SOCIETY

Blackhall Place, Dublin 7. Tel: 01 672 4828, fax: 01 672 4801, email: gazette@lawsociety.ie

PROFESSIONAL NOTICES: send small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie.
All cheques should be made payable to: Law Society of Ireland

COMMERCIAL ADVERTISING: contact Seán Ó hOisín, 10 Arran Road, Dublin 9, mobile: 086 811 7116, tel: 01 834 6891, email: sean@lawsociety.ie.
See the *Gazette* rate card online at www.lawsociety.ie/gazette-rates

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



Law Society Gazette
Volume 111, number 8
Subscriptions: €65 (€95 overseas)

Editor: Mark McDermott FIIC
Deputy editor: Dr Garrett O'Boyle
Art director: Nuala Redmond
Editorial secretary: Catherine Kearney
Printing: Turner's Printing Company Ltd, Longford

Editorial board: Michael Kealey (chairman), Mark McDermott (secretary), Patrick Ambrose, William Aylmer, Aoife Byrne, Mairéad Cashman, Hilary Forde, Richard Hammond, Teri Kelly, Tracy Cruikshank, Patrick J McGonagle, Aisling Meehan, Heather Murphy, Ken Murphy, Andrew Sheridan

CONTENTS



REGULARS

4 The big picture

Standout photo of the month

7 News

- 7 News in brief
- 16 In-house news
- 17 Social news

18 People**21 Comment**

- 21 Letters
- 22 **Comment:** The survival guide to family law

26 Analysis

- 26 **News in depth:** Prisoner who 'slopped out' not entitled to damages

- 28 **News in depth:** CCLRP 2017 child-care reports outline difficult cases

56 Books

A Comparative Examination of Multi-Party Actions: the Case of Environmental Mass Harm; Construction Adjudication in Ireland; and Human Rights and Personal Self-Defence in International Law

58 Briefing

- 58 Practice notes
- 62 Regulation
- 64 **Eurlegal:** Jurisdiction of recourse claim between joint and several borrowers

66 Professional notices**71 Final verdict**

IN-HOUSE CONTENT

Content of interest to in-house and public sector solicitors in this month's *Gazette*:

- 16 Date for your diary – in-house conference
- 44 Bribery and corruption continue to rate among the top economic crimes.

GET MORE AT
www.lawsociety.ie

Gazette readers can access back issues of the magazine as far back as Jan/Feb 1997, right up to the current issue at www.gazette.ie.

You can also check out:

- Current news
- Forthcoming events, as well as the fully interactive version of the *Gazette* and the magazine's indices
- Employment opportunities
- The latest CPD courses
- ... as well as lots of other useful information

No material from the *Gazette* may be published or used without the permission of the copyright holder. The Law Society of Ireland can accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine, and any views or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors, editor or publishers. The editor reserves the right to make publishing decisions on any advertisement or article submitted to this magazine, and to refuse publication or to edit any editorial material as seems appropriate to him. Professional legal advice should always be sought in relation to any specific matter.



FSC independently certified wood and paper products used by the *Law Society Gazette* come from ecologically managed forests. Visit: www.fsc.org

PEFC certifies that wood and paper products used by the *Law Society Gazette* are sourced by suppliers from sustainable, managed forests. Visit: www.pefc.org

The *Law Society Gazette* is a full participating member of the Press Council of Ireland and supports the Office of the Press Ombudsman. This scheme, in addition to defending the freedom of the press, offers readers a quick, fair and free method of dealing with complaints that they may have in relation to articles that appear on our pages. To contact the Office of the Press Ombudsman go to: www.pressombudsman.ie or www.presscouncil.ie.



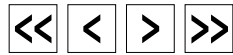
THE BIG PICTURE





SPANISH CIVIL WAR

A reported one million Catalans demonstrated in Barcelona on 11 September to call for independence, less than three weeks before the region was due to hold a vote on secession from Spain. However, the Spanish government took steps to stop the referendum, including deploying security forces, raiding Catalan government offices, arresting 14 officials, and seizing almost ten million ballot papers. Polls suggest a clear majority of people in the region want to be allowed to vote; however, they are almost equally divided on whether they wish to secede.



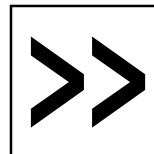
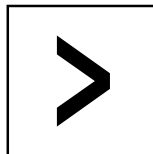
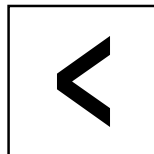
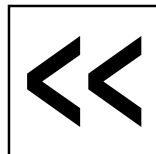
Have you played with us yet?

Because we have **issues...**



gazette

LAW SOCIETY



BACK TO
CONTENTS
PAGE

PREVIOUS
PAGE

NEXT
PAGE

NEXT SECTION/
FEATURE

In our digital issue, you can instantly access links to referenced cases and legislation, as well as pictures, video and audio. For best results, we recommend that you download the issue to your computer or device – it only takes seconds.

Go on – push our buttons: it's fun

Check it out at **gazette.ie**

PASSAGE OF MEDIATION BILL WELCOMED BY MINISTER

Minister for Justice and Equality Charlie Flanagan welcomed the passage of the *Mediation Bill 2017* through the Houses of the Oireachtas on 26 September. The bill, which aims to speed up dispute resolution, reduce legal costs and avoid the stress of adversarial court proceedings, received support from all sides of the Dáil and Seanad.

Describing mediation as a



viable, effective and efficient alternative to court proceedings, the minister said: "I believe that enactment of this bill will have an enormous beneficial effect in terms of promoting the use of mediation as an alternative to court proceedings. The bill has been broadly welcomed by the mediation sector, and I thank them for their input."

IWLA GALA TICKETS AVAILABLE



Patricia O'Brien

The Irish Women Lawyers' Association annual gala dinner takes place on 14 October. Tickets are available at www.iwla.ie.

The event, which takes place at Blackhall Place, is being sponsored by Eversheds Sutherland, with a drinks reception at 7pm and dinner at 8pm.

Ellen O'Malley-Dunlop will give the keynote speech, while the 'Woman Lawyer of the Year' award will be presented to the Irish Ambassador to France and Monaco, Patricia O'Brien.

The cost is €70 for paid-up members and €85 for non-members. The trainee, student and pupil rate is €50.

CULTURE VULTURES



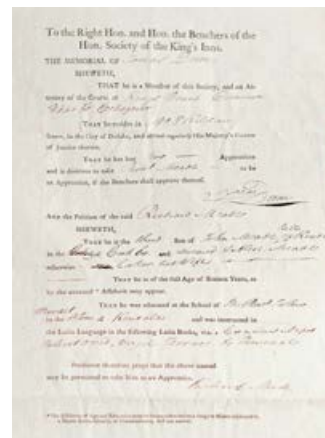
The Law Society's headquarters at Blackhall Place was one of hundreds of buildings around the country that was thrown open to the public on Culture Night on 22 September.

Nine tours were organised for approximately 260 visitors, led by Law Society staff members Cillian MacDomhnaill and Alan Greene, as well as the Society's conservation architect James Howley.

While visitors came from all over the city, a significant number of locals paid their first ever visit to the building, a result that MacDomhnaill described as "particularly gratifying".

A TALE OF TWO GENTLEMEN – AND A PHOTO

Readers of our feature article 'A tale of two gentlemen' in the Gazette (Aug/Sept 2017), would have noticed a photo on page 52 of the 1817 memorial paper of Josias Dunn (first president of the Law Society), regarding the petition of Richard Meade to take him on as an apprentice. We wish to thank the King's Inns library for its kind permission in allowing the Gazette to photograph the memorial paper, and to reproduce it.



AHEAD OF THE GAME!

The Diploma Centre is offering its Diploma in Sports Law again this autumn, starting on 25 October 2017.

The course will provide participants with insights to this dynamic area at domestic and international level, starting with a look at the topical area of regulation and governance of the sports' sector.

An array of international sports law practitioners and academics will lecture on club membership and liability, protection of players,

the issue of concussion and second-impact syndrome, broadcasting, ticketing and merchandising. Other key topics will include child protection in reference to younger sports players, as well as data protection, corruption in sport, violence and gambling.

The course will delve into the WADA anti-doping code, disciplinary procedures, and the use of alternative dispute resolution in sport.

For more details, visit www.lawsociety.ie/diplomacentre.

FUTURE PROOFING

Over 100 members of the Law School's associate faculty took part in a learning and development event on 12 September. The keynote presentation titled, 'Digital learning futures: from consumer to prosumer', was delivered by Steve Wheeler (learning innovations consultant).

Participants attended workshops on presentation skills, social media, reflective teaching, and techniques for tutoring.



Lemon squeezy.

Experience easier tax and pension finance solutions:

- A competitive fixed rate facility over a 9, 10 or 11 month repayment period.
- 100% finance available.
- One easy to complete application form for both tax and pension finance facilities.
- Suitable for legal, financial, medical and property professionals.

Also

- This product can also be used to finance your Professional Indemnity Insurance and practicing cert costs.

We're here to help, contact Laura Costello

016646432

laura.costello@kbc.ie

THE BANK OF YOU

Drop in 1800 51 52 53 kbc.ie

Warning: if you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.

Warning: you may have to pay charges if you pay off a fixed rate loan early.

Lending criteria, terms and conditions apply. KBC Bank Ireland plc is regulated by the Central Bank of Ireland

PROGRAM ON NEGOTIATION AT HARVARD LAW SCHOOL

Develop and advance your negotiation skills by attending the
Program on Negotiation at Harvard Law School's new course, PON Global – Dublin
6th, 7th and 8th December 2017

**In partnership with Maynooth University's Edward M. Kennedy Institute,
School of Business and Department of Law**

01 708 6629

Register! Book your place now!

PROGRAM ON NEGOTIATION
HARVARD LAW SCHOOL



Maynooth University
National University
of Ireland Maynooth

Edward M. Kennedy
Institute



SUPREME COURT TO EMBRACE TECHNOLOGICAL REVOLUTION

New Chief Justice Frank Clarke is to beef up the deployment of IT in the courts, with a move to the online filing of sworn documents.

Speaking ahead of the launch of the new legal year, at Dublin's Four Courts on 26 September, the Chief Justice said that he and his Supreme Court colleagues would be taking the lead on this initiative. A fully online system is planned for all applications for leave to appeal to the highest court.

"This is only the first step," the Chief Justice said. "I can see no reason why all further stages of the appellate process could not be facilitated by online filing and, indeed, the use of IT to support oral hearings."

The Chief Justice is to push forward with paperless hearings after a successful appeal was recently conducted entirely through the use of tablets by all legal personnel.

Significant reform

Two pieces of legislation currently in train will have a significant effect on the judiciary. "The *Judicial Appointments Commission Bill* will undoubtedly bring about significant reform in the way in which judges are appointed," he commented, adding that "the *Judicial Council Bill* will, for the first time, provide a proper framework for judicial training and ethics."

"The judiciary has long supported the principle of both of those measures, recognising the need for reform of the appointments process and the establishment of a Judicial Council," he said, reiterating that the judiciary would continue to engage in an appropriate fashion as the legislation passed through the Oireachtas.



PICT: ROLLINGNEWS/IE

Chief Justice Frank Clarke: dismissed suggestions that judicial engagement on legislative reform was inappropriate

The right of the judiciary to speak on such matters was reaffirmed by the Chief Justice, who dismissed suggestions that such engagement was inappropriate.

"I know of no jurisdiction in the world where it is not considered reasonable and appropriate for judges to make their views known in an appropriate way in relation to proposed legislation which actually affects the judiciary itself," he pointed out.

Access to justice

There are few formal legal barriers to access to justice, he said, but there are practical issues, in that certain types of litigation are beyond the resources of many.

"Not all of the measures which may be needed to improve access to justice are within the control of the judiciary," he said. "But some are."

"In particular I very much welcome the establishment of a committee under the chairmanship of the President of the High Court Peter Kelly, to engage in a thorough review of civil procedure."

"There can be little doubt that at least some aspects of our civil procedural model are beyond their sell-by dates. Furthermore, many individual solutions which were put in place to deal with particular problems in the past may have worked in the narrow sense of easing the identified problem, but have led to a somewhat unwieldy and sometimes overly complex system," he commented.

"The experience of new experiments such as the Commercial Court has demonstrated that it often requires a radical reappraisal to identify better ways of doing things."

The second major theme of the

Chief Justice's speech focused on the significant difference between the court systems of civil law jurisdictions and common law countries.

"There is a significant shifting of the burden of carrying litigation in common law countries on to the parties and away from the state. In civil law systems, the courts themselves – that is, judges and judicial staff – carry a much greater burden of ascertaining the facts and researching the law. But that comes at a cost in terms of the much greater numbers of personnel who are required to staff the courts in those jurisdictions."

Recruitment difficulties had put the Irish judicial research system in line for a radical overhaul, he said. He called for an increase in the number of Court of Appeal judges, pointing to the unsustainable workload in the appellate court.



FLAC PROVIDED LEGAL ASSISTANCE IN FACEBOOK DATA PROTECTION CASE

FLAC's 67-centre network of volunteer lawyers provided basic free legal advice to over 25,000 people in 2016, its *Annual Report 2016* reveals.

FLAC had 99 new volunteers join its ranks in 2016, while 30 lawyers and three law firms joined the *pro bono* register. A total of 171 FLAC volunteers attended a training or induction session during the period.

Approximately 33% of cases related to family law, with fewer than 15% relating to employment law, while 9.5% sought advice in relation to a will or probate issue.

The report commends the establishment of the *Abhaile* scheme, which gives those in mortgage arrears, and at risk of losing their homes, access to financial and legal advice – a

move FLAC has been advocating for several years.

FLAC also provided legal representation in what it felt was an important case of significant public interest concerning the right to privacy and the protection of personal data in *Commissioner v Facebook Ireland Ltd & Anor*. FLAC was joined as *amicus curiae* in the case, which was taken by the Data Protection Commissioner to establish the legality of channels being used for daily EU-US data transfers.

Pro bono

Under the Public Interest Law Alliance initiative, 85 referrals were made through the *pro bono* referral scheme. This involves a register of 330 barristers, 25 law firms, and four in-house legal



teams who provided their legal services for free to 120 NGOs, community groups, and independent law centres.

About one-third of the 85 referrals were related to organisational matters (governance, data

protection, contracts and leases) with the remainder related to campaigning work and issues relevant to their clients and service users (for instance, housing and homelessness, disability, immigration and mental health).

Law firms that committed to *pro bono* work and law in the public interest by becoming FLAC sustaining partners included A&L Goodbody, Arthur Cox, McCann FitzGerald and Mason Hayes & Curran. Among FLAC's funders for 2016 were the Atlantic Philanthropies, members of the Law Society of Ireland, members of the Bar of Ireland, the Citizens Information Board, the Community Foundation for Ireland, the Department of Justice, the Ireland Funds, and MABS.

COMPANY LAW REVIEW GROUP URGES STRONGER WORKER SAFEGUARDS

A review of safeguards for employees and unsecured creditors when a firm goes under has called for stronger measures to deal with 'walk-aways', where directors fail to formally liquidate their companies. The review calls for tougher sanctions for directors who fail to seek the appointment of a liquidator to an insolvent company. The proposals also call for improved transparency and accountability.

Eighteen months after it was convened, the Company Law Review Group on the Protection of Employees and Unsecured Creditors delivered its report. The group was asked to focus on corporate governance, corporate insolvency, share capital, directors' duties, and personal liability, as well as more general



provisions in company law and a review of all relevant provisions of the *Companies Act 2014*.

The brief did not specifically mention department store Clery's by name, but its 2015 failure and

the subsequent treatment of its workers are believed to have prompted the review.

A department spokeswoman told the Gazette: "The minister's request did not refer to any particular company, but rather was prompted by concern that there were potential contexts in which the privilege of limited liability in company law could be used to avoid a company's obligations to its employees and to unsecured creditors."

"In consideration of this matter, the CLRG was asked to explore:

- Instances where the corporate veil can and should be lifted that could be adopted in statute,
- The potential strengthening of obligations on directors to a

company's employees as part of directors' duties,

- Building-in checks and balances in statute that would strengthen obligations to employees for better protection in company restructuring,
- Circumstances in a liquidation of an insolvent company where the debts or liabilities of that company can be met from solvent companies in the same group or in related companies."

The review group's proposals include a statutory duty for directors towards a company's creditors in insolvency, and greater emphasis on the treatment of employees in the liquidator's report to the Office of the Director of Corporate Enforcement.



THE WORD ON THE STREET

Education improves critical thinking skills, the Street Law Best Practice Conference at Blackhall Place was told on 14 September.

Richard Grimes (University of York) told the conference that the cost of the public not knowing about legal rights has been estimated at £4 billion in Britain. Grimes said that if people knew how to solve their legal problems, this figure would fall dramatically.

Street Law education was shown to improve critical thinking skills, he said, and the need for a research strategy around the topic had led to the publication in September of an academic journal on Street Law.

The Diploma Centre's Street Law initiative is in its third year.



PG: CIAN REDMOND

Solicitor trainees go to secondary schools, where they teach a six-week transition-year programme – 38 volunteers from PPC1 got involved this year, with over 500

TY students taking part in 14 DEIS schools in the Dublin region.

Street Law originated in Georgetown University and aims to teach law-related content that

shows the relevance of law in daily life, give an insight to the legal process, and reveal the principles and values on which these are based.

RETIREMENT TRUST SCHEME

The deadline for final tax payment for the 2017 tax year under the self-assessment system is fast approaching. One way to reduce your tax liability is to make a contribution to an approved pension arrangement, such as the Law Society's Retirement Trust Scheme (RTS), before the deadline.

If you can afford to put some money into a pension fund, you will be able to claim back income tax of up to 40%, depending on your tax bracket. You can still create a tax refund for 2016 by putting money into a pension scheme and submitting a claim to Revenue before 31 October 2017 (extended to 14 November 2017 if you submit your return online).

The RTS is an ideal vehicle for making such a contribution. The scheme offers all the flexibility of a personal policy and, in addition, offers a number of enhanced features, including a simple and transparent charging structure,



PG: SHUTTERSTOCK

HOW MUCH CAN I CONTRIBUTE?*

Up to age 30	15%
From 30 to 39	20%
From 40 to 49	25%
From 50 to 54	30%
From 55 to 59	35%
Age 60 and over	40%

***Contributions are subject to a maximum earnings limit of €115,000.**

and best-in-class investment management.

There are currently four fund

offerings available to members of the Law Society of Ireland under the RTS, which the investment

committee is confident represent a high-quality retirement and tax-saving solution for members.

FUND PERFORMANCE TO 30 JUNE 2017

Fund	Three months%	One year %	Three years %
Managed Fund	0.2%	11.1%	7.9%
Equity Fund	0.0%	16.4%	11.2%
Bond Fund	1.0%	-8.6%	6.5%
Cash Fund	-0.1%	-0.3%	-0.2%

Past performance does not guarantee future results.

Membership of the scheme is open to all members of the Law Society who are self-employed, in partnership, or in non-pensionable employment. More information can be obtained from the scheme administrator at justask@mercerc.com or by tel: 1890 275 275. A copy of the explanatory booklet can also be found on the Law Society's website.



GETTING TO GRIPS WITH LEGAL ENGLISH



Pictured at the close of the programme are (front, l to r): Eva Massa, Cathal Quinn, Colette Reid, Katherine Kane and Lucia Fabbri (Sienna Bar Council); (back, l to r): Vanni Sancandi, Massimo Pellizzato, Johanna Thoele, Rosella Chiavetta, Alessandro Valerio, Francesca Turello, Massimiliano Pedoja, Paola Turello, Veronica Pruinelli and Antonella Benedetti

Italian and German lawyers were guests of Law Society Professional Training from 17-21 July in Dublin as part of the International Legal Excellence programme, with the collaboration of Sienna Bar Council, Velletri Bar Council,

Bologna Bar Council, and School of Law International Group.

The course provides participants with an understanding of the four key practical legal skills required by practitioners in the context of the English language

and international commercial law: negotiation, client interviewing and advising, commercial legal writing and drafting, and oral professional presentation. During the five-day training event, programme coordinator Katherine

Kane was supported by Law Society colleagues Eva Massa and Colette Reid, as well as Martin Cooney (Smyth & Son, Dublin), Juli Rea (James Riordan & Partners, Cork) and Cathal Quinn (head of voice, The Lir, Trinity College Dublin).

MAKING MENTAL HEALTH MATTER

LawCare is celebrating its 20th anniversary this year, and is marking the occasion with an afternoon conference in London on 10 October – World Mental Health Day.

This year's theme for World Mental Health Day is 'mental health in the workplace'.

This year's campaign will contribute to taking mental health out of the shadows in the workplace, so that people and



employers have the tools to help staff and increase the overall mental wellbeing of their workforce.

This theme runs throughout LawCare's conference, 'Making mental health matter', which will include a panel discussion on the approaches being taken by various organisations on mental health issues.

LawCare supports and promotes good mental health and

well-being across the legal community. It has helped thousands of legal professionals cope with a range of issues. Its key support service is a free, confidential and independent helpline, which is manned by trained staff and volunteers.

Call 1800 991 801, 365 days a year, 9am-7.30pm weekdays, 10am to 4pm weekends (and British bank holidays), or visit www.lawcare.ie.



NEW LSRA CHIEF EXECUTIVE NOW IN POST

Dr Brian Doherty has taken up his appointment as chief executive of the Legal Services Regulatory Authority (LSRA).

Brian, from Strabane in Co Tyrone, is a qualified barrister and was called to the Bar in Northern Ireland in 1996.

Up until his appointment on 14 September 2017, he worked in the office of the Police Ombudsman for Northern Ireland as director of investigations, leading a large team that considered complaints and critical incidents involving the police.

Brian originally joined the office of the Police Ombudsman for Northern Ireland as an investigator at its commencement in 2000. He was appointed deputy senior investigating officer in 2003.

In 2007, he joined the Garda Síochána Ombudsman Commission as a senior investigator and, in 2013, was appointed as the organisation's acting deputy director of investigations.



Director general Ken Murphy met with the LSRA's new chief executive Dr Brian Doherty at Blackhall Place on 25 September

Brian holds a master's in criminology and criminal justice management from Queen's University Belfast, and was awarded a doctorate in criminal justice by the University of Portsmouth in January 2014. He is also an accredited project manager and has qualifications in strategic man-

agement and executive leadership.

Of his appointment, Brian says: "I am delighted and honoured to take on the role of chief executive of the Legal Services Regulatory Authority. The LSRA has a challenging and complex task ahead, and a huge amount of work has already been done to meet the early

time-bound statutory obligations of the act.

"I look forward to building the LSRA's resourcing and capacity so that it can evolve into the fully functioning organisation with the wide remit envisaged by the legislation."

Law Society director general Ken Murphy has welcomed Dr Doherty's appointment, saying: "Congratulations on your appointment to this challenging role. You will receive the enthusiastic, constructive and expert assistance of the Law Society in your important work – just as your acting predecessor Renee Dempsey did since the authority was established, as she warmly acknowledged. We very much want the new authority to be a success, in the interests both of the general public and of the legal profession."

Brian lives in Rush with his wife Kathryn and their two children, Tess and Maeve.

MEMBER SERVICES

CONSULT A COLLEAGUE

"October can be a stressful time, with many solicitors under pressure. They've got their tax returns and insurance renewals – and it's a miserable time of year," says Paddy Kelly (managing partner, McKeever Solicitors and coordinator of Consult a Colleague).

Consult a Colleague is a free, confidential service for solicitors, which began life as the solicitors' helpline over 20 years ago, writes *Judith Tedders*. While it's funded by the Law Society and operated by the Dublin Solicitors' Bar Association, Paddy is keen to

point out that the service is a national one, with volunteers all over the country. The service operates completely independent of both organisations.

All volunteers are experienced solicitors who are specially trained to help colleagues with professional and personal issues. Such issues include running a practice, finance and accounts, staffing, human resources issues and regulatory compliance. Volunteers can also help with personal issues, such as bullying and harassment.

While acknowledging the many advantages that technol-

ogy brings, Paddy believes that one of the biggest issues facing solicitors is technology-induced stress. "Clients can often expect their solicitor to be available to them, 24 hours a day. We've all had it, when you're trying to get a deal over the line and the client is texting and emailing in the middle of the night."

He is especially concerned about the negative impact of email on relationships between colleagues.

"When I started out in practice, and there was a problem, you used to lift the

phone. It's important to remember that there's a human being on the other side of the deal – so why not ring the person? At the end of the day, we're all trying to service our clients – it's not a question of trying to catch each other out."

If you're a solicitor experiencing stress, call 01 284 8484 to hear a recorded message with the contact details of the volunteers on call for that week. Two solicitors are on call at all times. If you prefer, you can call any of the volunteers on the panel. A full list is available at www.consultacolleague.ie.



IRLI MARKS END OF SA COMMERCIAL LAW TRAINING PROGRAMME

This year marks the end of the current commercial law training programme in South Africa, which is provided by Irish Rule of Law International (IRLI), in partnership with the Law Society of South Africa (LSSA).

The programme first began in 2002 and has targeted attorneys from historically disadvantaged backgrounds in South Africa, with a view to building their capacity and enabling them to undertake commercial work.

In this respect, the training the lawyers received was not only a springboard for expanding their own practices, but enabled them to effectively participate in societal change and make a positive contribution to the progress of their own communities.

To mark the end of this programme, IRLI organised a post-graduate conference in Pretoria last May, targeting former students to help them expand their opportunities in commercial law.

Eight Irish legal experts took part in the conference. Throughout the week, the Irish team was joined by South African lawyers from leading law firms.

Returning from South Africa, IRLI director and solicitor Anna



At the Constitutional Court of South Africa in May 2017 were Conor Healy, Anna Hickey, Derry Hand BL, David Barniville SC, Wuraola Olatunbosun, Michael Irvine and Cillian MacDomhnaill

Hickey commented: "This year's course comprised a 'masterclass' and brought together past participants for the first time.

"It was wonderful to meet old friends and to see that the course has had a positive impact on the practices and career development of a significant number of them."

To honour the achievement of the students, IRLI and the LSSA organised a parchment ceremony at the Constitutional Court of South Africa, where Supreme Court of Appeal Judge Edwin Cameron presented the parchments and spoke warmly to the recipients and commended the

good work of IRLI.

In the evening, the participants and Irish delegates were invited to a reception hosted by the Irish Ambassador Liam MacGabhann.

It is hoped that the programme will continue through existing partnerships, and there is scope also to replicate the model in neighbouring African countries.

Looking to the future, Anna Hickey commented: "I know that IRLI is keen to continue its involvement in South Africa and I am excited to see the opportunities this will bring."

IRLI thanks Irish Aid and the Irish Embassy in South Africa for

their generous support throughout the years, as well as the many Irish and South African law firms who have facilitated participants' placements.

The organisation is particularly grateful to all the *pro bono* experts who have been involved in the programme since 2002. Above all, IRLI wishes to thank the tremendous work and commitment of its local partner, the Law Society of South Africa, without which the success and effectiveness of the programme would never have been possible.

To learn more about the work of IRLI, visit www.irishruleoflaw.ie.

**IS YOUR
CLIENT
SELLING A
RESIDENTIAL
PROPERTY?**

**WE OFFER
INDEPENDENT,
UNBIASED ADVICE**

**DUBLIN'S PREMIER
PROPERTY BROKER**

**WHY NOT USE OUR
FREE SERVICE**



**OUR FEE IS RETAINED FROM
THE OVERALL ESTATE AGENTS FEE**

CLIENTS WE WORK FOR:

- PRIVATE CLIENTS
- EXECUTORS
- SOLICITORS
- BANKS
- ELDERLY
- DIVORCÉES
- RECEIVERS
- ASSET MANAGERS

INHOUSE

CALL US TODAY - 01 513 6866

WWW.INHOUSE.COM



TAKE A WALK ON THE WILD SIDE

The West Cork Bar Association welcomed Law Society President Stuart Gilhooly and director general Ken Murphy to Dunmore House Hotel on 6 September 2017. Perched on the Wild

Atlantic Way overlooking Clonakilty Bay, the hotel is owned and managed by our retired colleague Richard Barrett and his wife Carol.

Veronica Neville (president of

the West Cork Bar) and Siúin Hurley (secretary) chaired the meeting, which featured a frank and lively discussion touching on the sensitive subject of the winding down of practices of deceased

colleagues, how the Law Society deals with practising solicitors and how this can be improved, the auditing of CPD, and the ongoing increasing onus on conveyancers.



Kevin O'Donovan, Siuin Hurley, Tony Greenway, Susan Moore, Flor McCarthy, Paul O'Sullivan, Letty Baker, Phil O'Regan, Roni Collins, Diarmuid O'Shea, Veronica Neville (president, West Cork Bar Association), Stuart Gilhooly (president, Law Society), Ken Murphy (director general), Marianne Quill, Karen Crowley, Kate Hallissey, Leah Kelly and Sine Enright; (Back, l to r): Jim Brooks, Eileen Hayes, Maura Crean, Susan Lee, Maura O'Donovan, Shane McCarthy, Plunkett Taaffe, Flor Murphy, John McCarthy, Collette McCarthy, Liam Crowley, Celine Barrett, Ted Hallissey, Bebhinn Murphy, Lorna Brooks, Eamonn Fleming, Denis O'Sullivan, Liz Murphy, Una Barrett, Marguerite Ryan, John Collins, Maura O'Donovan, Carmel Keane and Luke O'Donovan

SHRINK ME – PSYCHOLOGY OF THE LAWYER

Solicitors – an intriguing and entrancing bunch. Always on, rarely dull. Diverse as tightly packed congregations on Christmas Eve.

Cue the key descriptors: high-achieving, expert, ambitious, conscientious, tenacious, self-generating. So far, so fantastic. Who wouldn't want you on their side? Can you bear to look more closely – to tell me more about you?

An imposter camps inside your head. Am I good enough? Smart enough? Connected enough? Liked enough? Accepted enough? Respected enough? Confident enough? Of course, all this 'stuff' goes largely unnoticed – cleverly disguised and rarely revealed. So habitual or denied,

it may not be apparent, even to yourself.

Conceived as a sibling to the trainee module, 'Shrink me: psychology of the lawyer', I am delighted to introduce 'Shrink me: the column'.

Over the coming months, I invite you to join me in opening up some real conversations about the complexity of what makes you tick as a lawyer, and as a human being.

We ignore wellness at our individual and collective peril. Unchecked over time, something may well give. Sometimes, it is a treasured friendship or a loving relationship; sometimes, it's an unpursued dream; sometimes, it is quite simply our sense of joy in

the world. Sometimes, it is darker still. Many of you have lost valued colleagues to serious illness or work-related stress.

It may surprise you to know that more than one-third of our trainee solicitors choose to participate in time-intensive counselling with our Law School Counselling Service.

Bright, ambitious, and eager for their shot at that well-worn ladder of success, be absolutely sure that they are ready and eager for the climb. Just not at any cost. For the most part they are not willing to sacrifice personal happiness, wellbeing or important relationships in order to prove themselves worthy. For a growing number of

them, it is not 'one or the other'. It is a far healthier 'both/and'.

Join me and some great guest columnists over the next few months to uncover more about how you can silence that inner critic, and fall back in love with your life and your work. Life gets more interesting when we dive right in!

Join the conversation on Twitter at #SolicitorShrink.

Antoinette Moriarty is a psychotherapist who heads up the Law School's counselling service. She teaches 'Shrink me: psychology of a lawyer' to trainee solicitors and offers professional wellbeing and executive leadership programmes.



DATE FOR YOUR DIARY – IN-HOUSE CONFERENCE

The role of in-house counsel in managing risk, building trust, and leading is the theme of the annual conference for in-house lawyers in Dublin on 9 November. The *General Data Protection Regulation* from the perspective of the in-house solicitor will also be discussed.

This annual conference, presented by the In-house and Public Sector Committee in collaboration with Law Society Professional Training, is aimed at solicitors employed in the private and public sectors.

Speakers will include:

- Bob Semple (company director, facilitator and consultant),
- Rhona O'Brien (DCC Vital Ltd and DCC Health and Beauty Solutions Ltd),
- Adrienne Harrington (Department of An Taoiseach),
- Emma Redmond (LinkedIn),
- Dr Des Hogan (assistant chief state solicitor),
- Eleanor Daly (FEXCO),
- James Kingston (Department of Foreign Affairs),
- Mark Cockerill (Eir),
- Leo Moore (William Fry),
- Linda Ni Chualadh (An Post),



- Irina Sharapova (Kerry Group), and
- Brendan Foley (Office of the Attorney General).

The event will feature two interactive panel discussions, with participants drawn from the private and public sectors. Based on their career experienc-

es, they will provide guidance and practical tips. A light lunch will be provided.

- **Date:** Thursday 9 November 2017,
- **Time:** 10am to 4pm,
- **Venue:** Education Centre, Law Society of Ireland,
- **Fee:** €176; discounted fee: €150
- **CPD hours:** 1.5 regulatory, two

management and professional development and two general (by group study).

For further details and booking, visit www.lawsociety.ie. Alternatively, to register your place by post, [download a booking form](#). For assistance, email lspt@lawsociety.ie or tel: 01 881 5727.

PROFESSIONAL VALUATION SERVICES FOR ART, ANTIQUES & JEWELLERY

PROBATE • FAMILY DIVISION • TAX PURPOSES • INSURANCE • MARKET VALUE

For 130 years Adam's have provided expert valuation services to the legal profession. As Ireland's leading firm of fine art auctioneers and a member firm of the RICS and SCSi we deliver a professional and efficient service unsurpassed in quality and speed of completion. Our team of valuers are based in every Province enabling us to offer a truly countrywide service across a wide range of specialist departments.

In many instances we offer a 'walkaround' service which can assess a client's needs at minimal cost, often identifying previously unregarded items of value, and providing peace of mind to both you and your clients. The range of our experience often readily suggests solutions to an entire range of problems you are likely to encounter when dealing with personal property. Contact our valuation department for more information.

Stuart Cole / Amy McNamara 01-6760261 valuations@adams.ie

26 St. Stephen's Green Dublin 2 www.adams.ie



ADAM'S ESTD 1887



SKILLNET CLUSTER AUTUMN ROADSHOW

The first of autumn's Law Society Skillnet cluster events took place on 7 September in Ballygarra House, Tralee. Hosted by Kerry Law Society, over 100 practitioners attended.

Topics at the 'Essential solicitors update' event included AML – a litigation update, new contract for sale and requisitions on title, banks and repossessions, section 150 costs, and cybersecurity. It was followed by a networking reception.

The Skillnet roadshow will continue with a two-day Connaught Solicitors' Symposium in Breaffy House Hotel, Castlebar, on 12 and 13 October.

Save the date

- 20 October – north-east CPD day at the Glencarn Hotel, Castleblayney, Co Monaghan,
- 9 November – Law Society Finuas Network practice and



PIC: DONNICK WALSH

Attending the Skillnet 'Essential solicitors update' cluster event at Ballygarra House Hotel, Tralee, on 8 September 2017, were (front, l to r): Liam Fitzgerald (Liam R Fitzgerald Solicitors) and Stuart Gilhooly (Law Society President); (back, l to r): John O'Shea (Property Registration Authority), John Galvin (Kerry Law Society), Katherine Kane (Law Society Skillnet), Kathy McKenna (Law Society), Attracta O'Regan (head, Law Society Skillnet), Felix McKenna (Global Risk Solutions), Patrick Mann (Kerry Law Society) and Richard Hammond (Hammond Good Solicitors)

- regulation symposium at the Mansion House, Dublin,
- 17 November – practitioner update at the Kingsley Hotel,

- Victoria Cross, Cork, and
- 24 November – general practice update at Hotel Kilkenny, Kilkenny.

For the full list of speakers and topics, see www.lawsociety.ie/skillnetcluster or email the team at skillnetcluster@lawsociety.ie.

PAUL RECEIVES ORDER OF THE POLAR STAR

King Carl XVI Gustaf of Sweden has conferred the Order of the Polar Star on Irish solicitor Paul Keane. The ceremony took place at the Royal Palace in Stockholm on 19 September 2017.

Founded in 1748, the Order of the Polar Star is a reward for foreign citizens for personal services to Sweden or Swedish interests. Since 2010, Paul has served as the Honorary Consul General of Sweden, and is chairman of the Swedish Chamber of Commerce in Ireland.

Since his appointment as honorary consul, Paul has worked to promote and support Swedish/Irish relations through collaborative programmes of business and cultural activities.

Says Paul: "I am deeply honoured to be awarded the Order of the Polar Star, particularly as it is



in recognition of work that I enjoy so much. I have developed a true appreciation of the ties that bind our two countries – socially, cultur-

ally, politically and economically."

Remarking on the "breadth and depth" of the Swedish-Irish relationship, he recalled that, during

Ireland's recent financial crisis, Sweden and Denmark came to our financial aid when, in 2010, both countries loaned Ireland €1 billion. "There are approximately 2,000 Swedish citizens living in Ireland," he added. "Swedish businesses, such as Ericsson, are major employers. Ireland and Sweden are important trading partners, with the Nordic region being one of Ireland's most important export markets."

"In 2016, Swedish exports to Ireland were in excess of €6.9 billion, while Irish exports to Sweden were €17 billion."

Paul is managing partner of the Dublin law firm Reddy Charlton, is a member of the Council of the Law Society of Ireland, and non-executive chairman of Newbridge Silverware.



NOTARIES PUBLIC GRADUATION CEREMONY



At the recent graduation ceremony for candidate notaries at Blackhall Place were then Chief Justice Susan Denham, Michael V O'Mahony (dean, Faculty of Notaries Public in Ireland), Dr Eamonn G Hall (director, Institute of Notarial Studies), Dean Emeritus Rory O'Connor, Michael M Moran (secretary, Faculty of Notaries Public in Ireland) and members of the governing council of the faculty, with the graduands

DROGHEDA MARKS RETIREMENT OF 'JUDGE JOE'



The caretaker of the old Drogheda courthouse, Joe Clarke, has retired. Joe was caretaker of the building since February 2005. His generous assistance to Drogheda solicitors, visiting solicitors, counsel and the general public was renowned. Such was his empathy for court users dealing with domestic violence issues that he was fondly referred to locally as 'Judge Joe'. Presentations were made to him by Colm Berkery (on behalf of the Drogheda Bar Association), Noeleen Halpin (Courts Service) and Inspector Brendan Cadden (Drogheda gardai). (Front, l to r) Elaine Clarke (court registrar), Noeleen Halpin (District Court Chief Clerk), Joe Clarke (retiring caretaker), Judge John Coughlan (presiding Judge of District Area No 6) and Colm Berkery (president, Drogheda Bar Association), seen here with members of Drogheda Bar Association and at the last sitting of the court

ON A CLARE DAY...



PG: JOHN KELLY PHOTOGRAPHY

The Clare Law Association (CLA) held its summer drinks reception at The Old Ground Hotel, Ennis recently, which coincided with the sittings of the High Court personal injuries list in Ennis. (Front, l to r): Edel Ryan (secretary, CLA), Judge Mary Emer Larkin, Ms Justice Leonie Reynolds, Conor Bunbury (president, CLA), Ms Justice Margaret Heneghan, Judge Marie Keane and Laura O'Halloran (treasurer, CLA). (Middle, l to r): Paul Tuohy, Lorraine Burke, Sinead Glynn, Miriam Rowe, Anne Walsh, Anne Marie Browne, Pamela Clancy, Róisín Moloney Weekes, Angela Woulfe, Siobhán McMahon, Sheila Larkin, Yvonne Quinn BL and John Casey. (Back, l to r): Bernard Mullen, Ronan Connolly, Paul Lynch, Darragh Hassett, Murray Johnson SC, Pat Whyms BL, Gearóid Howard, Patrick Moylan, William Cahir and Lorcan Connolly BL



SOLICITORS APPOINTED TO THE SUPERIOR COURTS



PIC: LENS MEN

Earlier this year, the Society's Coordination Committee hosted a dinner at Blackhall Place for solicitors who had been appointed judges of the superior courts. (Front, l to r): Mary Keane (deputy director general), Mr Justice Michael Peart (Court of Appeal), Stuart Gilhooly (Law Society president), Mr Justice Michael White (High Court), and Michele O'Boyle (Coordination Committee); (back, l to r): Mr Justice Bobby Eagar (High Court), Ken Murphy (director general), Mr Justice Donald Binchy (High Court), Michael Quinlan (senior vice-president), James Cahill (junior vice-president), Patrick Dorgan (Coordination Committee), Simon Murphy (immediate past-president), and Mr Justice Michael Twomey (High Court). The event took place prior to the appointment of Ms Justice Eileen Creedon as a judge of the High Court and on an evening on which Mr Justice Max Barrett, unfortunately, was unavailable



TAKE FIVE...



LawWatch – delivered every Thursday to your inbox...

Keep up to date with recent judgments, legislation and topical journal articles by scanning the library's **LawWatch** newsletter every week.

Sent to all members, it takes just five minutes to stay informed. Enquiries to:
libraryenquire@lawsociety.ie or tel: 01 672 4843.

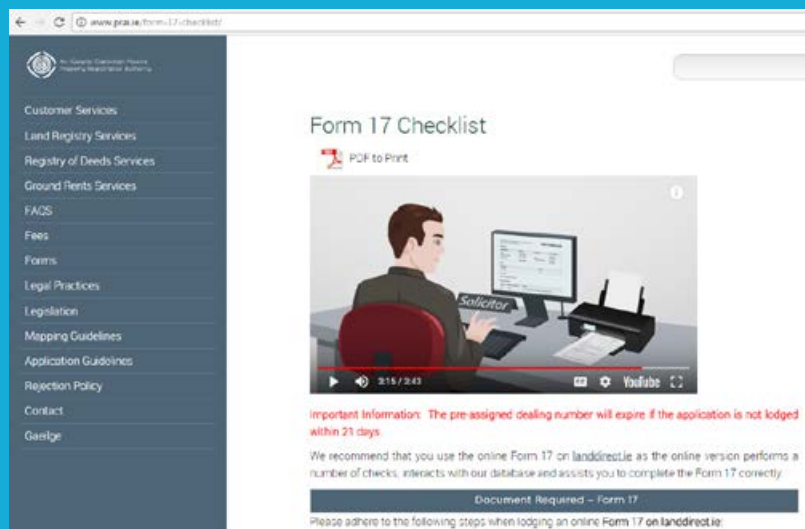


An tÚdarás Clárúcháin Maoine The Property Registration Authority

DID YOU KNOW?

Short videos and checklists to assist you in preparing your Land Registry applications are now available on our website www.prai.ie under **Application and Mapping Guidelines**. Currently applications are often rejected as a result of routine omissions and errors. Our videos will guide you on the correct documentation to lodge, helping you to get it right first time. The videos and corresponding printable checklists cover:

- Land Registry Rejection Policy
- Basic on-line application lodgement form
- Application for First Registration
- Solicitor certification for First Registration
- Mapping Guidelines
- Application for registration of a change of ownership (Transfer)
- Application for registration of a mortgage/loan (Charge).



An email has recently issued to all customers on our mailing list regarding the publication of these videos. If you have not received an email and would like to ensure that you are on our mailing list, please subscribe by contacting helpdesk-corporateservices@prai.ie

Upcoming CPD Seminars

www.cltireland.ie

Cork CPD Event - Taxation Issues in Relation to Residential and Agricultural Property

4 General CPD hours

Thursday 5 October 2017, 13:00 -17:15, Imperial Hotel, Cork

Medical Negligence: A Practical Guide to Recent Developments

3 General CPD hours

Tuesday 10 October 2017, 14:00 -17:15, The Radisson Blu Royal Hotel, Golden Lane, Dublin 8

Regulation Seminar: What Every Practitioner Needs to Know

4 Regulatory CPD hours (including 1 online hour)

Thursday 23 November 2017, 09:00 -12:00, The Radisson Blu Royal Hotel, Golden Lane, Dublin 8

Probate Practice: A Practical Guide to Recent Developments

4 General CPD hours

Thursday 23 November 2017, 13:00 -17:15, The Radisson Blu Royal Hotel, Golden Lane, Dublin 8

Essential Legal Updates 2017 - All your CPD in 2 Days

20 Legal CPD Hours – 4 Regulatory, 3 Management, 13 General CPD Hours. Friday & Saturday 8th & 9th December 2017, 9am-5.30pm, The Radisson Blu Royal Hotel, Golden Lane, Dublin 8

Option to book Essential Legal Updates Day 1 and Day 2 separately

CPD Online

Recorded seminars. Viewed anytime.

www.cltireland.ie

Anti-Money Laundering Regulations (1 Regulatory Hour)

Practical Conveyancing:

A Review of Recent Developments (4 General Hours)

Assisted Decision-Making (Capacity) Act 2015 (1 General Hour)

Pensions Adjustment Orders: Tips and Traps (1 General Hour)

Current Considerations in relation to Mortgages of Residential Property (1 General Hour)

A Review of the Requisitions in Relation to Planning (1 General Hour)

Land Registry (1 General Hour)

Taxation Issues in Conveyancing (1 General Hour)

The Implications of the 2017 edition of the Contract for Sale (1 General Hour)

Time Management (1 Management Hour)

Stress Management (2 Management Hours)

Probate : Complex Grants of Representation (1 General Hour)



Central Law Training Ireland, Suite 329, The Capel Building, Mary's Abbey, Dublin D07 V4HR

Tel: 01 8788 258 Email: cpd@cltireland.ie DX:200329 The Capel Building

PROPOSED COPYRIGHT DIRECTIVE CONSISTENT WITH EXISTING DIRECTIVES

From: Victor Finn, CEO, Irish Music Rights Organisation CLG, Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2

I refer to your article in the July 2017 issue entitled 'Modernisation of the EU's copyright laws' (p64).

Under the paragraph headed 'Tensions', in relation to the commission's proposed *Copyright Directive*, Dr Hyland states: "Importantly, by requiring ISSPs to ensure that their services/networks do not contain any illegal works, article 13 is in direct conflict with the hosting exemption for ISSPs contained in article 14 of the *eCommerce Directive*."

At the outset, we need to be clear that the objectives of the draft directive is to rebalance the so-called 'transfer of value' currently benefiting certain online platforms, with little or no recompense to the creators of cultural content.

Recital 37 of the commission's proposal summarises this transfer of value or value gap, as follows: "Over the last years, the functioning of the online content marketplace has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of right holders have flourished and have become main sources of access to content online. This affects rights holders' possibilities to determine whether, and under which conditions, their work and other subject-matter are used, as well as their possibilities to get an appropriate remuneration for it."

The internet has proved itself an excellent opportunity for the cultural sector, and creators have always been among the first to embrace online technological



developments. Consumers can now access vast amount of creative content in a manner unthinkable only a few short years ago. Creators are glad to see that music, movies, TV shows, publications, pictures, and video games created by them are so widely accessible and in such demand. However, it is also a significant cause for concern that their valuable contribution to the development and attraction of the information society goes largely unrewarded.

The draft directive has been criticised by some academics, echoed again here by Dr Hyland, and by claims that the proposed text is incompatible with the *eCommerce Directive* and that it runs contrary to the fundamental rights of the European Union.

Much of this criticism is unfounded and, indeed, many agree that the commission is going cautiously in the right direction (see, for example, Mathias Leistner, 'Copyright law on the internet in need of reform: hyperlinks, online platforms and aggregators', *Journal of Intellectual Property Law and Practice* (12)2, February 2017, pp136-149 – "In its recent copyright package, the commission has made a rather cautious, limited attempt to address this challenge.")

The key point is that the transfer of value provisions in the draft directive are not directed at all information society service providers, but only at those who (a) store and (b) provide to the public access to copyright works uploaded by their users. Both these cumulative criteria are drawn from two different legislative instruments. The first storing is from the definition of a hosting provider enshrined in article 14 of the *eCommerce Directive* (2000/31), and the second (providing access to the public) from the definition of communication to the public within the meaning of article 3 of Directive 2001/29 (the *Copyright Directive*).

These two factors – storing and providing access to the public – of user-uploaded content, by definition, exclude online aggregators, because they use linking or framing techniques and thus do not store the content to which they give access. Search engines are not covered either, as the content they store is not uploaded by users. Therefore, it follows that article 13 and recitals 38 and 39 of the draft directive are directed primarily at user uploaded content platforms, such as YouTube, Dailymotion, Vimeo, and SoundCloud.

Any assessment of the platform's liability will ultimately come down to the question as to whether the online platform is merely providing physical facilities (as referred to in recital 27 of Directive 2001/29) or whether it intervenes decisively in the process of communicating works to the public (see 'Transfer of value provisions of the Draft Copyright Directive (recitals 38,39, article 13)', by Agnes Lucas-Schloetter): "Either its contribu-

tion to the process of making the works available to the public is too insignificant to constitute an act of exploitation, in which case only the uploader will be regarded as having carried out the act of communication to the public, or, on the contrary, its deliberate intervention is indispensable for the public to be able to have access to the works, in which case the operator of the platform performs a restricted act."

The CJEU has not ruled on this issue yet, but Advocate General Szpunar has expressed an opinion, delivered on 8 February 2017, in BitTorrent tracker, 'The Pirate Bay' case, making a clear stand in favour of the joint liability of the operator and users of the platform for the same act of communication to the public.

The European Parliament stated in its resolution of 9 July 2015: "Creative works are one of the main sources nourishing the digital economy and information technology players such as search engines, social media and platforms for user generated content, but virtually all the value generated by creative works is transferred to those digital intermediaries, which refuse to pay authors or negotiate extremely low levels of remuneration."

The European Commission is attempting to address this 'value gap' in its proposal for a *Directive on Copyright on the Digital Single Market*. We believe article 13 and recital 38 of the draft directive are balanced texts which, despite the loud complaints from certain quarters, are totally consistent with existing EU directives, and infringe neither the *eCommerce Directive* nor those of the *Charter of Fundamental Rights of the European Union*.



THE SURVIVAL GUIDE TO FAMILY LAW

Our modern society has necessitated a new *Code of Practice for Family Law in Ireland*, which has just been launched by the Law Society's Family Law Committee

The new *Code of Practice for Family Law in Ireland*, produced by the Law Society's Family and Child Law Committee, was launched on 14 September 2017 by Judge Rosemary Horgan (President of the District Court). The last code was launched in September 2008.

Back then, Lehman Brothers went bust, triggering a domino effect in the financial and 'real' world – the consequences of which are still with us: 2008 was a different country to that of 2017.

Many factors have played their part in diminishing formerly busy family law practices. The impact on spouses and parents has been even more severe, with many husbands and wives trapped by negative equity from selling their properties and moving on with their lives or, even worse, not being able to move out of the family home or progress their separation or divorce due to the lack of a combined household income to support two households. The cost of this delay in resolving issues for children has yet to be assessed.

Raft of legislation

If that is the negative side of the past decade in family law, the positive side is a raft of constitutional and legislative changes that have enfranchised and empowered groups in our

society that were previously marginalised and not considered part of the 'official family' in Ireland. This increased solidarity and acceptance of difference in society is now mirrored in Ireland's family law legislation and is a welcome part of the change in the past decade.

The *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* recognised the union of both heterosexual and homosexual couples as civil partners, and afforded rights and responsibilities similar to, but not the same as, married couples.

More recently, the concept of civil partnership was swept away by the marriage equality referendum, which has led to the introduction of gay marriage. The 2010 act also granted cohabitant couples rights of financial redress when their relationship broke down, and also created a right to apply for part of the estate of a deceased cohabitant in limited circumstances.

A long-promised referendum on the voice of the child was finally introduced and passed in 2015. Children are now placed at the centre of family law, and their welfare is considered paramount. The introduction of the *Child and Family Relationships Act 2015* has redefined modern family relationships in Ireland.

There has been a marked increase in the complexity of public child-law cases coming

before the courts and, in particular, before the District Court. Emigration and immigration has led to more international family law cases dealing with relocation issues, *Brussels II*, and child abduction cases.

New Circuit Court Rules

A new process of case progression was introduced in the Circuit Court in 2008 and, this year, we have new *Circuit Court Rules* relating to family law (see [SI 207 of 2017](#)). There has been a raft of case law and practice directions on family law in the High Court. Journalists and academics such as Carol Coulter (see p28 of this *Gazette*) have taken advantage of changes to the *in camera* rule to open up and make more transparent the occurrences in the family courts.

Having survived the worst, we are now in recovery mode. The last few years have seen an increase in the numbers of spouses applying for divorce in the Circuit Court in Ireland – from a low of 3,330 in 2011 to a high of 4,290 in 2015. The recently released figures for 2016 show 4,162 applications, less than the 2008 figure of 4,214.

According to the [annual reports](#) of the Courts Service (2001-2016), applications for judicial separation have remained relatively static, since a high of 1,966 just as the



PIC SHUTTERSTOCK/ALIA REDYOND

The *Code of Practice for Family Law in Ireland* is a survival guide, not just for lawyers but also for parents

boom ended in 2008. The lowest subsequent level was 1,269 in 2012, while numbers have increased very slightly to 1,324 in 2016.

Alternatives

The growing importance of alternative dispute resolution (ADR) in family law is not reflected in the figures, but family lawyers report that clients respond well to their promotion of mediation and collaborative law. There is anecdotal evidence of the increased

settlement of many family law disputes outside the courts system, with deeds of separation or terms of settlement leading to reduced court involvement in family law cases.

The *Code of Practice for Family Law in Ireland* is a survival guide, not just for lawyers but also for parents. It endorses ADR and sets out principles for solicitors' relationships with their clients, with counsel, expert witnesses, other solicitors, lay litigants, and the courts.

It also provides useful guidance on conflicts

of interest, file management and anti-money-laundering obligations. The code has an extended section on children in private and public law cases, and sets out guiding principles when dealing with the child as a client, and when dealing with children in child-care cases.

The main objective of the new code remains the same as previous codes – “to assist practitioners in providing an excellent service to clients who, by virtue of the fact that they have instructed a solicitor, either are contemplating

WHILE THERE HAS BEEN A SURGE OF PROGRESSIVE LEGISLATION IN THE AREA OF FAMILY LAW IN THE PAST TEN YEARS, WE STILL NEED TO SEE MORE STATE RESOURCES INVESTED IN A MORE INTEGRATED AND FAIR SYSTEM OF FAMILY LAW



Important Questions for any Solicitor or Legal Practice

Are you missing calls when you are out of the office or your lines are busy?

Do you want to make your practice more efficient and save money?

Tele Call can give you a full-time Receptionist/PA for as little as €99 per month*, working Monday to Friday 8am to 7pm and Saturday 9am to 3pm

**Exclusive Offer for the Legal Sector*

Free Trial for *Law Society Gazette* Subscribers
To Arrange your Free Trial or For a Brochure
Call Us On 0818 222 928

"The Specialist Outsourced Reception Service for the Legal Sector."

www.telecall.ie



info@telecall.ie



ART\$UMMIT IRELAND

ArtSummit Ireland hosts its annual art business conference.

An evening of culture and conversation at the prestigious Merrion Hotel on the 3rd November 2017.

INVESTING TIME IN ART

A Unique Analysis of the Art Ecosystem from Artist to Asset

OPENING ADDRESS BY

Sean Rainbird
Director, National Gallery of Ireland

For more details on the expert speakers, programme and tickets go to www.artsummitireland.com

CPD Eligibility 5.5 General Hours for Solicitors in Estate Planning and Wealth Investment.

HERE'S TO THOSE WHO CHANGED THE WORLD



WHAT WILL YOUR LEGACY BE?

If you want to request a copy of our Leaving a Legacy guide 'Your questions answered' or wish to speak directly with our **Legacy Team** at our Sanctuary in Liscarroll, please contact: **(022) 48398**
info@thedonkeysanctuary.ie



THE DONKEY SANCTUARY

RETURN FORM TO: THE DONKEY SANCTUARY

Legacy Department (LSG),
Liscarroll, Mallow, Co. Cork

Charity Reg. No.
20032289



Name: Mr/Mrs/Miss

Address

Postcode

Email

www.thedonkeysanctuary.ie

0014_14_DS



THE CODE OF PRACTICE FOR FAMILY LAW IN IRELAND IS A SURVIVAL GUIDE, NOT JUST FOR LAWYERS BUT ALSO FOR PARENTS. IT ENDORSES ADR AND SETS OUT PRINCIPLES FOR SOLICITORS' RELATIONSHIPS WITH THEIR CLIENTS, WITH COUNSEL, EXPERT WITNESSES, OTHER SOLICITORS, LAY LITIGANTS AND THE COURT

or in the middle of family law proceedings, and are having a most stressful life experience. The guidelines are designed to enhance the service provided to the client and to assist professionals in maintaining professionalism in this most difficult task.”

The code should be read in terms of how practitioners can enhance the client services they provide. It can be downloaded in the ‘resources’ section on the Family and Child Law Committee page at www.lawsociety.ie.

While there has been a surge of progressive legislation in the area of family law in the past ten years, we still need to see more State resources invested in a more integrated and fair system of family law. This would encompass the creation of specialist family courts and judges, and more resources allocated to the Legal Aid Board, the mediation service, and other providers of support to those going through the family courts.

The legal-aid [Private Practitioner Scheme](#)

for the [District Court](#) also requires overhaul and adequate resourcing. One pressing issue in Dublin is the development of the proposed new Hammond Lane facility for family justice. At the time of writing, the project appears to have stalled. Only some of the parts of the *Child and Family Relationships Act* have been commenced, and there is considerable progress required in developing necessary resources in order to fully implement the act. A proper system of appointing and regulating guardians *ad litem* needs to be put in place, as does a system of common training and proper regulation for mediators in family law matters.

The Family and Child Law Committee will continue to pursue these issues and hopes that all of these will have been resolved before the next code issues. [G](#)

The annual Family and Child Law Committee conference takes place on 24 November 2017.

Q FOCAL POINT CIRCUIT COURT APPLICATIONS

YEAR	DIVORCE	JUDICIAL SEPARATION
2016	4,162	1,324
2015	4,290	1,384
2014	3,933	1,276
2013	3,598	1,292
2012	3,462	1,269
2011	3,330	1,352
2010	3,357	1,393
2009	3,683	1,592
2008	4,214	1,966
2007	4,081	1,689
2006	3,986	1,789

Source: reports of the Courts Service (2006-2016)

The Child and Family Law Committee extends its thanks to all in the Law Society who helped produce the latest edition of the code, including Donagh MacGowan, Justin Spain, Jane Moffat and Geoffrey Shannon; to all who contributed to previous codes; and to Judge Rosemary Horgan for launching it.

ORION RISK
TAKING RISK OUT OF THE EQUATION

Web: www.orionrisk.ie
Tel: + 353 1 2886625
Email: info@orionrisk.ie

Have you done your homework?

Orion Risk has been helping leading law firms, banking and financial institutions with key Debt Recovery solutions for over 25 years.

- Due Diligence Reporting
- Pre-Sue Enquiries
- Employee Screening
- Summons Service
- Asset Tracing & Valuations
- Background Checks

PSA Licence number: 06041



PRISONER WHO 'SLOPPED OUT' NOT ENTITLED TO DAMAGES

A court recently heard the complex background to the existence of out-of-date hygiene facilities in Mountjoy Prison. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

When the Thornton Hall new-build prison was put on ice during the financial crash, it sped up the refurbishment of Mountjoy and virtually eliminated the practice of 'slopping out', a court was told recently.

Judgment was delivered on 13 September in a case taken by a prisoner on the grounds that slopping out amounted to a breach of his right to dignity.

Plaintiff Gary Simpson took the case against the Governor of Mountjoy Prison, the Irish Prison Service, the Minister for Justice, Ireland, and the Attorney General, relating to his detention on D1 wing at Dublin's Mountjoy Prison in 2013.

The plaintiff alleged that the practice of slop-

ping out and using a chamber pot in the context of shared-cell occupancy amounted to a breach of his constitutional rights and of article 8 of the *European Convention on Human Rights*. He sought a declaration that the conditions and circumstances of his imprisonment amounted to a breach of his right to dignity and his right not to be subjected to inhuman and degrading treatment, as guaranteed by articles 40.3.1 and 40.3.2 of the Irish Constitution.

Simpson, who was jailed for three years for robbery in 2013, issued a plenary summons on 30 July 2014, claiming damages, including exemplary and punitive damages.

The court ruled that his treatment was in breach of his constitutional right to privacy. However, the court also ruled that he was not

entitled to compensation. Mr Justice Michael White found that the prisoner was an untruthful witness who had exaggerated parts of his evidence about his treatment while in jail for eight months.

The court also ruled that the practice of slopping out did not amount to inhuman and degrading treatment.

Judge White said a prisoner's constitutional rights were restricted, but not "totally set at nought". He noted the intention of authorities to refurbish Mountjoy Prison and move to single-cell occupancy with in-cell sanitation.

A Department of Justice statement to court pointed out that 98% of prisoners have in-cell sanitation. Overcrowding had been an increasing problem since the 1980s, and this had forced the abandonment of the one-prisoner-to-a-cell principle in some cases.

Among the plaintiff's complaints were having to eat meals while enduring the smell of faeces and urine. The plaintiff also alleged that, due to double-cell occupancy, the dimensions of the cell breached the recommended minimum of 11 square metres.

Mountjoy Prison is a Victorian structure built in 1850. When constructed, it had 500 cells and was designed for single occupancy. Little had been done to maintain the prison in recent years, as it was intended to replace it with a purpose-built prison. A 2003 report had rejected proposals to redevelop Mountjoy, in favour of a green-field site.

In his evidence, the plaintiff stated that he had requested protection on arrival at Mountjoy. All those prisoners housed in D1 landing in Mountjoy at the time were on a protection

Q FOCAL POINT

THE THORNTON SITE

The Government granted approval in January 2005 for the acquisition of a 150-acre site, known as the Thornton site, in Kilsallaghan, north County Dublin. However, between the first Government recommendation until the tendering process, there was substantial inflation in costs in the building industry.

Tenders were assessed in April 2007 and a preferred bidder was chosen, with the construction then estimated to cost €500 million. To enable planning for the prison, a new *Prisons Act* was finalised in

July 2008. By this time, the financial crisis and the loss of support from financial backers led to increased tender costs of 30-40%. In May 2009, the Government decided not to go ahead, on grounds of cost, and the project was put on hold.

An October 2015 report by the Comptroller and Auditor General into the purchase of the Thornton site concluded that, since 2010, many of the problems at Mountjoy had been dealt with at a much lower cost than the figure originally proposed to build a new prison.



THE JUDGMENT WILL HAVE IMPLICATIONS FOR HUNDREDS OF OTHER PENDING CASES BY PRISONERS

regime at their own request. The separation unit in the prison was also being used to house protected prisoners.

Prisoners on protection were locked in their cells, on average, for 23 hours a day. When there were lower numbers of protected prisoners, they had more time out of their cells. In general, their access to recreation, education, and leisure activities was severely restricted.

The evidence before the court pointed to a very challenging problem being faced by the administrators in the segregation of protected prisoners. Governor Gregg Garland gave evidence that, at the time of the plaintiff's detention in 2013, the separation unit was full, and D1 wing was selected for the overflow in order to keep prisoners safe.

'Satisfactory chamber pots'

In his judgment, Mr Justice White wrote: "Subject to my criticism of the practice of having to defecate in one's cell in the first place, the court is satisfied that the chamber pot provided was satisfactory. The lids provided fitted snugly to the pot itself.

"If the lid was replaced promptly onto a pot, the smell would diffuse after a reasonably short period of time. The chamber pot was of sufficient size to accommodate the average urine output of an adult male over a 24-hour period

and, given the opportunity which the plaintiff had to slop out, I am satisfied that it was of sufficient size to both urinate and defecate."

A modesty screen or a commode structure would have "gone a long way" to give better respect to the plaintiff's privacy rights, the judge said.

In evidence, retired governor Edward Whelan stated that they tried to introduce portable toilets, which were trialled on a number of wings in the prison in or around 2011 or late 2010, but that the prisoners were not keen on them. He stated that the prisoners would tell you that they would rather have their chamber pots.

In his evidence in relation to hygiene standards in the wing, plaintiff Gary Simpson stated that the prisoner cleaners were heavy drug users and that he did not think they did any work.

Various witnesses for the defendants gave evidence that cleaners were trusted prisoners with drug-free status and, if they misbehaved, they would be relieved of their hygiene duties.

Mr Justice White said in his judgment: "This is a nasty allegation, and I am satisfied it is not an exaggeration, but untruthful evidence by the plaintiff."


Mr Justice White said: "I consider [Governor] Whelan to have been a highly responsible

governor and a truthful witness. He was held in high regard throughout the Prison Service, as reflected in the evidence of various witnesses. He was a hands-on governor and not remote.

"The court accepts his judgement that, after a wide consultation, he felt that he had no choice but to use D1 for protection prisoners, but I note at that time the number of protection prisoners going there was very small. He estimated about seven.

"The court was surprised that the issue did not receive serious consideration at executive level within the Prison Service. It was left to the campus governor of the prison to deal with. The matter was not revisited when the numbers increased to the extent that the whole of D1 landing housed protection prisoners.

"It is to the credit of the management and staff in the prison that they went to substantial lengths to mitigate the hardship on prisoners in other ways."

The judge held that Mr Simpson was not entitled to damages and that he had "huge issues" with the credibility of some of the plaintiff's evidence. The judgment will have implications for hundreds of other pending cases by prisoners. Although the judge said that he did not regard this as a test case, legal sources believe it to be significant. 



2017 CHILD-CARE REPORTS OUTLINE DIFFICULT CASES

The Child Care Law Reporting Project published the first volume of its 2017 reports in July. **Carol Coulter** reports

DR CAROL COULTER IS DIRECTOR OF THE CHILD CARE LAW REPORTING PROJECT

Allegations of serious sex abuse, court intervention in securing psychiatric services for troubled teenagers, and praise for the dedication of social workers in certain cases all featured in the volume of [22 further reports](#) from the Child Care Law Reporting Project, published on its website at the beginning of July. The published report included five very lengthy cases involving serious allegations of child sexual abuse, and five detailed accounts over many months of cases involving the detention of troubled teenagers wending their way through the High Court.

Risk of self-harm

They also included the case of a pregnant girl who had been detained under the *Mental Health Act* following evidence from a consultant psychiatrist that she had a mental health disorder and was at risk of self-harm and suicide as a result of her pregnancy. She had sought a termination of the pregnancy, but the psychiatrist said her condition could be managed by treatment and that the termination of the pregnancy was not the solution for all the child's problems at that stage.

The judge who granted the order detaining her also appointed a guardian *ad litem* (GAL) for the child, and the GAL then applied to the District Court for a discharge of the order. The GAL visited the young girl on several occasions and reported to the judge that she did not wish to be detained and was extremely upset. Although the case did not relate to any application under the *Child Care Act 1991*, it was heard

in the District Court, which normally hears child-care cases.

Another consultant psychiatrist was employed by the GAL to assess the young girl and determine whether or not she had a mental disorder in accordance with the *Mental Health Act*. That consultant psychiatrist was of the opinion that the young girl presented as being depressed; however, there was no evidence of a psychological disorder and she was dealing with her depression well. This consultant psychiatrist was of the opinion that the young girl was not suicidal and was not in immediate danger of committing suicide. The consultant psychiatrist concluded that, as the young girl did not have a mental illness, she could not be detained under the *Mental Health Act*. The consultant psychiatrist also reported that the young girl had very strong views as to why she wanted a termination of her pregnancy.

The court also heard evidence from the young girl's treating adolescent psychiatrist, who had last seen the young girl the day before the application. He was of the opinion that, while the young girl remained agitated and angry, she did not suffer from an acute mental health disorder that warranted her detention under the *Mental Health Act 2001*. He said that there had been an initial concern of self-harm and that the girl was very distressed to find out about the pregnancy.

The GAL pointed out that there was no conflict regarding the evidence from the two consultant psychiatrists and therefore the

order should be discharged immediately. In the light of all the evidence, the judge discharged the order.

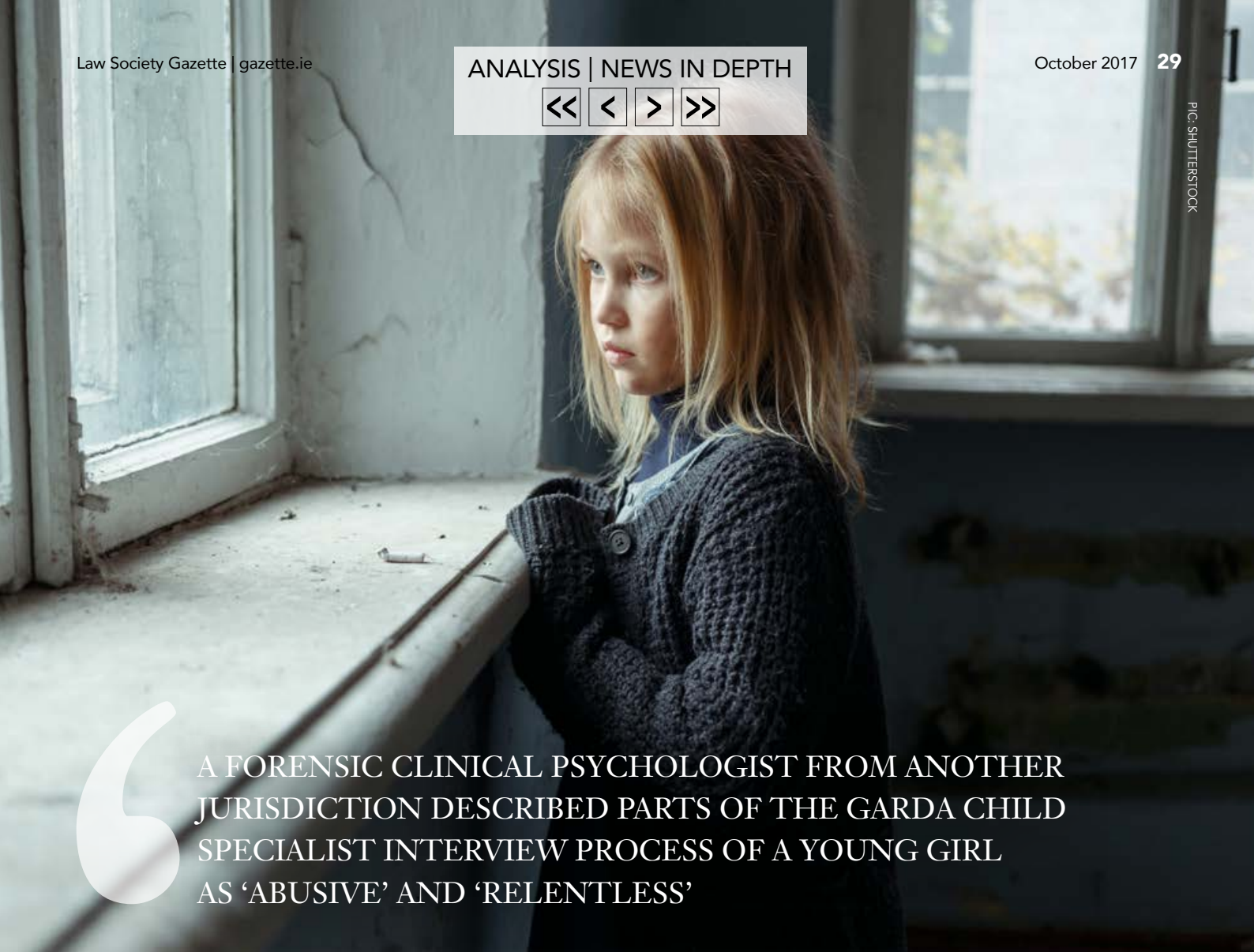
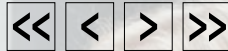
Neglect and abuse

Among the other cases was a report of a Circuit Court appeal of an earlier District Court care order for five children following allegations of serious neglect and sexual abuse by their parents. The appeal lasted 47 days, and the District Court hearing had taken almost 70 days. The appeal was unsuccessful, and the children remain in care. This case was one of a number where the proceedings were very protracted and where there were days of legal argument concerning the admissibility of hearsay evidence from children and the reliability of evidence from specialist sex-abuse units.

Another case concerned a care order for a girl who had made allegations of sexual abuse against multiple perpetrators in circumstances involving her mother over a number of years. She had also made allegations of being drugged before the abuse took place. There were further allegations of being asked many times by her mother to pose naked while photos were taken of her and that subsequently these photos were shown to the men before they abused her. The child also made allegations of physical abuse, emotional abuse, and neglect.

Investigation difficulties

This case revealed some of the difficulties in the investigation of child sexual abuse, and in the interplay of child protection proceedings with



A FORENSIC CLINICAL PSYCHOLOGIST FROM ANOTHER JURISDICTION DESCRIBED PARTS OF THE GARDA CHILD SPECIALIST INTERVIEW PROCESS OF A YOUNG GIRL AS ‘ABUSIVE’ AND ‘RELENTLESS’

garda investigations. In this case, the child was interviewed 11 times in all by both a specialist child sex-abuse clinic and a specialist garda interviewer. A forensic clinical psychologist from another jurisdiction described parts of the garda child specialist interview process of a young girl as “abusive” and “relentless”. The quality of the interviewer’s training was questioned, as well as the lack of ongoing training. When told there would be no prosecutions of the perpetrators of the abuse, the forensic psychologist said: “I am not surprised.”

The reports of the High Court cases where children are detained for therapy and their own protection reveal the difficulty in sometimes finding appropriate ‘step-down’ placements for children who no longer need to be detained, but are not stable enough to return home or go to foster care. Such children also often wait for months for appropriate psychiatric assessment and help, and the High Court has intervened on a number of occasions to insist that they receive such services.

The reports also reveal the ongoing issues of mental health problems, cognitive disability, and addiction problems that lead many children into the child protection system.

Good practice

However, the reports also give examples of good practice by the Child and Family Agency, where social workers go to great lengths to protect vulnerable children. An unaccompanied minor had arrived in the State saying she was seeking asylum. Her father was deceased and there had been no contact with her mother. Earlier, the court had extended an interim care order, when the social worker informed the court that the child had no parent or guardian in the State. He told the court that the social work department had not undertaken family tracing, as they believed this could pose a risk to the child’s family.

At this hearing, the court ruled that, in the circumstances of the case, it was not necessary to attempt to give notice to the child’s parents

of the intention to seek a care order. The Child and Family Agency had found a placement that was closer to adoption than fostering. The foster carer wanted a long-term placement, and the child was really looking forward to becoming part of a family. The child had also visited the town and the school and had had an overnight stay with the intended foster carer, which was very positive, the social worker said. The GAL praised the efforts made by the social worker on the child’s behalf.

This is the second year in which the CCLRP is publishing reports twice yearly, compared with quarterly for the first three years. The project is now focusing in detail on some lengthy and complex cases. As well as reporting on them, the CCLRP is conducting qualitative research into the reasons for some cases becoming so protracted. A report on the result of this research will be published at the end of the year.

All the reports are published on the CCLRP website, www.childlawproject.ie. 



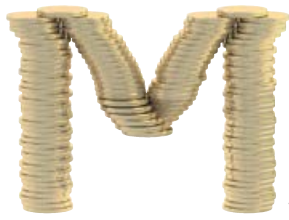
PICTURE: SHUTTERSTOCK/NUALA REDMOND

Two's company, FEE'S A CROWD

Crowdfunding litigation has the potential to greatly increase access to justice and promote public-interest cases. But this would require changes to the rules of maintenance and champerty, writes **Matthew Holmes**

MATTHEW HOLMES IS A DUBLIN-BASED BARRISTER. HE WISHES TO THANK
MARGARET NERNEY SC FOR REVIEWING THE ARTICLE





aintenance and champerty are ancient concepts – and they are

preventing lawyers from moving into the future. These two old legal doctrines on the funding of cases are stopping us from adopting one of the big social changes of our times: crowdfunding and the new ‘sharing economy’. Crowdfunding has huge potential to affect how cases and – in particular – public-interest cases are paid for. However, these rules restrict the way cases are funded and prevent this new innovation from benefiting litigation.

What is crowdfunding?

Crowdfunding does exactly what it says on the tin – funding by a crowd. This has been revolutionised by the internet. People seeking investments or donations can put themselves forward on websites like Kickstarter, Patreon or GoFundMe. These websites allow backers to pick a cause, product, or idea they like and to back it financially in exchange for a small commission. Individuals can choose to contribute as much or as little as they like to the project being funded. Fundraisers can offer rewards to their backers, depending on the website they choose. These rewards are usually linked to the amount contributed and can vary from a simple thank you, a copy of the final product or, for high-end contributors, unique opportunities such as appearing in the final product or meeting a celebrity.

Crowdfunding has been used to great success by all kinds of inventors, artists, and innovators. This type of funding is particularly popular with charitable causes and with people who cannot fund their ideas through conventional means. In April this

AT A GLANCE

- Crowdfunding is particularly popular with charitable causes and with people who cannot fund their ideas through conventional means
- Maintenance and champerty are rules on the funding of cases, which are designed to filter out frivolous and vexatious cases by stopping third-party funding
- The concepts of maintenance and champerty should be revisited in order to move litigation into the 21st century, while continuing to ensure that frivolous or vexatious cases do not proliferate



PIC: SHUTTERSTOCK

year, the computer game *Star Citizen* raised over \$140 million, beating the previous record of over \$10 million set by the Pebble ‘smartwatch’, a watch that promised to connect to phones. In June 2015, *Forbes*

magazine reported that crowdfunding would amount to \$34 billion in investments, which is around \$4 billion more than that invested by venture capitalists. It also said that the amount of money raised by crowdfunding would double every year. This is a huge chunk of change, which is being raised from the public. There are even crowdfunding websites that specialise in funding litigation: [CrowdJustice](#), [TrialFunder](#), and [LexShares](#). These websites give investors the opportunity to invest in legal cases – they can search cases by cause of action, lawyer, or plaintiff. In exchange, they may get a share of the proceeds if the case is successful or settles, or they may just get to feel good because they have donated towards a worthwhile cause.

Crowdfunding is taking off with lawyers in our neighbouring jurisdiction. The largest funder there, [Harbour Litigation Funding](#), has raised over £400 million and is so successful that it is looking for new claims, not new investors. The challenge to article 50 and Brexit in our High Court by the British tax barrister Jolyon Maugham QC raised over £70,000 on the CrowdJustice website in less than 48 hours. Over 1,800 people contributed, and almost £145,000 was raised in the end. Why hasn’t crowdfunding taken off with Irish lawyers in the same way it has with their British counterparts? The answer lies in the rules against maintenance and champerty.

What are maintenance and champerty?

Maintenance and champerty are old rules on the funding of cases, which are designed to filter out frivolous and vexatious cases by stopping third-party funding. Maintenance is funding a court case in which you have no interest. Champerty is maintenance in exchange for a share of the proceeds. Maintenance and champerty are both torts and criminal offences in Ireland. The [Statute Law Revision Act 2007](#), which repealed over 3,000 pre-1922 statutes, preserved statutes from 1634, 1540, and earlier, that criminalised maintenance and champerty.

The rules of maintenance and champerty are rarely discussed. McMahon and Binchy’s *Law of Torts* only devotes five lines to them

ONE MAN IN OHIO SEEKING \$10 TO
MAKE A BOWL OF POTATO SALAD
ENDED UP RAISING \$55,492 AFTER HIS
APPEAL WENT VIRAL



PIC: SHUTTERSTOCK

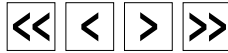
in the third edition, and none at all in the fourth. However, they have recently become more prominent for two reasons.

The first is the Supreme Court decision from May of this year in *Persona Digital Telephony Ltd and another v Minister for Public Enterprise*. This is the first case directly concerning the acceptability of professional third-party litigation funding in Ireland. The plaintiffs in this case were seeking damages against the State and Denis O'Brien, but were unable to fund their case without outside help. Their funder had previously reviewed over 1,900 cases since

2007 and had funded cases in numerous other jurisdictions, including Britain and the USA. They claimed in the High Court that third-party funding should be allowed for public-interest litigation, but this was rejected by Donnelly J. The Supreme Court, in a leapfrog appeal, dismissed their appeal and emphasised that maintenance and champerty still remain crimes and torts in this jurisdiction. It did not rule on the constitutionality of these doctrines, as no constitutional challenge had been taken, noting instead that the constitutional issues were "perhaps for another day". It did

express the opinion that the policy issues were so complex that they would be better addressed by legislation than by the courts.

The second reason maintenance and champerty have become more prominent is because of recent publicity concerning contempt of court in the aftermath of the Jobstown trial. In an article written by Josepha Madigan TD in the *Irish Independent* on 8 July 2017, she suggested that, in addition to the need for legislation in the area of contempt of court to limit what could be put on social media during the course of a criminal trial, other rules – such as those



THE BAR
OF IRELAND
The Law Library

NEED EXPERIENCED DISCOVERY COUNSEL?

Expertise at your fingertips - log on to
www.lawlibrary.ie/discovery

*Instant access
to database
of 200 expert
barristers skilled
in discovery,
e-discovery and
title review*

*A service provided by
The Bar of Ireland
Distillery Building
145/151 Church Street
Dublin D07 WDX8
T: +353 1 817 5000
W: www.lawlibrary.ie
E: thebarofireland@lawlibrary.ie*



TITLE INSURANCE

Looking for immediate solutions visit:
www.titlesolv.com

For an intelligent conversation, discuss your unique needs and challenges in Ireland with the Titlesolv Team.

**Commercial
Judicial Review
Renewable Energy**

**Distressed Assets
Residential Development
Telecommunications**

For more information about Titlesolv or to gain access to our products contact:

Camel Nielsen
T: +353 (1) 633 8872
M: +353 87 299 8088

Email
cnielsen@titlesolv.com
enquiries@titlesolv.com

Titlesolv is a trading name of London & European Title Insurance Services Limited (Registered in England & Wales company number 4459633 - VAT No. GB 709149918) authorised and regulated by the Financial Conduct Authority and a member of the Hannover Re group.

A member of the **hannover re** group

Dublin Dispute Resolution Centre

Ireland's Premier Dispute Resolution Venue

- Arbitrations
- Mediations
- Conciliations
- Consultations
- Seminars
- Training



Dublin Dispute
Resolution Centre

CONTACT US
Distillery Building, 145-151 Church Street, Dublin 7, Ireland
Tel: +353 (1) 817 5277 Email: info@dublinarbitration.com



Legal Contingency Insurance

Aviva has many years experience of providing insurance solutions for a wide range of Legal Contingency issues to those in the legal profession:

Our product offerings include:

- **Administration Bonds**
- **Defective Titles**
- **Lost Title Deeds**
- **Lost Shares Indemnities**
- **Missing Beneficiary Insurance**
- **Restrictive Covenants**
- **Rights of Way**
- **Easement of Services Indemnities**

To arrange cover or discuss any of the above:

Email: contingencyservices@aviva.com

or phone **Niall Sheridan** on 01 898 7743

or **Karl Dobbryn** on 01 898 7710.

Aviva Insurance Limited, trading as Aviva, is authorised by the Prudential Regulation Authority in the UK and is regulated by the Central Bank of Ireland for conduct of business rules. Registered Branch Office in Ireland No 900175. Registered Branch Address One Park Place, Hatch Street, Dublin 2. Registered in Scotland No 2116. Registered Office Pitheavlis, Perth, PH2 0NH.



THE RULES OF MAINTENANCE AND CHAMPERTY ARE RARELY DISCUSSED. MCMAHON AND BINCHY'S *LAW OF TORTS* ONLY DEVOTES FIVE LINES TO THEM IN THE THIRD EDITION, AND NONE AT ALL IN THE FOURTH

relating to the funding of cases – might need to be re-examined in the light of the internet and crowdfunding.

Maintenance and champerty were abolished in Britain in 1967. Litigation funding is now a thriving industry there. According to the *Wall Street Journal*, American funders have invested more than a billion dollars into litigation funding in the USA. If the rules against maintenance and champerty are abolished or amended in Ireland, then Irish cases may benefit from this as well.

Possible problems

One of the biggest risks with third-party funding is that the third party may seek to influence the case. On the one hand, people seeking funding for litigation might be tempted to exaggerate the strengths of their case, with the result that their backers may be less inclined towards settlement. On the other, large funding companies may exert undue pressure on plaintiffs to settle, in order to recoup their investment, and therefore be somewhat less concerned with achieving justice by seeing litigation through to finality. The American websites specifically refer to a payout for investors when a case is settled. Members of the public funding a case may have difficulty assessing how strong or weak a case is, to say nothing of the unexpected twists and turns that every case takes as it progresses. One way of meeting this difficulty would be by making it a condition of all funding agreements that backers cannot influence the progress of the litigation or the decision to settle by, for example, making it an offence to do either. Another concern is that investors might scoop up too much of the award, leaving the deserving plaintiff with little for their trouble. This could also be met with limits to payouts in fee arrangements.

Benefits

It is axiomatic that, for want of funding, there have been many good but unlitigated cases. Crowdfunding provides an alternative to other

possible previous methods of funding these cases, such as, for example, after-the-event insurance, 'no foal no fee' arrangements, seeking a contribution towards costs, or even having a number of backers coming together to form a company to litigate a case. All of these methods have their own difficulties and problems.

Crowdfunding has proven itself to be a fast and effective way of raising a lot of money in a short period of time. It allows a large number of people to contribute towards a cause they believe in. Small contributions can quickly amount to a large figure if made by many people. Public-interest litigation is likely to receive a large boost, as are cases with deserving and sympathetic parties.

The rules against maintenance and champerty were introduced to stop worthless cases being taken. It should be noted that large litigation funders have no interest in backing such cases. If they did, they'd only stand to lose their investment. This is admittedly more of a risk with public crowdfunding (one man in Ohio seeking \$10 to make a bowl of potato salad ended up [raising \\$55,492](#) after his appeal went viral). However, the usual remedies against frivolous or vexatious cases should be more than enough to deal with these situations.

Possible compromise?

There is a possible compromise between those who want maintenance and champerty abolished, and those who do not. The American sites specialise in investing in commercial litigation in exchange for a share of the outcome, whereas the British sites specialise in funding for public-interest litigation without the prospect of any reward. This latter approach of allowing only maintenance may be a possible compromise. There is much more scope for difficulty if champerty is also permitted than if maintenance alone is allowed. If funders are acting altruistically, rather than expecting a return on investment, this is much less likely to cause problems. Even non-financial rewards,

such as a commemorative certificate, T-shirt, or mug are much less likely to be problematic than a share in the proceeds.

There is case law that shows that charity is an exception to the rules against maintenance and champerty (see *Thema International Fund v HSBC Institutional Trust Services (Ireland)*). It is probably permissible to set up a crowdfunding account to fund a case taken for charitable reasons, particularly if no reward is offered. This could prove to be a very successful tactic with human-rights lawyers seeking to advance a client's claim. Charities and pressure groups may find themselves better able to take cases within their areas of interest. It has traditionally been easier to establish *locus standi* in public-interest cases on issues of general importance. Now such cases may also be easier to fund. This, I believe, will ultimately have benefits for society as a whole.

The rules of maintenance and champerty have been done away with in a number of jurisdictions. Third-party funding and crowdfunding litigation have the potential to greatly increase access to justice and to promote and progress deserving public-interest cases. In my opinion, the medieval concepts of maintenance and champerty are outmoded and need to be revisited in order to move litigation into the 21st century while, at the same time, continuing to ensure that frivolous or vexatious cases do not proliferate in a new and more liberal litigation-funding landscape. [G](#)

LOOK IT UP

- *Persona Digital Telephony Ltd and another v Minister for Public Enterprise* [2011] 3 IR 654
- *Thema International Fund v HSBC Institutional Trust Services (Ireland)* [2011] 3 IR 654



Secret sauce

How do you win – and retain – great clients? **Flor McCarthy** measures and mixes the ingredients to deliver marketing's secret sauce

FLOR MCCARTHY IS MANAGING PARTNER OF MCCARTHY & CO AND THE AUTHOR OF
THE SOLICITOR'S GUIDE TO MARKETING AND GROWING A BUSINESS

In 2015, the Law Society commissioned a consumer survey on how people choose a solicitor. The findings revealed that only 2% were influenced by advertising. A similarly paltry 2% referenced searching online for a solicitor or visiting a website.

Based on that, you might think that any article on marketing needs to be pretty short! Some solicitors may see figures like this as a continuing justification for their decision – conscious or otherwise – to dismiss or ignore marketing of their practice entirely. This fact, and these figures, represent an enormous opportunity for those smart lawyers who see value in marketing.

To get a better picture of what reality might actually look like requires a little more context. And, as all good lawyers should, we must start with our definitions.

Morkeshing, baby

Simply put, marketing is everything we can do to get or retain a client. Advertising and digital media are just two of many marketing tools.

The results of the survey showed

varying factors influencing the choice of solicitor:

- Recommendation/word of mouth – 43%,
- Family solicitor/family always used – 28%,
- Good reputation – 24%,
- Located nearby/close to home or work – 19%,
- Reasonable fees – 10%,
- Knew them personally – 4%,
- Advertising: saw, read or heard an advert – 2%,
- Searched online/saw the website – 2%,
- Used them before/experience of service – 2%.

But before considering these figures in any detail, let's look at something more fundamental. What's the most important part

of any legal business? Any business, actually?

The customer, or the client, of course.

We will always have those cynics who say: "It'd be a great job, if it weren't for the clients", but after the back-slapping and locker-room laughter subsides, we know that we can only make money if we are providing a service of value to someone ready, willing and able to pay for it – in other words, a client.

AT A GLANCE

- How clients choose a solicitor
- Three ways to get and retain clients
- Where the smart marketing money is going
- Investing your marketing efforts in the people who know you – and the people they know



PIC: WIKIMEDIA COMMONS

SIMPLY PUT, MARKETING IS EVERYTHING WE CAN DO TO GET OR RETAIN A CLIENT

And, if we accept that the most important facet of any legal business is the client, then it follows that the most important activity for any legal business is getting and retaining clients. Simple.

The fundamentals

Indeed, in this vein, the fundamentals of good marketing are also very simple. It may not be easy, and the execution of good marketing should be complex, but the fundamentals are very simple.

There are only three ways to get a client.

1. *They know you and your story.* This can actually include mass advertising, if they come to know you in that way. Only 2% of people surveyed had acted in response to an ad and, while this is low, it is unsurprising in the Irish legal marketplace, given the lack of advertising. So that is not what we are interested in here.

What is really worth paying attention to is that, of those surveyed, 34% chose a solicitor because they knew them personally,

used them before, or they were the family solicitor.

2. *They know somebody who knows you.* This is the world of referrals, and 43% of those surveyed chose their solicitor based on a recommendation or word of mouth.

3. *They find you by searching.* If I don't know a solicitor, or I don't know anybody who knows a solicitor, I've got to go find one. On a local level, this could involve walking down the street and looking for a solicitor's office. Historically, it meant hitting the *Golden Pages* and the phone. Nowadays, it means the web.

However, only 2% of survey respondents said that they chose their solicitors based on an online search or a by viewing a website. This is a surprisingly low number, and is not consistent with surveys internationally or practical experience, but it may be accounted for in the fact that the survey was framed in very general terms, whereas the use of the web by consumers in their search for solicitors is likely to vary dramatically between practice areas.

Where's the beef?

And here is the secret: in marketing terms, the real money is in categories 1 and 2 above. It is how 77% of people say they choose a solicitor. But the vast majority of lawyers' marketing money is, and always has been, spent in category 3.

Data (such as there is) on marketing spend by Irish legal professionals is hard to come by. But there are figures available internationally. Martindale-Hubbell published a study of US lawyers, who were asked the question: 'What percentage of your overall budget did you spend on what advertising mediums in 2015?' The results were:

- Online lead generation – 33%,
- Online directories – 17%,
- Search-engine optimisation – 13%,
- Print ads – 5%,
- Search engine marketing – 5%,
- Printed phone book – 5%,
- Social media – 5%,
- TV and radio – 2%,
- Other – 15%.



gazette

LAW SOCIETY

www.gazette.ie

**BONUS DIGITAL FEATURES WITH
YOUR ONLINE GAZETTE**



- Links to judgments, cases and relevant literature
- Links to additional material
- Links to advertisers' websites
- Seamless navigation throughout

- View on your computer, tablet or smartphone

**For your best viewing experience,
download the Gazette to your device**



“INSOFAR AS MOST SOLICITORS ENGAGE IN ANY MARKETING AT ALL, THEY TEND TO IGNORE STACKS OF BORING OLD CASH LYING UNDER THEIR NOSES FOR THE ALLURE OF BRIGHT SHINY OBJECTS IN THE MARKETING SPACE

With one exception, everything on this list is ‘advertising’ and ‘search’. This is where US lawyers tend to focus their marketing resources. And while we don’t have figures for this jurisdiction, it does give us an insight into the mind of the legal profession generally, and those advising them, when it comes to marketing.

The interesting category on this list is ‘other’. This is everything that lawyers spend on marketing that isn’t on traditional advertising, or online and offline search traffic.

The most important consideration in any marketing decision is ‘return on investment’ (ROI). In terms of where you could be spending your money, the ROI is in ‘other’. That includes money spent marketing to the people you already know and who know you, and those who are likely to refer others to you.

In the Irish legal market place, 77% of people say they choose their solicitor based on these factors. Yet, internationally, it seems that lawyers spend less than 15% of their marketing money investing in these areas.

These two numbers are a classic demonstration of the ‘Pareto Principle’ (or the 80/20 rule) which tells us that a disproportionately small number of causes produce a disproportionately large number of effects. They also present an enormous opportunity.

Search engines

Historically, the big marketing spend for Irish lawyers was the *Golden Pages* – in other words, ‘search’. Now, that investment is primarily web based, whether on internet-based assets like websites or on activities that support and drive traffic to websites, such as search-engine optimisation, web advertising or social media, etc. But the bulk of the marketing money being spent is still on chasing ‘search’.

The smart money should be going into

what we know (and what the public tells us) really works – and that’s on the people who know us, and the people they know.

But, nobody does it. Or at least, nobody does it systematically.

You see, the real news in these figures isn’t that advertising doesn’t work (it does) or that web searches won’t get you clients (they will). The real news is that most solicitors take who they know, and the people that they know, completely for granted when considering where new business could come from. And, insofar as most solicitors engage in any marketing at all, they tend to ignore stacks of boring old cash lying under their noses for the allure of bright shiny objects in the marketing space.

Received wisdom

The old wisdom was that, if we did a good job for our clients, they’d be happy to come back and use us again, and tell others. There are a number of problems with this assumption.

First off, doing a good job is just part of the deal. If we pay for a service, we expect that the person we are paying will be capable of performing the service, and will do so in a helpful and pleasant manner. It’s nice when this happens (and it’s plain disappointing when it doesn’t), but it’s just part of the deal. When all we get is what we’ve paid for, we’re quits.

Expecting repeat business or referrals as a given in these circumstances is just asking too much. We’ve got to do more to have a realistic expectation of that happening, repeatedly and consistently. Yet few do.

Secondly, simply assuming that clients will remember who we are and what we can do for them as they get on with their very busy lives after they deal with us is similarly unrealistic. We’re just not that interesting or remarkable, no matter how fascinating we might think we really are! As time passes, we all forget about transactional experiences, and we forget about the people we dealt with, too.


In the Law Society survey, 85% of people had either never used a solicitor, or had only done so every few years. We do not provide services that most people consume regularly and, unless we do something about actively keeping in touch with those we deal with, why should we expect that, when they have a problem years later, they should even remember who we are, never mind whether we might be the right people to solve it?

Everything we do

Marketing is not just something that we do, it is everything that we do. When we see figures that suggest that only 2% were influenced by advertising in choosing a solicitor, and another 2% searched online, we may be tempted to write off marketing as a waste of time and money.

Smart marketing isn’t just about flashy ads or online wizardry – it’s about putting systems in place to ensure that, when the ideal clients you want in your practice have the problems that you are best placed to help them solve, you are the first (ideally the only) person they think about. The best way to do that is to invest your marketing efforts in cultivating and nurturing those who know you, and have dealt with you before, and are likely to refer others to you.

Success comes to those who are prepared to do what others won’t. Not can’t – won’t. With simple and effective marketing to that great majority of existing and past clients (who are ignored and taken for granted by most solicitors), you can fill your practice with your future ideal clients, who value what you do and are able, and willing, to pay you what you deserve for the quality of the service you provide.

The only important question is, will you? 

Flor McCarthy will be contributing a regular column on marketing your practice in future issues of the Gazette.



PIC: SHUTTERSTOCK

Stiff competition

Ireland has implemented the *EU Damages Directive*. While it fosters greater uniformity across the EU, the position of Irish claimants won't necessarily improve. **Joanne Finn** and **Robert McDermott** check the rules book

JOANNE FINN IS A PARTNER IN BYRNEWALLACE'S CORPORATE TEAM AND HEADS ITS EU, COMPETITION AND REGULATED MARKETS GROUPS. ROBERT MCDERMOTT IS AN ASSOCIATE SOLICITOR AT THE FIRM



Competition law provides for a right to claim compensation for losses resulting from infringements. However, in practice, successful actions for damages by an individual are difficult and rare, for various reasons. These include the complex factual and economic analysis required, the inaccessibility of evidence,

and the availability of injunctive relief, rendering expensive High Court damages actions less appealing.

Often, orders seeking to restrain anti-competitive behaviour will be sought by way of an application for injunctive relief at an early stage in proceedings. If a complainant has successfully prevented future occurrences of the anti-competitive behaviour by way of injunction, then continuing with bringing an expensive High Court action for damages may not be worthwhile where the alleged breach may only

have had a minimal financial impact on the complainant.

The introduction of the *EU Damages Directive* aims to better vindicate this right by prescribing measures in relation to damages and evidence, with the aim of making it less burdensome for an injured party to successfully pursue an action for a breach of competition law.

Ireland has recently implemented the directive by way of the *European Union (Actions for Damages for Infringements of Competition Law) Regulations 2017*.

This article assesses the efficacy of this step from both a competition and litigation perspective and concludes that, while the directive fosters greater uniformity and legal certainty across the EU, its implementation in Ireland does not necessarily improve the position of claimants.

The effect of the regulations in Ireland is lessened by pre-existing equivalent procedural rules in national law, which are often more claimant-

AT A GLANCE

- Successful actions for damages by individuals in competition law cases are difficult and rare
- The *Damages Directive* aims to make it less burdensome for an injured party to successfully pursue an action for a breach of competition law
- The overriding principle of the regulations is that disclosure will not be ordered unless it is proportionate



friendly, as well as limits to the public enforcement powers of the Competition and Consumer Protection Commission (CCPC).

Removal of exemplary damages

Regulation 4(1) provides for the remedy of compensatory damages for those who have been aggrieved by an infringement of competition law, pursuant to [section 14](#) of the *Competition Act 2002*.

Compensation, both under the directive

and the regulations, is designed to “place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed”.

While exemplary or punitive damages were previously available under section 14 of the *Competition Act 2002*, the regulations expressly exclude the award of exemplary damages as a remedy for a claimant who has suffered harm arising from an

infringement of competition law.

Exemplary damages are damages awarded where there has been particularly egregious behaviour on the part of the wrongful party in litigation. The aim of exemplary damages is twofold. First, to punish the defendant and, second, to operate as a deterrent to both the defendant and others from engaging in conduct that is extremely malicious or socially harmful. Only compensatory damages are now available for

“COMPENSATION, BOTH UNDER THE DIRECTIVE AND THE REGULATIONS, IS DESIGNED TO ‘PLACE A PERSON WHO HAS SUFFERED HARM IN THE POSITION IN WHICH THAT PERSON WOULD HAVE BEEN HAD THE INFRINGEMENT OF COMPETITION LAW NOT BEEN COMMITTED’



WHILE THE DIRECTIVE FOSTERS GREATER UNIFORMITY AND LEGAL CERTAINTY ACROSS THE EU, ITS IMPLEMENTATION IN IRELAND DOES NOT NECESSARILY IMPROVE THE POSITION OF CLAIMANTS

breaches of competition law.

As exemplary damages are rarely awarded in private competition actions in practice, the implementation of the regulations has, in practical reality, not changed the availability of damages for breaches of competition law, and claimants will be largely unaffected.

Narrower disclosure rules?

The position of claimants is largely unchanged by the rules on the disclosure of evidence in the regulations.

The overriding principle of the regulations is that disclosure will not be ordered unless it is proportionate. The regulations provide for a number of factors to be considered by the courts in determining whether a request is proportionate, such as the strength of the claim, the scope and cost of the disclosure, and the confidentiality of information contained therein.

This approach is markedly similar to that traditionally adopted by the Irish courts in relation to discovery where, in order to

obtain discovery of a particular category of documents, a party must be able to demonstrate that the disclosure is:

- Both relevant and necessary for the fair disposal of the case, or to save costs,
- Proportionate, given the degree that the disclosure is likely to advance the case, and the availability or otherwise of alternative means of proof open to the party seeking discovery.

Accordingly, the key difference between the traditional common law regime and that

Q FOCAL POINT

AN OPPORTUNITY FOR IRELAND?

The *Damages Directive* seeks to improve the position of claimants in jurisdictions across the EU. At best, its implementation in Ireland does little to change the landscape of private competition enforcement, and they may actually worsen the position of Irish claimants.

Despite a 2001 ruling by the European Court of Justice in C-453/99 *Courage and Crehan*, which found that victims of cartels and other breaches of antitrust law have a right to compensation for harm they suffered, there remains a significant underdevelopment and great diversity (where it does occur) in private competition litigation across the EU.

'Forum shopping' is very popular, with 90% of follow-on actions being taken in just three member states (Britain, Germany and the Netherlands), as the opportunity for victims to obtain compensation greatly depends on which member state they happen to live in. Further, in the vast majority of cases where the EU Commission establishes an infringement of competition rules, it is estimated that victims have

remained uncompensated up to an estimated €23 billion because of ineffective private enforcement.

London is currently seen as the centre of excellence and the 'forum of choice' for competition litigation in the EU. This is the result of many factors, including its extensive disclosure rules, the use of the English language in international business, the reputation of the British courts and the cost rules, and its specialist Competition Appeal Tribunal.

Although a full commentary on the implications of Brexit on competition litigation is beyond the scope of this article, the challenges include: (a) the status of EU Commission decisions as evidence of infringement in British private damages claims, (b) jurisdiction (including the risk of parallel proceedings and inconsistent decisions), and (c) the enforceability of British court judgments in the EU.

Ireland is ostensibly the most similar jurisdiction for plaintiffs to bring these kinds of competition actions, which makes it a claimant-friendly destination, being the only remaining English-speaking and common

law EU member state, with a similar broad disclosure regime to Britain, and a specialist division of the High Court to deal with competition litigation in an expeditious way.

The EU-wide implementation of the directive could have positive effects for Ireland through the uniformity and legal certainty it creates, as well as providing for the recognition of other EU national competition authority decisions as *prima facie* evidence of a breach. However, the lack of concrete collective redress procedures in the regulations is a missed opportunity, given the complexities involved in prosecuting competition law proceedings, which can often lead to prohibitive costs for a claimant.

Ultimately, this may make Ireland a more attractive destination for private competition law enforcement in the wake of Brexit. It remains to be seen whether the regulations will have any immediate or future broader implications for the private enforcement of competition law in Ireland. In practice, little has changed, but maintaining the status quo can be a distinct advantage in uncertain times.



under the regulations is the inclusion of 'confidential information' as an additional ground to refuse disclosure.

While there is no definition of 'confidential information', this additional ground to refuse disclosure makes the new regime narrower and, if anything, somewhat weakens the position of claimants in competition actions.

Liability restrictions

Joint and several liability has also been narrowed slightly under the regulations. The concept of joint and several liability (that where there are concurrent wrongdoers, each is liable for the whole of the damage caused) is already well established in Irish law. This affords protection to a claimant where one of the infringing parties is unable to discharge its share of the damages award.

The regulations provide a number of restrictions on the principle of joint and several liability where one of the infringing parties is an SME. The principle will not apply where the SME's market share is below 5% and paying damages would jeopardise its economic viability. However, an SME may not avail of the protection where it has led the infringing behaviour or has previously been found to have breached competition law.

In practice, actions for a breach of competition law by an SME are rare, so restrictions on joint and several liability may have limited practical application. They are thus unlikely to have a negative impact on a claimant's ability to enforce a judgment awarded in its favour. Regardless of the efficacy, these exceptions to the general principle cannot be seen as enhancing the position of the claimant in damages actions.

Irish peculiarities

Regulation 8 provides that the decisions of the CCPC in relation to infringements of competition law are deemed irrefutably established for the purposes of subsequent actions for damages. However, the CCPC currently does not have the power to make formal infringement decisions in respect of breaches of competition law in Ireland, and must go before the courts for a formal finding.

Existing Irish competition legislation provides that, where a court finds that an undertaking contravened the competition



PICTURE: SHUTTERSTOCK

rules, that finding is binding for the purposes of any subsequent proceedings – that is, a plaintiff in a subsequent damages action must only prove damage (and the quantum) rather than an infringement.

As a result, the practical application of the regulations is limited, particularly given the CCPC's preference for an informal approach to resolving breaches of competition law and the fact that relatively few formal decisions have been taken by the Irish courts on competition issues. This means that the existing provisions and the addition of regulation 8 are of little benefit to claimants in practice.

Of more practical assistance, regulation 8 also provides that the decisions of national competition authorities in other EU member states may be used as *prima facie* evidence of a breach of competition law. This may allow those claimants seeking to use the Irish courts to obtain damages for breaches committed in other EU jurisdictions. Ireland was the forum of choice at the beginning of this year in the first follow-on damages action brought under the European Commission's largest ever cartel fine in the truck-manufacturing sector.

What could have been

The primary means for bringing class action litigation in Ireland is set out in [order 15](#), rule 9 of the *Rules of the Superior Courts*:

"Where there are numerous persons having the same interest or matter, one or more such person may sue or be sued, or may be authorised by the court to defend, in such cause or matter, on behalf, or for the benefit, of all persons so interested."

The directive and resulting regulations fall short of introducing collective action for breaches of competition law, which would have certainly improved the position of smaller claimants, who would otherwise be unable to recover small losses when facing prohibitive litigation costs.

Ireland already has another species of class action that is often utilised in multi-party litigation, referred to as the 'test case' procedure. This form of proceeding is not a class action in the conventional sense, in that it involves multiple sets of proceedings by multiple plaintiffs. It operates in a manner akin to a class action, however, in that one (or more) litigant(s) out of a pool of litigants in related actions will be chosen to take a case and act as a 'pathfinder' case for the other litigants.

The European Commission has increasingly encouraged member states to move towards allowing collective redress for breaches of competition law. Its recommendations on further steps were set to be taken this summer, which could genuinely assist claimants in private competition actions – although the proposals fall significantly short of the equivalent US class action regime. [E](#)

LOOK IT UP

CASES:

- [Courage and Crehan](#) (C-453/99)

LEGISLATION:

- [Directive 2014/104/EU](#) on certain rules governing actions for damages under national law for infringements of the competition law provisions of the member states and the EU
- [European Union \(Actions for Damages for Infringements of Competition Law\) Regulations 2017](#) (SI 43/2017)

Standard bearers

Bribery and corruption continue to rate among the top economic crimes experienced by organisations globally. **James O'Rourke** refuses the sweetener

JAMES O'ROURKE IS SENIOR LEGAL COUNSEL AT PERRIGO COMPANY PLC



For organisations operating and selling into numerous markets around the world, the practice of outsourcing business functions to local partners in situ has become the norm.

This is a direct result of globalisation and has allowed for greater efficiency and reduced product costs that ultimately can be passed onto the customer by way of lower price.

This has helped organisations grow and access new markets, local innovation, and resources. The model is actively encouraged by local governments, as it brings employment, knowledge and money to that country. This all seems to be win-win.

However, as reliance on third parties grows, so does the difficult job of controlling and supervising the actions of these third parties, particularly when it entails issues relating to bribery and corruption.

Based on results from PwC's 2016 *Global Economic Crime Survey*, bribery and corruption continue to rate in the top four economic crimes experienced by organisations globally.

AT A GLANCE

- Global organisations tend to outsource business functions to locally based partners for the sake of efficiency and reduced product costs
- As reliance on third parties grows, controlling and supervising their actions becomes more challenging
- This has ramifications for bribery and corruption – which have serious consequences for global organisations
- A commitment to an established anti-bribery and corruption management system is a vital part of a well-managed organisation

Bribery and corruption

Put simply, bribery is the practice of offering something, usually money, to gain an advantage. Corruption is an abuse of a position of trust in order to gain an undue advantage. There is a general consensus that bribery and corruption reduce efficiency and increase inequality. They undermine the rule of law, weaken trust in public institutions, and challenge democratic principles. Estimates show that the cost of corruption equals more than 5% of global GDP (US\$ 2.6 trillion, World Economic Forum), with over US\$1 trillion paid in bribes each year (World Bank).

What organisations must




IT MAKES ETHICAL AND BUSINESS SENSE FOR ORGANISATIONS TO TAKE A MORE PRO-ACTIVE AND ROBUST APPROACH TO VETTING AND MONITORING THIRD PARTIES

Standard bearer

realise is that bribery and corruption are not an academic risk – they are real and have serious consequences. And they happen every day, both at home and abroad. Organisations are particularly exposed in foreign jurisdictions, or in any market where they operate under time pressures, with intense competition and/or where profit margins are tight. Enthusiastic and ambitious organisations trying to adapt to unfamiliar legal systems, business practices, and political circumstances will often find doing business in such an environment difficult. And criminals deliberately set out to expose this.

The temptation is there to look for that once-off helping hand to cut a corner for the good of the organisation or to ‘cut the red tape’ or ‘get ahead of the competition’. The justifications are endless.

But by not fully committing third parties to a code of conduct, and vetting and closely monitoring the relationship, organisations and the senior managers within those organisations are exposing themselves. Yet, despite these vulnerabilities, organisations are

falling short in mitigating avoidable risks by failing to adopt even the most basic controls to manage their third parties.

New legislation

In addition to the ethical reasons for an Irish organisation not to engage in bribery and corruption and the current, but old, legislation in this area, the *Criminal Justice (Corruption) Bill 2016* is imminent. When enacted, the bill is likely to have significant implications for organisations doing business in Ireland and abroad, as it proposes significant new white-collar criminal offences, including ‘offences by the bodies corporate’, where a director/manager/employee may also be guilty of an offence, and the ‘presumption of corrupt enrichment’ where, if a public official maintains a standard of living “above that which is commensurate with his/her official emoluments and interests”, they may be caught by the bill. These are far-reaching developments and will apply to corrupt practices carried on outside the State.

The bill will effectively introduce strict

liability for corporate bodies found guilty of corruption offences. However, a defence will be an ability to demonstrate that it took all ‘reasonable steps’ and exercised ‘due diligence’ to prevent the corruption from taking place.

Under the bill, all organisations will need to control and prevent corruption within that organisation. This can be done by way of an anti-bribery and corruption management system (ABMS).

It is generally accepted among large multinational organisations operating in Ireland that commitment to an established ABMS is a vital part of a well-managed organisation, as it helps an organisation to enhance its corporate reputation and to avoid potentially corrupt business, and the high cost and reputational damage that can result from involvement in corruption.

As I’m sure many of you reading this article can attest, there is many a raised eyebrow in US and British companies when they learn – particularly around the due diligence in the acquisition of an Irish



company – that there is no Irish statutory equivalent to the *Foreign Corrupt Practices Act 1977* in the US and the *Bribery Act 2010* in Britain. But this is about to change – and soon.

Identifying the risks

To combat this emerging concern, boards are increasingly looking to their internal teams to take greater responsibility for both preventing incidents of bribery and corruption and strengthening organisational resilience.

A pragmatic first step in that process is conducting a bribery and corruption risk assessment to identify and evaluate the risk of the various business practices, and their likelihood of encountering corruption compliance issues. This process requires a deep understanding of the business and the differing potential exposures across business units and supply chains that essentially allow an organisation to rank risk levels, so that they may allocate resources to higher risk areas rather than lower risk areas. This is critical in avoiding overspending on compliance and in managing budgets. More specifically, the key risks, in most risk assessments, are likely to include:

- **Country risk:** although corruption can and does occur in every country, baseline bribery risks tend to be higher in some countries than in others. A good guide here is Transparency International's *Corruption Perceptions Index*.
- **Business operations/business partnership risk:** higher risk exists if the organisation conducts business through joint ventures or through a range of other business intermediaries, such as international sales representatives and resellers. Such third parties are common sources of corruption risk.



Standard bear

- **Industry/sector and business opportunity risk:** certain industries or sectors are generally recognised as presenting higher corruption risks than others, depending on the nature and frequency of government interactions. These include state-owned entities/government customers and businesses that are heavily regulated.

Documented risk assessments can generate valuable credit with enforcement authorities during any investigation, but they also serve a key role in helping organisations detect and prevent bribery and corruption.

Risk assessments are as important for an organisation with mature compliance programmes as they are for organisations launching an ABMS for the first time, as they provide a mechanism to identify new risks that may have arisen, for example, from a change in the law or a change in the organisation's structure or supply chains.

Implementing an ABMS

Any organisation operating in high-risk industries or countries should be able to demonstrate a documented ABMS based on risk-based policies, procedures and controls. An ABMS cannot provide certain assurance that no bribery or corruption has occurred or will take place in an organisation, but it does

set out the rulebook of preventative measures and demonstrates to the world that the organisation has implemented reasonable and proportionate measures specifically designed to prevent bribery and corruption.

An effective ABMS requires continuous monitoring to deliver continual improvement. Most weaknesses identified with an ABMS are in the areas of document management and record keeping. It is all well and good having perfectly drafted legal and compliance policies and procedures but, if these are not easily accessible and it cannot be easily demonstrated to a third-party enforcement authority that they are understood and followed by all employees, and the organisation generally, they will be of little use to that organisation in the event of an investigation.

The real skill for a lawyer tasked with devising and implementing an ABMS will be to do so without introducing an overly cumbersome set of rules and policies that do not work practically or are too convoluted to follow. Drafting complex and all-encompassing policies and guidelines are, despite their academic difficulties, the easy part. It is the drafting of user-friendly and easy-to-read policies, their implementation, and getting staff to understand (or even read) and follow them that is the difficult part – and where the lawyers' ability to apply the law is fundamental. Further, the training of staff and an ability to effectively communicate a complicated message in a simple, practical, and relevant format is critical to the overall exercise.

In establishing an ABMS, a good place to start is with the most senior levels of management and, perhaps, a 'message from the CEO' or something similar. This helps employees to understand that this is a serious issue and is supported by the highest levels of

THERE IS A GENERAL CONSENSUS THAT BRIBERY AND CORRUPTION REDUCE EFFICIENCY AND INCREASE INEQUALITY. THEY UNDERMINE THE RULE OF LAW, WEAKEN TRUST IN PUBLIC INSTITUTIONS, AND CHALLENGE DEMOCRATIC PRINCIPLES

CORRUPTION



management. This will also set the tone for what is to come.

After the risk assessment, the following guidelines should apply for the implementation of an ABMS:

- Proportionate, clear, and easy-to-follow procedures,
- Top-level management commitment that is demonstrated to all the organisation,
- Due diligence on third parties and agents, particularly those that are paid by way of commission,
- Communication and training, and
- Periodic monitoring and review.

You know it makes sense


Regulators are clamping down on unethical practices. The expansion of investment in emerging markets has heightened the risk of bribery and corruption faced by organisations today and, combined with the complex network of international laws, there are challenges to be faced up to in this area in many ways.



UNDER THE BILL, ALL ORGANISATIONS WILL NEED TO CONTROL AND PREVENT CORRUPTION WITHIN THAT ORGANISATION

The issue of how to manage third parties that are acting on an organisation's instruction is being pushed to the fore, and the importance of setting the right tone at the top of an organisation will be crucial. Key gaps in compliance will need to be identified and addressed. Adequate resources will need to be allocated to rectify an organisation's weak internal systems and controls so these cannot be easily exploited by opportunistic third parties. Do not forget – there are professional criminals out there who spend their days seeking out weak compliance systems. They only need to get lucky once.

It makes ethical and business sense for organisations to take a more proactive and robust approach to vetting and monitoring third parties, as well as a more hands-on approach in the continuing management and monitoring of their ABMS. This should lead to fewer challenges further down the road.

Let's face it: we all want the win-win scenarios to continue but, without proper checks and balances, this may quickly turn to a lose-win – where the instructing organisation loses drastically and the criminals win. 



INCISIVE

Your partner in delivering financial success

We believe giving clients direct access to our most experienced partners is key when it comes to helping them make the optimal business decisions. Isn't it time you leveraged our experience to make better financial decisions?

Talk to us about how we could help you by calling us on: +353 1 6142500 or email us at info@smith.williamson.ie



Smith & Williamson Freaney Limited
Authorised to carry on investment business
by the Institute of Chartered Accountants
in Ireland A member of Nexia International

www.smith.williamson.ie

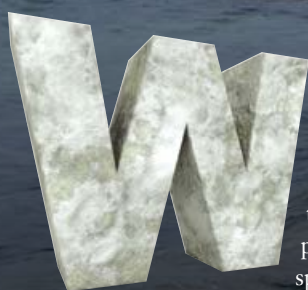


Limestone cowboy

The decision of the European Court of Justice in *Sweetman v An Bord Pleanála* has had major implications for development in Ireland. **Tara O'Connor** goes to the waters and the wild

TARA O'CONNOR IS AN ASSOCIATE SOLICITOR AT PHILIP LEE. SHE WISHES TO THANK ALICE WHITTAKER FOR REVIEWING THIS ARTICLE

*"...when I try to imagine a faultless love
Or the life to come, what I hear is the murmur
Of underground streams, what I see is a limestone landscape"*
– WH Auden, In Praise of Limestone



When Auden compared limestone landscapes to a 'faultless love' in the 1940s, he likely could not have predicted the legal issues that would spring from the same sort of karstic regions in future years. Though less poetic, the decision of the European Court of Justice in Case 258/11 *Sweetman v An Bord Pleanála*, relating to the impact of the Galway bypass on a section of limestone pavement, is equally noteworthy, given the court's pronouncements on the provisions of the *Habitats Directive* and the potentially stark consequences it has for development in Ireland.

The *Habitats Directive* (92/43/EEC) on the conservation of

natural habitats and wild fauna and flora aims to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements.

Article 3 of the directive requires the establishment of a

European network of *special areas of conservation* (SACs), collectively known as Natura 2000 (or 'European sites'). This network is made up of sites hosting habitat types listed in annex I of the directive, habitats of the species listed in annex II of the directive and, since 1994, *special protection areas* (SPAs) classified under the *Birds Directive*. Natura 2000 is the most extensive network of protected sites in the world.

The process of designation of SACs is lengthy, encompassing three distinct phases. Member

AT A GLANCE

- The *Habitats Directive* aims to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements
- Effectively, the decision in *Sweetman* makes it seemingly very difficult, if not impossible, for projects to be permitted where even the smallest areas of protected habitats will be destroyed as a consequence



THE JUDGMENT HAS IMPOSED A VERY STRICT INTERPRETATION OF WHAT ‘INTEGRITY’ MEANS FOR THE PURPOSES OF ASSESSING WHEN A PLAN OR PROJECT IS LIKELY TO HAVE ‘AN ADVERSE EFFECT ON THE INTEGRITY’ OF A SITE



PIC: SHUTTERSTOCK

IT IS UNCLEAR WHETHER THE COURT'S STRICT INTERPRETATION IS APPLICABLE TO ALL EUROPEAN SITES, OR JUST PRIORITY HABITATS

states submit a list of sites that host annex I habitat types, and/or species in annex II, to the European Commission following comprehensive assessments in their jurisdiction. From there, the commission adopts a list of [sites of community importance](#) (SCIs) in agreement with member states. The final step is designation by the member states of these SCIs as special areas of conservation. This must be done within six years of their designation as an SCI.

Article 6 of the directive sets out the legal consequences for a site once it has been designated. Where a plan or project is found to have a significant effect on the conservation objectives of a European site, that plan or project is subject to an [appropriate assessment](#) of its effects on the site. Authorisation will only be permitted for such a project if:

- It will not adversely affect the integrity of the site, or
- Where there are no reasonable or feasible alternatives, the development can be justified by imperative reasons of overriding public interest (IROPI).

Priority natural habitat types are those in danger of disappearance, and are indicated by an asterisk in annex I to the directive. Derogations from the directive in relation to sites containing priority natural habitat types and/or a priority species are only permitted for reasons of human health or safety.

One such priority site under annex I of the *Habitats Directive* is limestone pavement. The *Interpretation Manual of European Union Habitats* describes these complex stone mosaics as “regular blocks of limestone known as ‘clints’, with loose flags separated by a network of vertical fissures known as ‘grykes’ or ‘shattered pavements’, containing more loose limestone rubble”. The protection of this unique habitat was at issue in the *Sweetman* proceedings.

The Galway bypass

On 20 November 2008, An Bord Pleanála granted permission for the N6 Galway City outer bypass road scheme by Galway County Council and Galway City Council. However,

the project was planned to traverse the Lough Corrib SCI, which hosted a variety of priority habitat types including limestone pavement. The development would result in the permanent loss of 1.47 hectares approximately of the pavement from the SCI.

Notwithstanding this, the inspector and the board considered that the project would not have a significant effect overall: “The part of the road development being approved would be an appropriate solution to the identified traffic needs of the city and surrounding area ... and, while having a localised severe impact on the Lough Corrib candidate special area of conservation, would not adversely affect the integrity of this candidate special area of conservation. The development, hereby approved, would not, therefore, have unacceptable effects on the environment and would be in accordance with the proper planning and sustainable development of the area.”

On 9 October 2009, the High Court upheld An Bord Pleanála’s decision and



refused Mr Sweetman leave to judicially review the decision. Sweetman, supported by the State, unsuccessfully argued that An Bord Pleanála had erred in its interpretation of article 6 of the *Habitats Directive* in finding that the proposed development would not have an adverse effect on the integrity of the site. Mr Justice Birmingham stated that he was not persuaded that the board had misinterpreted the *Habitats Directive* and that its approach “accords with the clear language of the legislation”. He noted that the concepts of significant impacts and effect on the integrity of the site did not have equivalence under the directive: “In my view, the clear language of the *Habitats Directive*, in its ordinary and natural meaning, provides for a two-stage procedure involving the national authorities ascertaining in the first instance whether a project under consideration is one that is likely to have a significant effect on the site and then, if that is established, moving on to consider whether the proposal is one that will affect the integrity of the site.”

On 6 November 2009, Mr Sweetman was granted leave to appeal this decision to the Supreme Court.

On 13 May 2011, the Supreme Court referred the following questions to the European Court of Justice for a preliminary ruling under [article 267](#) of the *Treaty on the Functioning of the European Union*:

- “1) What are the criteria in law to be applied by a competent authority to an assessment of the likelihood of a plan or project the subject of article 6(3) of the *Habitats Directive*, having ‘an adverse effect on the integrity of the site’?”
- 2) Does the application of the precautionary principle have as its consequence that such a plan or project cannot be authorised if it would result in the permanent non-renewable loss of the whole or any part of the habitat in question?
- 3) What is the relationship, if any, between article 6(4) and the making of the decision under article 6(3) that the plan or project will not adversely affect the integrity of the site?”

Ultimately, the ECJ determined that the board’s decision to grant development consent for the bypass was contrary to the directive. The court held that: “If, after an

appropriate assessment of a plan or project’s implications for a site ... the competent national authority concludes that that plan or project will lead to the lasting and irreparable loss of the whole or part of a priority natural habitat type whose conservation was the objective that justified the designation of the site concerned as an SCI, the view should be taken that such a plan or project will adversely affect the integrity of that site.”

The matter was remitted to the Supreme Court and An Bord Pleanála consented to an order quashing its decision.

Implications of the decision

The judgment of the European Court has imposed a very strict interpretation of what ‘integrity’ means for the purposes of assessing when a plan or project is likely to have ‘an adverse effect on the integrity’ of a site for the purposes of the directive.

Advocate General Sharpston’s opinion was notably supportive of this very strict interpretation of ‘integrity’ for the purposes of the directive: “Any interpretation of article 6(3) that provides a lower level of protection than that which article 6(4) contemplates cannot be correct ... allowing them [member states] to authorise more minor projects to proceed under the former provision, even though some permanent or long-lasting damage or destruction may be involved, would be incompatible with the general scheme which article 6 lays down. Such an interpretation would also fail to prevent what the commission terms the ‘death by a thousand cuts’ phenomenon, that is to say, cumulative habitat loss as a result of multiple, or at least a number of, lower-level projects being allowed to proceed on the same site.”

Effectively, the decision in *Sweetman* makes it seemingly very difficult, if not impossible, for projects to be permitted where even the smallest areas of protected habitats will be destroyed as a consequence, unless it is possible to proceed via the IROPI/article 6(4) process.

This ‘death by a thousand cuts’ phenomenon comes into keen focus in relation to the protection of raised bog habitats in Ireland. Ireland is obliged to report to the European Commission every six years regarding the status of its EU protected habitats and species in Ireland under article 17 of the directive. In Ireland’s latest such

report to the commission, the conservation status of raised bog in Ireland is classed as declining. Applying the stringent *Sweetman* test with regard to ‘integrity’ to raised bog habitats, it would appear to sound the death knell for turf cutting in these areas, on both a commercial and domestic scale.

A further notable point arising from the judgment is that, at first blush, and in the absence of any subsequent cases specifically on this point, it is unclear whether the court’s strict interpretation is applicable to all European sites, or just priority habitats. In particular, the ECJ observed that competent national authorities “cannot ... authorise interventions where there is a risk of lasting harm to the ecological characteristics of sites which host priority natural habitat types”. This, in the court’s view, would particularly be so where there is a risk that an intervention would bring about “the disappearance or the partial and irreparable destruction of a priority natural habitat type present on the site concerned”.

Ultimately, Ireland’s overarching obligation is to endeavour to achieve favourable conservation status for each European site. Even small interventions that individually seem to have little impact can undermine Ireland’s ability to meet these obligations by decreasing the area of habitat. Recent destructive fires across many areas of protected habitat have made this task all the more challenging. Given the lofty bar that has been set in cases involving European sites in both the European and the national courts, it seems the ‘faultless love’ Auden saw reflected in limestone all those decades ago may be preserved for the time being, and not just in a collection of poetry. 

LOOK IT UP

CASES:

- Case 258/11 *Sweetman v An Bord Pleanála*

LEGISLATION:

- *Birds Directive* (2009/147/EC)
- *Habitats Directive* (92/43/EEC)
- *Treaty on the Functioning of the European Union*

At full capacity

Practitioners need to be aware of best practice in identifying and dealing with clients who may be suffering from dementia. **Prof Brian Lawlor** and **Matthew Gibb** advise the advisers

BRIAN LAWLOR IS A CONSULTANT OLD-AGE PSYCHIATRIST AND DIRECTOR OF THE MERCER'S MEMORY CLINIC AT ST JAMES'S HOSPITAL. MATTHEW GIBB IS A SENIOR SOCIAL WORKER AT THE CLINIC



Dementia is an umbrella term for a syndrome characterised by significant impairment in memory, language, and decision-making ability that results in loss of function. Dementia is not one disease but can be caused by multiple diseases that affect the brain. The most common brain disease leading to dementia is Alzheimer's disease, but

there are many other causes, such as Lewy Body disease, vascular dementia, and frontotemporal dementia.

Dementia is usually progressive and results in deterioration in function and impairs the person's ability to live independently over time. The condition does not begin overnight; there is usually a stage of mild cognitive impairment that precedes dementia where there is memory loss or other cognitive deficits, but no loss of function.

The main risk factor for dementia is age – the older you are, the more likely you are to develop dementia – and most cases occur in people in their 60s, 70s, 80s and 90s. However,

less commonly, it can also present in younger people in their 40s and 50s. This is referred to as early-onset (under 65 years) as opposed to late-onset (over 65 years) dementia.

A person who has dementia may already have a diagnosis and be aware of it; however, some individuals may have dementia and not be aware, or indeed may not have received a formal diagnosis.

Capacity and decision-making

Dementia can affect short-term memory and the ability to express oneself and comprehend. It can cause difficulties with money-management, way-finding, orientation, and carrying out procedures and tasks (such as dressing). Most importantly, it can interfere with decision-making.

This may not be obvious or apparent to the casual observer, and it is crucial – where you might have concerns about an individual with whom you are having a consultation – to check with a family member (with the client's permission) or see that individual in the company of a family member.

While you must assume capacity unless otherwise proven, it's wise to carry out your own checks to be sure that a person can consistently recall

AT A GLANCE

- How dementia affects a person's capacity or ability to make decisions and how the severity of an individual's dementia is assessed
- Approaches to communicating with clients with dementia
- Enduring power of attorney and assisted decision-making legislation



PIC: SHUTTERSTOCK

information that you give them (for example, ask them to repeat back their understanding of what you've just explained to them). Where a person has dementia that is affecting their decision-making, it is likely that they will have difficulty explaining issues back to you and, in particular, the consequences of particular decisions on a consistent basis.

A person who has dementia can be taken advantage of, and there are numerous instances of such individuals being scammed, either by telephone or internet, providing credit card numbers and bank account details.

While the vast majority of family and friends will always act in the best interest of the person with dementia, unfortunately, financial abuse may occur, and people with dementia can be exploited. Watching out for cognitive

difficulties and being aware of the possibility of dementia is crucial so that you may be alert to this and be in a position to act in your client's best interest.

Dementia severity

You may often see a doctor's report refer to the 'mini mental state examination' or MMSE. This is a paper-and-pencil screening test that assesses orientation, attention, short-term memory, language and copying skills. It is scored out of 30. A score of less than 24 indicates dementia in many cases, although due to age and education effects, some people above this score will have dementia where some people below this score will not have dementia.

It's helpful to maintain good eye contact, speak slowly and distinctly, and check as you

go along that the person grasps fully what you are saying.

Written communication is also of benefit, as the person can refer to the written details if they are having difficulty with short-term memory. In this way, you will pick up if the person has a good grasp of what you want them to understand as part of the consultation.

Dementia and important decisions

Always ask the person if they have a memory or cognitive disorder or whether they have received a diagnosis, such as a dementia, from a doctor if you have concerns. Regarding making a will, it should be apparent if there are cognitive issues as they go through the details of what their assets are and who should inherit, and they should be able to

DEMENTIA IS AN UMBRELLA TERM FOR A SYNDROME CHARACTERISED BY SIGNIFICANT IMPAIRMENT IN MEMORY, LANGUAGE, AND DECISION-MAKING ABILITY THAT RESULTS IN LOSS OF FUNCTION



ENDURING POWER OF ATTORNEY SHOULD BE RECOMMENDED AS PRUDENT PLANNING TO CAREGIVERS, AS WELL AS THOSE WITH MEMORY AND/OR COGNITION PROBLEMS

indicate if they are being put under pressure by family members.

It's often helpful to have them repeat for consistency what they want to do. Even in the presence of dementia, a person may still retain enough capacity to make a valid will. Where there are any concerns regarding cognition and, in particular, where the person carries a diagnosis of dementia, it's wise to ask the person's doctor or specialist to give an opinion.

A person may have capacity to make a will but not have sufficient capacity to sell their house or make a financial transaction, or vice versa. Each specific decision has to be assessed

on its own merit. Unfortunately, because dementia is progressive, decision-making capacity is eroded over time. Many people with dementia may have capacity to make decisions at the mild stage but, at the moderate-to-severe stage, may have lost capacity.

Enduring power of attorney

People who have been diagnosed with dementia should ensure their affairs are in order while they have the capacity to make decisions for themselves. This is particularly important in the case of wills, enduring power of attorney, and advanced healthcare directives.

Enduring power of attorney should be recommended as prudent planning to caregivers, as well as those with memory and/or cognition problems. The cost of taking out an enduring power of attorney and the cost of registration should be outlined at the beginning of the process.

The *Assisted Decision-Making (Capacity) Act 2015* introduces, in a phased manner, a number of different support mechanisms for decision-making. Families are likely to need guidance in a number of areas, such as advanced healthcare directives and the different ways to help individuals to make decisions about their own lives.



WHERE THERE ARE ANY CONCERNS REGARDING COGNITION AND, IN PARTICULAR, WHERE THE PERSON CARRIES A DIAGNOSIS OF DEMENTIA, IT'S WISE TO ASK THE PERSON'S DOCTOR OR SPECIALIST TO GIVE AN OPINION

There are a number of other issues that may arise for people with dementia following a diagnosis, including employment issues, discrimination, insurance, and driving.

Employment issues

As mentioned earlier, dementia can affect people under the age of 65 and, thus, some may still be in employment. This is a particularly vulnerable group of people who will need much support and advice as the illness progresses. Work is hugely important, as it brings with it financial reward, social connections, psychological well-being and, in some cases, physical activity. We should be actively encouraging people diagnosed with dementia to keep working as long as they enjoy it and it is safe for them and those around them. Dementia is a form of disability and, as such, people with dementia are protected by the 1998 to 2015 *Employment Equality Acts*.

The concept of 'appropriate measures' can protect those with a dementia in the workplace. "Appropriate measures mean effective and practical changes that the employer puts in place to enable employees with a disability to carry out their work on an equal footing with others" (*Irish Human Rights and Equality Commission*).

For a person with dementia, this might mean offering flexible working hours, having somebody double-check their work, or being assigned different duties.

A person cannot be dismissed from their work just on the basis of a diagnosis of dementia. The employer is obliged to try and take appropriate measures to accommodate the person at work, provided that this does not create a 'disproportionate burden' on them.

There may come a time when the person with dementia is unable or no longer wishes to continue working. At this point, the

individual should seek advice on the most advantageous way to exit employment. This may include, for example, triggering an income-protection policy, seeking redundancy, taking sick leave, and/or arranging social welfare payments.

Discrimination

The *Equal Status Acts* ban discrimination and harassment and promote the 'reasonable accommodation' of people with disabilities.

"Reasonable accommodation' means providing specific treatment or facilities to make sure that people with a disability can avail of particular goods, services, housing, and so on" (*Your Equal Status Rights Explained*, Irish Human Rights and Equality Commission).


For example, with regard to people with dementia, this might mean that you are assisted to find your departure gate at an airport or that supermarket offers are explained clearly to you. If you feel that your rights have been infringed in relation to employment equality or equal status legislation, then you can submit a complaint to the Workplace Relations Commission and the Irish Human Rights and Equality Commission.

Insurance

People who are newly diagnosed with a dementia should carefully check all life insurance/assurance policies and mortgage protection policies, as some will pay out early on a diagnosis of dementia. Some companies will specify a particular subtype, such as Alzheimer's disease, and in these cases one may wish to consult with a medical specialist in dementia to assist with a claim. Other policies such as specified illness cover and critical illness cover will often pay out on the basis of a diagnosis. People still in employment when receiving

a diagnosis may have some form of income protection cover, which will invariably pay out if one is unable to continue in employment.

Driving

People who have been diagnosed with a dementia are not automatically excluded from driving. Indeed the vast majority of those diagnosed continue to drive safely and will often make their own decision to stop driving at some point in the future. However, they are obliged to fulfil certain tasks. Firstly, they must inform their insurance company of their diagnosis or run the risk of having no cover in the event of an accident. Each insurance company deals with this information in their own way, but most will ask for some form of medical confirmation that the individual is safe to continue driving. Secondly, the person with dementia must inform the National Driving Licence Service about their change in circumstances. Thirdly, as laid out in the Road Safety Authority's *Medical Fitness to Drive Guidelines*, the physician would normally recommend a formal driving assessment by a 'suitably qualified' driving assessor before making a decision on an individual's fitness to drive. 

LOOK IT UP

LEGISLATION:

- *Assisted Decision-Making (Capacity) Act 2015*
- *Employment Equality Acts*
- *Equal Status Acts*

LITERATURE:

- Irish Human Rights and Equality Commission, *Your Equal Status Rights Explained*
- Road Safety Authority, *Medical Fitness to Drive Guidelines*



A COMPARATIVE EXAMINATION OF MULTI-PARTY ACTIONS: THE CASE OF ENVIRONMENTAL MASS HARM

Joanne Blennerhassett. Bloomsbury Professional (2016), www.bloomsburyprofessional.com. ISBN: 978-1-50990-529-4. Price: €60.

The recent Grenfell fire tragedy looms large reading this book, as the author engages with the issue of redressing mass harm and the possible future trend of the use of multi-party actions (MPAs).

The MPA mechanism is examined through the prism of the familiar common law jurisdictions, along with contributions from the EU and the US.

The author highlights the lack of an effective mechanism for MPAs in this jurisdiction and the alternative methods in Irish litigation where an MPA would have been the obvious tool. The essential goals of MPAs are access to justice, procedural efficiency, and fairness for the plaintiff – made accessible through a collective voice and/or the ‘burden sharing’ of costs.

In discussing alternatives to the MPA and the potential that might exist for its abuse, the author examines the examples of Australia and Canada with regard to the ‘opt-in model’ and how to avoid free riders.

The opposing EU and US positions on the concept of private versus public enforcement

CIVIL JUSTICE SYSTEMS

A Comparative Examination of Multi-Party Actions

The Case of Environmental Mass Harm

Joanne Blennerhassett

Hart • CH Beck • Nomos

offers a template for addressing the Irish need for an MPA mechanism that works in the context of the Irish legal system.

David Bassett is assistant solicitor with Aylmer & Co, Solicitors.

CONSTRUCTION ADJUDICATION IN IRELAND

Anthony Hussey. Routledge (2017), www.routledge.com. ISBN: 978-1-13818-792-4. Price: Stg£110.

The **Construction Contracts Act 2013**, which came into effect in July 2016, introduced an entirely new dispute resolution procedure into Irish law. It applies to most construction contracts relating to commercial property, including professional services agreements and to certain contracts for construction of housing.

The author is a solicitor with many years’

Construction Adjudication in Ireland

Anthony Hussey



SEMINAR 4 CPD POINTS

COMPANIES (ACCOUNTING) ACT 2017 & BENEFICIAL OWNERSHIP REGULATIONS SEMINAR

26 October 2017, 8:30am – 1pm
Chartered Accountants House,
Dublin

Speakers:

Dr Thomas B Courtney and Úna Curtis

COVERS THE FOLLOWING:

- Four fold classification of companies and the micro & small regimes
- Miscellany of Amendments to the Companies Act 2014
- Consolidation and medium and large companies
- The Beneficial Ownership Regulations

PRICE: €350

The delegate fee includes a copy of *Bloomsbury Professional's Company Law Guide 2017* (RRP €165)

All enquiries to

T: +353 (0) 1 6373920

E: seminars@bloomsbury.com



Bloomsbury Professional

BOOKS



experience of construction disputes. This provides a very helpful counterpoint in the book, grounded in the author's perspective from practice, to the discussion of the act and the relevant principles. The book is organised to mirror the chronology of a construction dispute, setting out the scope of the act, provisions relating to payment, and the various steps in the adjudication process itself.

A particular strength of this book is the quality of the comparative analysis of similar legislation in other jurisdictions. This will be very valuable to Irish readers, who will be grappling – as practice and jurisprudence develop around the act – with the meaning of key terms and the interpretation of the act in the particular context of Irish law.

The equivalent British legislation, now over 20 years old, had a dramatic effect on dispute resolution. Practitioners had to adapt quickly to the very tight timescales of the procedure. As such, this book is a most welcome guide to practitioners navigating their way through adjudication as it develops in Ireland – although, as the author notes, it is aimed at all parties to construction projects, from developers through to professional teams and lawyers. The clear style in which the book is written should ensure that it will indeed appeal to a broad audience.

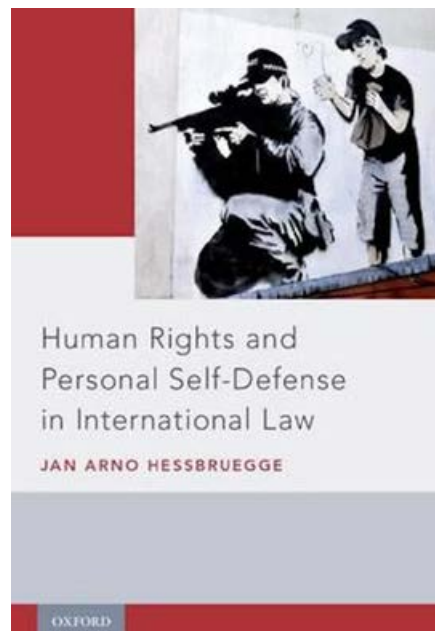
Deirdre Ní Fhloinn is a barrister currently undertaking a PhD at Trinity College Dublin, on legal remedies for housing defects.

HUMAN RIGHTS AND PERSONAL SELF-DEFENCE IN INTERNATIONAL LAW

Jan Arno Hessbruegge. Oxford University Press (2017), global.oup.com. ISBN: 978-0-19065-502-0. Price: Stg£64.

When one considers the area of human rights, it conjures up images of the oppressed taking on an unwieldy system and the 'barbed-wire hands' of Amnesty International. What if, however, human rights can be used as justification for positive actions?

Covering such cases as the shooting of Jean Charles de Menezes, the Moscow theatre siege (Finogenov), and resistance during the Holocaust, the book explores the theory that the right to self-defence has its origins in culture and is supported by international law – and specifically international human rights law. Dr Hessbruegge moves deftly between Aristotle and Cicero, through to the *UN Charter*, all the while keeping the reader interested in the underlying argument that the right to self-defence is a right that can, in the right circumstances, be used against forcible denials of the right to self-determination, which may be met with organised armed resistance as a measure of last resort. Dr Hessbruegge even discusses the right to defend others who are the subject of genocide where the state has failed or is failing to intervene. The ability to switch between law, philosophy, and political science makes the book a fasci-



nating read for practitioners in human rights, scholars, and mere solicitors!

Dr Hessbruegge works for the New York Office of the United Nations High Commissioner for Human Rights. He is also a visiting professor for international law at the UN-mandated University for Peace in Costa Rica. [G](#)

Ben Mannering is a solicitor with the State Claims Agency.

THOMSON REUTERS

ROUND HALL



DEBT RECOVERY HANDBOOK

2nd Edition | Martin Daly
Mason Hayes & Curran

The new edition of Debt Recovery Handbook provides practitioners with a straightforward and practical guide to the debt recovery process, which has seen major change in the last 10 years. The book covers new court rules, legislative changes, important judgments as well as the impact of the Personal Insolvency Act and new bankruptcy rules.

ISBN: 9780414065161 | Price: €145
Publication: December 2017



IMMIGRATION AND CITIZENSHIP LAW

1st Edition | John Stanley

Immigration and Citizenship Law is the first comprehensive statement of Irish immigration, free movement, and citizenship law. It provides the practitioner with a clear overview of these areas of Irish law, and succinct analysis of the key legal issues, referring to reported and unreported decisions of the courts, legislation and administrative schemes.

ISBN: 9780414034839 | Price: €225
Publication: December 2017

PLACE YOUR ORDER TODAY

TRLUKI.orders@thomsonreuters.com
+44 345 600 9355
roundhall.ie



the answer company™

THOMSON REUTERS®

CONVEYANCING COMMITTEE AND TAXATION COMMITTEE

LPT REVISED REVENUE CLEARANCE GUIDELINES

Revenue has decided to again increase the general clearance thresholds for LPT. The last time this was done was in November 2015, and it had the effect of reducing the number of cases requiring specific clearance for the purpose of closing property sales. The thresholds are now being further increased, in recognition of the further increase in property prices.

Revenue has indicated that these changes will come into effect for sales on or after 1 September 2017. Revenue is updating its *Guidelines for the Sale or Transfer of Ownership of a Relevant Residential Property* and these, including revised examples, will be available on www.revenue.ie.

Where at least one of the four conditions in paragraphs 4.2.1 to 4.2.4 of the above guidelines (relating to clearance for potential uncrystallised liabilities at date of sale) applies at the date of sale, a purchaser can be assured that Revenue accepts that there is no charge on a property in respect of 'uncrystallised' liabilities following a sale, where it establishes after the sale that a vendor had under-declared his or her LPT liability before that sale.

In summary, the main revisions to the clearance guidelines include:

4.2.1. General clearance condition 1 has been changed to reflect an increased limit from €300,000 to €350,000 – that is, where a property is sold for a price that does not exceed €350,000, general clearance will apply.

4.2.2. General clearance condition 2 – allowable valuation margin. The condition in this section relates to the allowable margin by which the sale price of a property exceeds the valuation band/chargeable value that was declared for the property in relation to the 1 May 2013 valuation date. The allowable margins have been changed (from 50% to 80% in Dublin city and county, and from 25% to 50% for all other property), and now are:

- Where the sale price is not more than 50% (80% for properties in Dublin city and county) higher than the upper limit of the band declared, and
- In the case of properties for which the declared chargeable value exceeds €1,000,000, where the sale price is not more than 50% (80% for properties in Dublin city and county) higher than the chargeable value.

4.2.3. General clearance condition 3 – expenditure on enhancements to a property. Where the sale price exceeds the valuation band/

chargeable value declared, any such excess must be within the specified margins set out in general clearance condition 2, adjusted by the amount of any verifiable expenditure on refurbishment or improvement incurred since 1 May 2013. The specified margin set out in general clearance condition 2 is now 80% in the case of properties

with a chargeable value exceeding €350,000 situated in Dublin city and county, and 50% for all other properties.

4.2.4. The existing guideline on sales of comparable properties was not revised.

Note also that the specific clearance form (LPT5) has been renamed and edited.

CONVEYANCING COMMITTEE

LPT REVISED
CLEARANCE GUIDELINES
– FOLLOW-UP

Revenue's revised clearance guidelines for LPT are stated to be effective from 1 September 2017. The committee posed the following question to Revenue: "On the effective date, is there a Revenue view on whether it applies where contracts for sale are entered into on 1 September 2017, or where the sale closes/deeds of transfer are dated 1 September 2017?"

The reply received from Revenue was: "The benefit of the new thresholds for general and specific clearance will be available from 1 September to

any vendor who is involved in any stage of the sale process on that date – unless s/he has already submitted an LPT5 to Revenue. We would, however, expect that any applications for specific clearance in respect of sales closing on 1 September would have been submitted at this stage under the old conditions."

The committee thinks that Revenue has taken a pragmatic view on this matter, and this approach allows the maximum number of cases possible to avail of the new thresholds.

REGULATION OF PRACTICE COMMITTEE

COSTS AWARDED UNDER THE COMPENSATION
FUND SCHEME

Under [section 21](#) of the *Solicitors (Amendment) Act 1960*, as substituted by [section 29](#) of the *Solicitors (Amendment) Act 1994* and amended by [section 16](#) of the *Solicitors (Amendment) Act 2002*, certain costs are allowable

to a claimant as part of a grant under the statutory scheme of the compensation fund.

The Regulation of Practice Committee wishes to set out that the only context in which the payment of a claimant's second solicitor's

fees arises is in a situation where a claimant paid fees to a first solicitor for work that was not completed due to this first solicitor's dishonesty. Since these fees are a direct loss to the claimant, and have arisen as a result of the

first solicitor's dishonesty, these fees are recoverable under the scheme.

If the second solicitor had to finalise the stamping of deeds, the registration of title, and the certification of title for lenders,



and the need for this work arose directly from the dishonesty of the first solicitor, the Law Society would usually pay a fee of up to €750 plus VAT plus outlay already discharged for claims received after 1 January 2017.

Under the statutory scheme, there is no provision to allow the Law Society to pay or discharge, in whole or in part, the claimant's solicitor's legal costs relating to the making of an application for a grant or any work associated

with this application.

For the avoidance of doubt, the compensation fund does not cover the legal fees incurred by a claimant in the preparation and submission of a claim on the compensation fund. Thus, the

legal costs incurred by a claimant in retaining a solicitor to make a claim on the compensation fund is a matter to be agreed between the claimant and the solicitor in the ordinary course of business.

BUSINESS LAW COMMITTEE

COMPANIES (ACCOUNTING) ACT 2017 – IMPACT ON UNLIMITED COMPANIES

On 17 May 2017, the *Companies (Accounting) Act 2017* was signed into law and, following the passing of SI no 246, it came into operation on 9 June 2017. The main purpose of the 2017 act is to incorporate the provisions of the *EU Accounting Directive* (2013/34/EU) into the *Companies Act 2014*. These amendments will have a significant impact on private unlimited companies (ULCs) and their pre-existing rights not to have to file accounts.

Non-filing by ULCs

By way of reminder of the existing position, all ULCs, except for designated ULCs (see more details below), are exempted from the requirement to file accounts. This means that, for example, a stand-alone ULC owned by private individual shareholders is not required to file accounts, and this will continue to be the case with the 2017 act. The 2017 act has tightened the definition of a designated ULC, which will have knock-on effects to structures implemented that sought to marry the non-filing rights of ULCs with the desire of the ultimate beneficial shareholders to have their liability limited to some extent.

Expanded concept of designated ULC

A designated ULC cannot rely

on the exemption from the obligation to file accounts. This will capture the below types of ULC:

- 1) A ULC that has been a subsidiary of a limited liability undertaking wherever incorporated – the previous equivalent provision had referred to EU member states, or
- 2) A ULC that has been a holding company of a limited liability undertaking ('HoldCo ULCs'), or
- 3) A ULC in which two or more of the limited liability undertakings, wherever incorporated, has had rights exercisable, which, if exercised by one of them, would have made the ULC a subsidiary of that undertaking,
- 4) A ULC, all of whose members are:
 - a) Companies limited by shares or guarantee (Irish or non-Irish),
 - b) Unlimited companies, wherever incorporated, all of whose shareholders then have limited liability,
 - c) General partnerships, Irish or non-Irish, where the general partners are again limited companies and who are governed by the laws of one or more member state,
 - d) Limited partnerships where each of the general partners are limited companies (Irish or non-Irish), and
 - e) Any combination of the

above, or

- 5) A ULC that is held within a structure whereby the ultimate beneficial owners enjoy the protection of limited liability.

Extension to adoption

The 2017 act provides that Holdco ULCs will not be affected by this amendment until financial years commencing on or after 1 January 2022. After that date, it would appear that Holdco ULCs will have to ensure that they do not fall within the definition of a designated ULC if they wish to continue to be exempt from its filing obligations.

Reason for change

The reason the non-filing regime is being abolished is grounded upon a principles-based approach, and is to prevent corporate structures containing multiple layers of undertakings established within or outside the EU. Article 30 of the *EU Accounting Directive* sets out the general publication requirement obliging member states to ensure that undertakings publish financial statements and related information within a reasonable period of time after the balance sheet date.

Removal of the naming exemption

Currently, the 2014 act provides that an unlimited company must

use the words 'unlimited company' or 'ULC' (or the Irish equivalent) in its name. This obligation applies to both private and public unlimited companies, unless the ULC has obtained an exemption under [section 1237\(5\)](#) of the 2014 act by the Minister for Jobs, Enterprise and Innovation not to use the word 'unlimited' in its title. The 2017 act removes the power of the minister to grant such an exemption; however, exemptions that have already been granted will continue in force until their stated expiration.

Practical implications

The 2017 act introduces significant future amendments to the current regime that ULCs can avail of. Since the 2017 act has come into force, ULCs will no longer be able to avail of a naming exemption.

However, the more significant amendments relate to the filing obligations for designated ULCs, although Holdco ULCs can continue to avail of the filing exemptions until the financial year commencing on 1 January 2022. Post-2022, if a Holdco ULC fails to comply with its filing obligations, both it and every officer of the company who is in default can be liable for a fine not exceeding €5,000.

LAW SOCIETY PROFESSIONAL TRAINING



Centre of Excellence for
Professional Education and Training

To view our full programme visit www.lawsociety.ie/Lspt

See the news section of this *Gazette* for future Cluster events

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
12 Oct	THE SMART CLIENT - MASTERING THE SOLICITOR/CLIENT RELATIONSHIP in collaboration with the Younger Members Committee		€105	3 M & PD Skills (by Group Study)
19 Oct	ANNUAL PROPERTY LAW CONFERENCE 2017 in collaboration with the Conveyancing Committee	€150	€176	3.5 General (By Group Study)
26 Oct	PROBATE & TAXATION UPDATE 2017 in collaboration with the Taxation Committee and the Probate, Administration of Estates & Trusts Committee	€150	€176	3 General (by Group Study)
2 Nov	CYBERATTACKS – THE LEGAL RESPONSE in collaboration with the EU and International Affairs Committee	Complimentary		2 General (by Group Study)
3/4 Nov	LAW SOCIETY SKILLNET CONSTRUCTION LAW An intense, practical series of lectures and case studies	€350	€425	10 General (By Group Study)
9 Nov	ANNUAL INHOUSE & PUBLIC SECTOR CONFERENCE in collaboration with the In-house and Public Sector Committee	€150	€176	1.5 Regulatory, 2 M & PD Skills (by Group Study) and 2 General (by Group Study) 5.5 Total
8/9 Dec & 19/20 Jan 2018 & 9/10 Feb 2018	PROPERTY TRANSACTIONS MASTERCLASS Attend 1, 2 or all 3 Modules There is a reduced fee of €1,600/€1300 for attending all three modules	€500 per module	€600 per module	CPD Hours per module: 10 Hours including 2 M & PD Skills
24 Nov	ANNUAL FAMILY & CHILD LAW CONFERENCE in collaboration with the Family and Child Law Committee	€150	€176	2 M & PD Skills and 2 General (by Group Study)
Starts 1 Dec	LAW SOCIETY SKILLNET CPD CERTIFICATE IN PROFESSIONAL EDUCATION Friday 1, Saturday 2, Friday 15 December 2017 Friday 12, Friday 26, Saturday 27 January 2018	€1,250	€1,450	Full General and M & PD Skills CPD requirement for 2017 (by Group Study) including 5 hours M & PD Skills (by eLearning)



BUSINESS LAW COMMITTEE

COMPANIES (ACCOUNTING) ACT 2017

The *Companies (Accounting) Act 2017* was commenced on 9 June 2017, mainly to incorporate the provisions of the *EU Accounting Directive* (2013/34/EU) into the *Companies Act 2014*. The impact of the 2017 act on unlimited companies, particularly in relation to their obligations to file financial statements, is the subject of a separate note (p59).

This note summarises the other material changes introduced by the 2017 act, primarily around audits and financial statements.

Concept of a 'micro-company'

The act introduces the 'micro-company', a new concept in Irish company law, which is subject to relaxed financial reporting/disclosure requirements. The table sets out the minimum size threshold for micro-companies, as well as the proposed increased thresholds for small and medium companies.

Key features of the micro-company include:

- A presumption that financial statements of micro-companies that comply with the 'minimum requirements' of the 2014 act have given a true and fair view, and a new schedule added to the 2014 act dealing with the format/content of micro-company financial statements. Micro-companies are *eligible for audit exemption*.
- Micro-companies are exempt from preparing directors' reports.
- Micro-companies are exempt from disclosing directors' remuneration and arrangements, transactions with directors, or consideration paid to third parties for services of a director in financial statements.
- PLCs and unlimited companies cannot avail of the new micro-company regime.

	MICRO-COMPANY (must meet any two of the below three thresholds)	SMALL COMPANY (must meet any two of the below three thresholds)	MEDIUM COMPANY (must meet any two of the below three thresholds)
Net turnover	€700,000	€12,000,000 (up from €8,800,000)	€40,000,000 (up from €20,000,000)
Balance sheet total	€350,000	€6,000,000 (up from €4,400,000)	€20,000,000 (up from €10,000,000)
Average number of employees	10	50 (no change)	250 (no change)

Small and medium companies

- Significant increase in minimum size thresholds for small and medium companies (as per table above).
- Small and medium companies are now exempt from including a business review in the directors' report.
- Exemption from the requirement to disclose the number of employees employed by category. Instead, companies can disclose average number employed in financial year.
- Medium companies will be required to prepare group financial statements, as the exemption relating to the size of the company will now only apply to micro and small companies.

Changes to audit exemption

- New minimum size thresholds for micro-companies and small companies (as per table above) will replace the current audit exemption thresholds once the act enters into force. This will allow many more companies to avail of the audit exemption.
- A company that files its first annual return (six-month return) late can retain its audit exemption.

Other changes

- New disclosure requirements

relating to directors' remuneration and services, including a requirement for companies (other than micro-companies) to disclose payments made to third parties for services provided to a director and/or any remuneration waived by directors during a financial year,

- Amendment of the 2014 act to require auditors to report to the Director of Corporate Enforcement where there are reasonable grounds to believe that an indictable offence under 2014 act or offence contrary to *Market Abuse, Prospectus* or *Transparency Directives* has been committed,
- Obligations for auditors of traded companies to provide opinion in the auditors' report that the corporate governance state-

ment is consistent with statutory financial statements, that it was prepared in accordance with the 2014 act, and to confirm certain related matters,

- A new part 26 to the 2014 act providing for preparation and public disclosure (via filing with CRO) of the annual report on payments made to governments by large companies, large groups, and public-interest entities active in the mining, extractive or logging industries,
- Amendment to the definition of 'credit institution', as defined in the 2014 act, to make clear that only entities lending to the public will be considered a credit institution, with the related requirement to be incorporated as a DAC company.

CONVEYANCING COMMITTEE

DON'T DELAY REGISTERING TRANSFER OR CHARGE

The Conveyancing Committee recommends that solicitors do not hold off on lodging a purchase/mortgage dealing in the Land Registry while waiting to receive the discharge of the ven-

dor's mortgage following completion. There is no requirement that the discharge be lodged along with the transfer, and there is no advantage in terms of reduction in registration fees in doing that.



SOLICITORS DISCIPLINARY TRIBUNAL

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

In the matter of Micheál Glynn, solicitor, Micheál Glynn & Company, Solicitors, 98 O'Connell Street, Limerick, and in the matter of the *Solicitors Acts 1954-2011* [5629/DT110/15; 5629/DT111/15; 5629/DT112/15]
Law Society of Ireland (applicant)
Micheál Glynn (respondent solicitor)

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

DT110/15

- 1) Failed to comply with an undertaking dated 4 October 2005 to a financial institution in relation to a named property in a timely manner or at all,
- 2) Failed to comply with an undertaking dated 4 October 2005 to a financial institution in relation to a named property in a timely manner,
- 3) Failed to comply with an undertaking dated 9 January 2004 to a financial institution in relation to a named property in a timely manner or at all,
- 4) Failed to comply with an undertaking dated 22 March 2008 to a financial institution in relation to three named properties in a timely manner,
- 5) Failed to comply with an undertaking dated 12 September 2006 to a financial institution in relation to a named property in a timely manner,
- 6) Failed to comply with an undertaking dated 21 April 2008 to a financial institution in relation to three named properties in a timely manner,
- 7) Failed to respond adequately or at all to some or all of the

correspondence sent to him by the complainant in relation to a complaint, particularly letters dated 8 June 2011 and 16 June 2011,

- 8) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant in relation to a complaint, particularly letters dated 8 June 2011 and 16 June 2011,
- 9) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant in relation to a complaint, particularly letters dated 8 June 2011 and 16 June 2011,
- 10) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant in relation to a complaint, particularly letters dated 22 June 2011 and 16 August 2011,
- 11) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant in relation to a complaint, particularly letters dated 8 June 2011 and 16 June 2011,
- 12) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, particularly letters dated 8 August 2013, 6 November 2013 and/or 3 February 2014,
- 13) Failed to comply with the directions of the Complaints and Client Relations Committee in a timely manner or at all.

DT111/15

- 1) Failed to comply with part or all of an undertaking dated 12 August 2004 in relation to a named property in a timely manner or at all,

- 2) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, particularly letters dated 6 September 2005, 7 March 2006, 5 September 2006, 26 September 2006, 9 October 2009, and 23 June 2010.

DT112/15

- 1) Failed to comply with part or all of the undertaking dated 15 August 2005 in respect of a named property in a timely manner or at all,
- 2) Failed to comply with part or all of the undertaking dated 2 December 2007 in respect of a named property in a timely manner or at all,
- 3) Failed to comply with the directions of the Complaints and Client Relations Committee dated 15 October 2013.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished in respect of each referral,
- 2) Pay the cumulative sum of €2,500 to the compensation fund,
- 3) Pay the cumulative sum of €2,500 towards the whole of the Society's costs.

In the matter of Daniel (Donal) Downes, a solicitor formerly practising as O'Dea & Company, Solicitors, 1st floor, Hardiman House, Eyre Square, Galway, and in the matter of the *Solicitors Acts 1954-2011* [4298/DT46/14; 4298/DT87/14; 4298/DT89/15; and High Court record 2017/48 SA]
Law Society of Ireland (applicant)
Daniel (Donal) Downes (respondent former solicitor)

On 24 January 2017, the Solicitors Disciplinary Tribunal found the respondent former solicitor guilty of misconduct in his practice as a solicitor as follows:

4298/DT46/14

- 1) Failed to comply with an undertaking furnished to ACC Bank on 2 June 2009 in respect of named borrowers and property at Co Galway in a timely manner or at all,
- 2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 9 March 2013, 25 April 2013, 21 May 2013, and 2 September 2013 in a timely manner, within the time prescribed, or at all,
- 3) Failed to comply with the directions made by the Complaints and Client Relations Committee at its meeting of 16 July 2013 that he:
 - a) Furnish certain information to the Society within 21 days of the date of the meeting,
 - b) Furnish a progress report to the committee on or before 14 September 2013, and that he
 - c) Furnish a further progress report to the committee on or before 14 November 2013,
- 4) Failed to attend the Complaints and Client Relations Committee meeting of 3 December 2013, despite being required to so attend.

4298/DT87/14

- 1) Forged the signature of one of the nominated cheque signatories on a number of client account cheques without her authority, thereby circumventing the arrangement in the practice that all cheques had to be signed by two assistant solicitors,



- 2) Failed to have adequate supporting documentation on files to enable the vouching of transactions, in breach of regulation 12(1) of the *Solicitors Accounts Regulations*,
- 3) Caused backdated letters and documents to be created and placed on client files, some during the investigation of his practice,
- 4) Provided information to the investigating accountant during his time in his office that subsequently proved to be false,
- 5) Caused a false confirmation to be created on a file of a named client confirming an agreement to pay €85,000 to a named individual and forged his client's signature on the confirmation,
- 6) Paid approximately €15,000 too much from the client account to a named client and tried to conceal this by the creation of the false confirmation document,
- 7) Failed to comply with anti-money-laundering procedures and had no or inadequate supporting documentation on file in relation to the receipt of €150,000 in cash in a named matter,
- 8) Caused €206,000 to be paid from the client account in relation to a named client, thereby creating a debit balance of approximately €46,000,
- 9) Caused or allowed the debit balance referred to in (8) above to be concealed by the backdating of a transfer of €46,000 from the client ledger account of another client,
- 10) Caused a deed of partnership and a deed of dissolution of the partnership to be created on or about 8 May 2013, but

backdated the deed of partnership to 6 January 2012 and caused a letter to be created on or about 21 November 2013 on the same file that was backdated to 10 May 2013 and that purported to send copies of the deeds to one of the clients,

11) Failed to keep proper books of account.


4298/DT89/15

Failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001), in a timely manner or at all, having ceased practice on 28 April 2014.

The tribunal sent the matter forward to the High Court and, on Monday 10 July 2017, in proceedings 2017 no 48 SA, the High

Court declared that the former respondent solicitor was not a fit person to be a member of the solicitors' profession and ordered that the former respondent solicitor pay:

- 1) Within six months from the date hereof, the sum of €5,000 to the Law Society as a contribution towards the costs the Society incurred before the disciplinary tribunal,
- 2) The costs of the Law Society in respect of the High Court application, such costs to be taxed in default of agreement – with execution to be stayed for 12 months from the date hereof.

The former respondent solicitor's name had already been struck from the Roll of Solicitors by order of the High Court on 28 April 2014 in proceedings 2014 no 53 SA. 

DIPLOMA CENTRE

Postgraduate courses with professional focus and practical insight



2017 COURSE NAME	DATE	FEE
Certificate in Aviation Leasing and Finance	28 September 2017	€1,550
Certificate in Juvenile Justice (New)	30 September 2017	€1,550
Certificate in Company Secretarial Law and Practice	3 October 2017	€1,550
Diploma in Environmental and Planning Law	4 October 2017	€2,500
Certificate in Data Protection Practice	5 October 2017	€1,550
Diploma in Finance Law	7 October 2017	€2,500
Diploma in Construction Law (New)	11 October 2017	€2,500
Diploma in Employment Law	13 October 2017	€2,500
Certificate in Strategic Development for In-House Practice (New)	13 October 2017	€1,550
Certificate in Conveyancing	17 October 2017	€1,550
Diploma in Regulation Law and Practice (New)	19 October 2017	€2,500
Certificate in Negotiation Skills and Practice (New)	20 October 2017	€1,550
Certificate in Commercial Contracts	21 October 2017	€1,550
Certificate in Pensions Law and Applied Trusteeship (New)	24 October 2017	€1,550
Diploma in Sports Law	25 October 2017	€2,500
Diploma in Mediator Training	27 October 2017	€3,000
Diploma in Education Law	3 November 2017	€2,500
Diploma in Commercial Litigation	7 November 2017	€2,500

CONTACT DETAILS

E: diplomateam@lawsociety.ie T: 01 672 4802 W: www.lawsociety.ie/diplomacentre

Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change. Some of these courses may be iPad courses in which case there will be a higher fee payable to include the device. Contact the Diploma Centre or check our website for up-to-date fees and dates.

NEWS FROM THE EU AND INTERNATIONAL AFFAIRS COMMITTEE
 EDITED BY TP KENNEDY, DIRECTOR OF EDUCATION, LAW SOCIETY OF IRELAND

JURISDICTION OF RECOURSE CLAIM BETWEEN JOINT AND SEVERAL BORROWERS

In *Case C-249/16* (15 June 2017), the Court of Justice of the European Union delivered its judgment following a request for a preliminary ruling from the Oberster Gerichtshof (the Supreme Court of Austria). The Austrian court had referred a number of questions that arose during proceedings for reimbursement brought by one joint and several borrower against another.

The CJEU decided that the proper interpretation of *Regulation 1215/2012* (the recast regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) is that such recourse claims, where one joint and several borrower sues another, should be treated as a contractual claim related to the underlying credit agreement. This is because the claim between the borrowers can be categorised as a matter ‘relating to a contract’ (meaning the original credit agreement) for the purposes of article 7(1)(a) of the regulation.

In this particular case, that meant that the appropriate jurisdiction for disputes between two joint and several borrowers should be determined in the same way as it would be for disputes between the lender and the borrowers. The result of this analysis was that the Austrian courts had jurisdiction.

This marks a derogation from the key tenet of *Regulation 1215/2012*, which is that a defendant should be sued in their home

member state. It is also a useful confirmation that credit agreements will be treated as ‘services’ for the purposes of article 7(1). It is worth noting that, although both borrowers were consumers for the purposes of the underlying credit agreement, the rules in relation to consumer contracts under *Regulation 1215/2012* were not relevant in this case because they do not apply to cases between consumers.

Background

In 2007 Mr Benkő (an Austrian national) and Ms Kareda (an Estonian national) bought a house together in Austria, and they borrowed €300,000 from an Austrian lender to fund the purchase. In 2011, the relationship had broken down and Ms Kareda returned to Estonia. In June 2012, she stopped paying her share of the repayments. Mr Benkő paid the full monthly instalment himself from then on, and he sued Ms Kareda in Austria to recoup her share of the repayments.

Mr Benkő did not know Ms Kareda’s address in Estonia and, after failing to locate her, the Estonian embassy accepted service on her behalf. An Estonian representative for Ms Kareda objected to the jurisdiction of the Austrian courts on the basis that Ms Kareda was domiciled in Estonia and should be sued there, claiming that the action did not come within one of the exceptions set out in articles 2-7 of chapter 2 of

Regulation 1215/2012.

The Austrian court of first instance agreed and declared it did not have jurisdiction. Mr Benkő appealed this to a higher Austrian court, which overturned the lower court’s declaration. Ms Kareda’s representative in turn appealed on a point of law, and it was on foot of this appeal to the Austrian Supreme Court that the preliminary ruling was requested.

The questions

The first question asked if the reimbursement claim was a secondary contractual claim arising from the underlying credit agreement, under article 7 of *Regulation 1215/2012*. This was to determine if the proceedings qualified for an exception to the rule that the defendant is sued at home.

Article 7(1) reads as follows: “A person domiciled in a member state may be sued in another member state:

- a) In matters relating to a contract, in the courts for the place of performance of the obligation in question,
- b) For the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
 - In the case of the sale of goods, the place in a member state where, under the contract, the goods were delivered or should have been delivered,
 - In the case of the provision of services, the place in a mem-

ber state where, under the contract, the services were provided or should have been provided,

- c) If point (b) does not apply, then point (a) applies.”

The CJEU decided that the proceedings between two joint and several borrowers who were both party to a credit agreement with a lender should be treated as ‘matters relating to a contract’, so that such proceedings would be within the scope of article 7(1) of *Regulation 1215/2012*. The claim for reimbursement could not exist had the borrowers not entered into the underlying credit agreement. It would be artificial to separate the legal relationship created between the joint and several borrowers from the underlying agreement. Such a separation would have been contrary to logic but also to the very purpose of the regulation, which is predictability in the rules of jurisdiction.

Interestingly, both the advocate general and the CJEU were guided by the need for consistency between the *Rome I Regulation* on the law applicable to contractual obligations and *Regulation 1215/2012*. The *Rome I Regulation* actually legislates for a situation where a joint and several borrower has repaid a loan and seeks recourse from other borrowers. Article 16 of the *Rome I Regulation* (called ‘multiple liability’) provides that, where there are multiple borrowers, it is the law governing those joint and



PG: SHUTTERSTOCK



'I can haz equity?'

THIS CASE ALSO PROVIDES CERTAINTY TO LENDERS IN CIRCUMSTANCES WHERE THEY HAVE ADVANCED A LOAN TO BORROWERS WHO NOW LIVE IN OTHER MEMBER STATES

several borrowers' obligations towards the lender that will apply if a borrower claims recourse from another borrower.

Although the CJEU has previously stressed that the rules of governing law set out in the *Rome I* and *Rome II Regulations* and the rules of jurisdiction contained in Regulation 1215/2012 must be interpreted independently of each other to pursue the separate objectives of each regulation, the court – where possible – takes account of the aim of consistency in the reciprocal application of those regulations. In this case, the CJEU felt that it would run counter to the objective of consistency to determine the jurisdiction in recourse claims on a different basis than the governing law for the same claim would be determined.

This led to the second ques-

tion, which asked whether a credit agreement should be seen as 'the provision of services' for the purposes of article 7(1)(b)(ii). The CJEU agreed with the advocate general that a lender is providing a service when it advances a loan that will be repaid with interest.

Thirdly, the CJEU was asked for its view on the place of performance of the obligation in question under this contractual claim. In accordance with the previous case law on this point, this requires an analysis of the obligation that characterises the contract. In a credit agreement, the characteristic obligation is the actual advance of the loan by the lender. A borrower's repayment obligations are a consequence of that defining obligation.

Accordingly, in the absence of an agreed jurisdiction between the parties, the 'place of performance

of the obligation in question' in this case was the place from which the lender advanced the loan (that is, where the lender had its registered office), which was Austria.


It is not clear from the case report or the advocate general's opinion whether the underlying credit agreement contained a jurisdiction clause nominating a particular court in the event of a dispute between the lender and the borrowers. If it had, depending on how broadly the jurisdiction clause was drafted, it may have covered the secondary dispute between the joint and several borrowers.

Jurisdiction clauses

The CJEU ruling is a useful reminder that, for utmost certainty for all parties, a well-drafted jurisdiction clause should include disputes not only arising from

but also 'in connection with' a contract. The case may assist practitioners where a client seeks recourse against a non-resident ex-partner for similar joint and several loan obligations.

The CJEU did not address how jurisdiction would be analysed if there were multiple lenders based in different member states. However, in a sophisticated commercial credit agreement, it would be unusual not to have a broadly drafted jurisdiction clause.

Although this case dealt with a claim between the joint and several borrowers, it also provides certainty to lenders in circumstances where they have advanced a loan to borrowers who now live in other member states (subject to other considerations such as whether the borrowers are consumers). 

Grace Kelly is a solicitor at AIB.



RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for November 2017 *Gazette*: 16 October. For further information, contact the *Gazette* office on tel: 01 672 4828.

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

WILLS

Boland, Herbert (Herbie) (deceased), who died on 2 August 2017, late of Knockacullen, Dromore West, Co Sligo, and 20 Portersgate Heights, Clonsilla, Dublin 15. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Callan Tansey Solicitors, Boyle, Co Roscommon; tel: 071 966 2019, email: info@callantansley.ie

Byrne, Marcella (deceased), late of 2 Caledon Road, East Wall, Dublin 3, who died on 29 January 2013. Would any person having knowledge of the whereabouts

of any will made by the above-named deceased please contact Suzanne Parker, Vincent & Beatty, Solicitors, 67/68 Fitzwilliam Square, Dublin 2; tel: 01 634 0000, email: sparker@vblaw.ie

Carty, Margaret (deceased), late of 29 O'Molloy Street, Tullamore, Co Offaly. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Farrell and Partners, Solicitors, O'Connor Square, Tullamore, Co Offaly; tel: 057 932 1477, email: info@farrellandpartners.ie

Casey, John Anthony (otherwise Jim) (deceased), formerly of Springfield House, Blackwood,

Athy, Co Kildare, who died on 8 May 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Jacqueline McManus, Solicitors, Forest Lane, Athy, Co Kildare; tel: 085 196 2231, email: jackiemcmanus1@gmail.com

Connolly, John Michael (deceased), late of Grange Beg, Raharney, Mullingar, Co Westmeath, who died on 22 May 2016 at Bethany House Nursing Home, Tyrellspass, Co Westmeath. Would any person having knowledge of any will executed by the above-named deceased please contact O'Donnell McKenna

Solicitors, 26 Upper Pembroke Street, Dublin 2; tel: 01 640 1887, email: info@odmk.ie

Finan, Edward (Eddie) (deceased), late of Farna Nursing Home, Castlereagh, and of Kilmurray, Castlereagh, Co Roscommon, who died on 1 March 2017. Would any person having knowledge of a will made by the above-named deceased please contact Pdraig Kelly, Solicitors, Strokestown, Co Roscommon; tel: 071 963 3666, email: info@pksols.ie; ref: F/5/17

Flynn, Joan (née Kelly) (deceased), late of Realt O Flaitheas, Temple na Bree, Knocknahur, Sligo, and formerly of Dalkey, Dublin, who died on 24 August 2017. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact McCann & Co, Solicitors, Pollexfen House, Wine Street, Sligo; tel: 071 914 5928, email: germy@mccannysolicitors.com

Gorman, John (deceased), late of 2 Pearse Terrace, Pearse Road, Sligo, who died on 7 December 2006. Would any person having knowledge of any will made by the above-named deceased please contact Denis I Finn, Solicitors, 5 Lower Hatch Street, Dublin 2 – Catherine O'Driscoll; tel: 01 676 0844, email: cod@denisifinn.ie

MISSING HEIRS, WILLS, DOCUMENTS & ASSETS FOUND WORLDWIDE

Now in Ireland

FREEPHONE 1800 210210
(Ireland Only)

◀ **finders** ▶

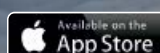
international probate genealogists

www.findersinternational.ie

Finders with insurance by **AVIVA**



Free 'Heir Hunters' App now available





www.FOL.ie
Forensic Video Services

Gorman, Rosaleen (deceased), late of 2 Pearse Terrace, Pearse Road, Sligo, and formerly of Northbrook Road, Ranelagh, Dublin 6, who died on 4 April 2017. Would any person having knowledge of any will made by the above-named deceased please contact Denis I Finn, Solicitors, 5 Lower Hatch Street, Dublin 2 – Catherine O'Driscoll; tel: 01 676 0844, email: cod@denisifinn.ie

Hayes, Veronica (deceased), late of 23 Ring Street, Inchicore, Dublin 8, who died on 11 January 1991. Would any person having knowledge of the whereabouts of a will dated 9 May 1986 made by the above-named deceased please contact McCartan & Burke, Solicitors, Iceland House, Arran Court, Smithfield, Dublin 7; tel: 01 872 5944, email: nhand@mccartanandburke.ie

Kenny, Robert (deceased), late of 16 Joy Street, Ringsend, Dublin 4, who died on 3 July 2017. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Ann Mangan, Howell & Company, Solicitors, 2 Tower Road, Clondalkin, Dublin 22; tel: 01 403 0777, email: info@howellsolicitors.ie

Lysaght, JJ (John) (deceased), formerly of Ballysimon, Co Lim-

erick, and of Main Street, Croom, Co Limerick, and of Beech Lodge Nursing Home, Bruree, Limerick, who died on 22 August 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Margaret O'Connell, Dermot G O'Donovan Solicitors, 5th Floor, Riverpoint, Lower Mallow Street, Limerick; tel: 061 314 788, email: moconnell@dgod.ie

McCarthy, Mary (deceased), who died on 2 November 2016, late of 'Iosagán', 4 Clashdub Estate, Glasheen Road, Cork City. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Kiely Solicitors, 7/8 Liberty Street, Cork; tel: 021 239 1110, email: joe@kielysolicitors.ie

McCarthy, William (deceased) and Daniel McCarthy (deceased), both late of 15 Millrose Estate, Bluebell, Dublin 12, who died on 4 October 2016. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Frank O'Connor & Co, Solicitors, Upper Main Street, Dingle, Co Kerry; tel: 066 915 1448; email: foconnor@dinglelaw.com

O'Donnell, Kathleen (née McGee) (deceased), late of 5 Amber Court, Carrick-on-Shannon, Co Leitrim, and also of St Patrick's

Hospital, Carrick-on-Shannon, Co Leitrim, who died on 1 January 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Patrick Duffy, Solicitors, Carrick-on-Shannon, Co Leitrim; tel: 071 962 1846, email: info@pduffysolicitors.ie

Thomas, Caroline (née Larkin) (deceased), late of Kilcrow, Clontibret, Co Monaghan, and formerly of 55 Manor Wood, Monaghan, who died on 30 June 2017. Would any person holding or having any knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Wilkie & Flanagan, Solicitors, Main Street, Castleblayney, Co Monaghan; DX 71001 Castleblayney; tel: 042 974 0064, email: gd@wilkieandflanagan.com

ADVERTISEMENT FOR INCUMBRANCES

Circuit Court record no 437/2011, South Eastern Circuit, county of Carlow, between Peter Thorpe, trading as Peter Thorpe Steel Fabrication Carlow, (plaintiff) and Gary O'Neill, trading as Gary O'Neill Construction (defendant)

Pursuant to an order of the Circuit Court made in the above-mentioned suit, all persons claiming to be incumbrancers affecting the interest of the defendant in the property specified in the schedule hereto are to enter their claims at the Circuit Court Office, Court House, Carlow, on or before 27 October 2017, or in default thereof, they will be peremptorily excluded from the benefit of the said order.

Every such incumbrancer holding any security is required to produce same before the county registrar for the said county at the Circuit Court Office aforesaid on 9 November 2017 at 11.30 o'clock in the forenoon, being the time appointed for adjudicating on the claims.

Date: 6 October 2017, Marie Garahy, county registrar

Schedule: all that and those the properties comprised in Folios 8812F, 24368F and 21758F Co Carlow

TITLE DEEDS

Egan, Dr John (also Sean) M, late of 1572 South West, Monarch Club Drive, Palm City, Florida 34990 USA. Would any person having knowledge of the whereabouts of the deeds of the properties of the late Dr John (also Sean) M Egan at 46 Woodpark, Castleknock, Dublin, and 71 Seabury, Sandymount, Dublin, please contact Hamilton Sheahan & Co, Solicitors, Main Street, Kinnegad, Co Westmeath; DX 235001 Kinnegad; tel: 044 93 75040, email: roisin@hamiltonsheahan.ie

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the portion of land situated on the south side of Pennyfeather Lane, Kilkenny, being part of the premises known as the Multistorey Carpark at Ormonde Street, Kilkenny: an application by Shimmerside Limited

Take notice that any person having any interest in the freehold estate or any intermediate interests in the following property: a portion of land situated on the south side of Pennyfeather Lane, Kilkenny, being part of the premises known as the Multistorey Carpark at Ormonde Street, Kilkenny, held under a lease dated 4 February 1928 between (1) Sir Lionel Lockington Harty, Pauline Rhoda Forsyth and Kathleen Flood and (2) Rev Patrick Ignatius Collins, Rev Thomas Edwin Fitzgibbon, Rev Thomas Matthew O'Connor, Rev John Pious Duggan and Rev Henry Eugene Carroll for a term of 99 years from 29 September 1926, subject to the rent of £50 per annum.

Take notice that Shimmerside Limited (the applicant), being the party now holding the properties and now entitled to the lessees' interest under the said lease,

**IS YOUR CLIENT INTERESTED
IN SELLING OR BUYING
A 7-DAY LIQUOR LICENCE?**

email: info@liquorlicencetransfers.ie
web: www.liquorlicencetransfers.ie

Call: 01 2091935



Gascón Bernabéu
ABOGADOS

Spanish Solicitors
Private client & Corporate law

Specialist English language service
to assist Irish solicitors

T: +44 (0)20 3137 1320 – info@gbabogados.co.uk

Adam House, 7-10 Adam Street, London, WC2N 6AA
Offices throughout Spain

www.gbabogados.co.uk

intends to submit an application to the county registrar for the county of Kilkenny for the acquisition of the freehold interest and any intermediate interest(s) in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Shimmerside Limited (the applicant) intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Kilkenny for directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests including the fee simple and freehold reversion in the aforesaid properties are unknown or unascertained.

Dated: 6 October 2017

Signed: Mason Hayes & Curran, Solicitors for Shimmerside Limited (the applicant), South Bank House, Barrow Street, Dublin 4, ref: LMQ/LCY

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 (as amended) and in the matter of an application by Henry A Crosbie (in receivership) in

respect of a plot of land situate at the Point Village, Dublin 1

Take notice that any person having any interest in the freehold estate or any intermediate interests in the following property at the Point Village, Dublin 1: all that and those that plot or piece of ground part of foot lot Number 90, which is more particularly delineated and described in and by a map or terchart thereof in the margin of the lease of 26 July 1864 between Thomas Crosthwait of the one part and Thomas Walpole, William Henry Webb, and John Fredrick Bewley of the other part, and coloured green thereon, and is situate, lying, and being in the parish of St Thomas and county of the city of Dublin, held under a lease dated 26 July 1864 between Thomas Crosthwait of the one part and Thomas Walpole, William Henry Webb, and John Fredrick Bewley of the other part from 1 May 1864 for the term of 400 years, subject to the yearly rent of £40.

Take notice that Henry A Crosbie, acting by his joint statutory receivers Stephen Tennant and Paul McCann, being the persons now holding the said property, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold simple estate or any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to

furnish evidence of the title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the aforesaid property are unknown or unascertained.

Dated: 6 October 2017

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

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Mark Tracey

Any person having a freehold estate or any intermediate interest in all that and those the business premises and dwellinghouse known as the Coffee Stand, situate in the townland of Carn and abutting on Erne Square in the town of Clones, in the barony of Dartrey and county of Monaghan, being portion of the lands comprised in Folio 3947 of the land register, county of Monaghan, which premises are the subject of an indenture of lease dated 30 October 1948 between Matilda Barnes of the one part and Elizabeth Scholes of the other part for a term of 99 years from 1 November 1948 at a rent of £50 per annum.

Take notice that Mark Tracey intends to apply to the county registrar of the county of Monaghan to vest in him the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days

from the date of this notice.

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

Dated: 6 October 2017

Signed: Morgan McManus (solicitors for the applicant), The Diamond, Clones, Co Monaghan

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of premises known as Glendair, 9 Earlsvale Road, Cavan Town, in the county of Cavan, and in the matter of an application by Edward O'Hanlon and Joanne Smith

Take notice that any person having an interest in the freehold estate or any superior intermediate interest in the property known as Glendair, 9 Earlsvale Road, Cavan Town, in the county of Cavan, of lands comprised and demised by indenture of lease (the first lease) dated 28 October 1936 and made between the Hon Lord Farnham of the one part and James Joseph Smith of the other part for a term of 99 years from 30 April 1935, subject to the yearly rent thereby reserved and the covenants on the part of the lessee and the conditions therein contained. The said part of the lands were the subject matter of a sublease between the said James Joseph Smith to the Anglo Celt Limited for the term of 84 years from 1 November 1950, subject to the yearly rent therein reserved and the covenants and conditions therein contained, should give notice of their interest to the undersigned solicitors.



Take notice that the applicants hereby intend to submit an application to the county registrar in the county of Cavan for the acquisition of the freehold and all intermediary interest in the said property, and any party asserting that they hold an interest therein is called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

In default of the said notice of interest being received, the applicants intend 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 in the county of Cavan for directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior interest in the said property are unknown or unascertained.

Date: 6 October 2017

Signed: Michael J Ryan (solicitors for the applicant), Atbbara House, Cavan

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Patrick Leader of 20 Belair, Douglas Road, Cork, and Catherine Leader, 23 Chesterton Court, Knockrea Lawn, Cork

Take notice any person having an interest in the freehold estate or any other estate of the following property: 77 North Main Street in the city of Cork. Take notice that Patrick Leader and Catherine Leader intend to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all intermediate interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named. In particular, such persons who are entitled to the

interest of Justin McCarthy, deceased, pursuant to a lease of 9 September 1891 between Justin McCarthy by his committee of John George McCarthy of the one part and William Joe Shinkwin of the other part for a term of 200 years from 1 March 1892 in property known as 77 North Main Street in the city of Cork, should provide evidence of their title to the below named.

In default of any such notice being received, the applicants, Patrick Leader and Catherine Leader, intend to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold in the premises, are unknown and ascertained.

Date: 6 October 2017

Signed: Babington, Clarke & Mooney, Solicitors, 48 South Mall, Cork

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of an application by Patrick Leader of 20 Belair, Douglas Road, Cork, and Catherine Leader, 23 Chesterton Court, Knockrea Lawn, Cork

Take notice any person having an interest in the freehold estate or any other estate of the following property: 76 North Main Street in the city of Cork. Take notice that Patrick Leader and Catherine Leader intend to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all intermediate interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned premises to the below named.

In particular, such persons as are entitled to the interest of Daniel McCarthy pursuant to a lease dated 5 December 1839 between John Moore Travers of the one part and Daniel McCarthy of the other part for a term of 500 years in property all that and those two dwellinghouses with the back, yards and back concerns thereunto belonging, situate in the North Main Street in the city of Cork, and in particular such persons who are entitled to the interest of Elizabeth Augusta Julian, Elizabeth Geraldine Sylvia Julian, Francis Marjorie Ruth Julian, and Donal McCarthy, pursuant to a lease dated 11 June 1952 between Elizabeth Augusta Julian, Elizabeth Geraldine Sylvia Julian, Francis Marjorie Ruth Julian, and Donal McCarthy on the one part and James J Murphy & Co Ltd of the other part for a term of 99 years from 29 September 1951 in the property known as 76 North Main Street in the city of Cork, should provide evidence of their title to the below named.

In default of any such notice being received, the applicants, Patrick Leader and Catherine Leader, intend to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold in the premises are unknown and unascertained.

Date: 6 October 2017

Signed: Babington, Clarke & Mooney, Solicitors, 48 South Mall, Cork

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Brian McCloskey and Bernard McCloskey Limited and/or Lispopple Point Limited
Any person having a freehold



**23.11.17
10:00 – 17:00**

RHA Gallery, 15 Ely Pl, D2

Join a range of experts from the legal, financial, museum and archive sectors to examine strategies in planning and managing an artists estate and legacy.

- Tax efficient planning
- Trusts and estate structures
- Art market strategies
- Copyright law and royalties

Keynote Speaker:

**Henry Lydiate,
(Arts Legal Specialist)**

For tickets and other info,
please visit www.ivaro.ie or
call +353 (0)1 672 9488

6 CPD Hours Available

SOLICITORS

Small Dublin practice
seeking merger, acquisition
with like-minded ambitious
professionals.

Apply to **box no 01/08/17**

estate or any intermediate interest in all that and those premises at the rear of 81 Morehampton Road, Dublin 4, the subject (along with other premises) of an indenture of lease dated 10 May 1900 between Patrick Newport of the one part and Michael Cullen of the other part for a term of 166 years from 1 May 1900 at a rent of £9.4s.6d until 1 May 1918, and £13 6s.8d from 1 May 1918.

Take notice that Brian McCloskey and Bernard McCloskey Limited and/or Lispopple Point



Limited as purchaser therefrom (hereinafter collectively referred to as 'the applicants') intend to apply to the county registrar of the county of Dublin to vest in them the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the Dublin county registrar for such directions as may be appropriate on the basis

that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 6 October 2017

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

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of property situate at Newtownbutler Road, Clones, Co Monaghan, in the county of Monaghan, and in the matter of an application by Ambrose Doran

Take notice that any person having an interest in the freehold

estate or any superior intermediate interest in the property situate at Newtownbutler Road, Clones, in the county of Monaghan, of lands comprised and demised by lease dated 7 August 1953 and made between Mary J Fitzpatrick of the one part and Alexander J Black of the other part for a term of 999 years from 1 June 1953, subject to the yearly rent thereby reserved and the covenants on the part of the lessee and the conditions therein contained, should give notice of their interest to the undersigned solicitors.

Take notice that the applicants hereby intend to submit an application to the county registrar in the county of Monaghan for the acquisition of the freehold and all intermediary interest in the said property, and any party asserting

that they hold an interest therein is called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

In default of the said notice of interest 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 of Monaghan for directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior interest in the said property are unknown or unascertained.

Date: 6 October 2017

Signed: Aisling Hayes (solicitors for the applicant), 46A Market Street, Cootehill, Co Cavan

RECRUITMENT



PERSONAL INJURIES SOLICITOR (SENIOR ASSOCIATE LEVEL) – DUBLIN

Holmes O'Malley Sexton Solicitors is a leading national Irish law firm, with offices in Dublin, Limerick and London. HOMS Solicitors provide a wide range of legal services nationwide, delivering quality, knowledge, experience and value; collectively working in partnership with our clients, investing in our people while supporting the communities in which we operate.

In support of our continued growth we now have an exceptional opportunity for a Personal Injuries Solicitor at Senior Associate level to join our Dublin office.

The ideal candidate must have significant experience handling an expansive portfolio of personal injury files from inception through to conclusion.

PERSONAL ATTRIBUTES:

- Self-motivated with a strong work ethic.
- Excellent communication and interpersonal skills.
- Ability to work on own initiative and as part of a team.
- Commercially focused with a commitment to quality.
- Client centred.
- Excellent organisational ability.

Closing Date: Friday 27th October

This position offers an attractive remuneration package and exceptional career prospects with HOMS Solicitors, 2 Ely Place, Dublin 2. We are an equal opportunities employer.

To apply: Please email your CV together with cover letter, in strict confidence to HR@homs.ie.

Tel: 061 313222. Web: www.homs.ie



ADVOCATUS DIABOLI

I CAN HAZ CERTIORARI?

A Japanese IT firm has introduced an 'office cat' policy in order to help workers deal with the stressful environment of the Japanese workplace, iizcat.com reports.

The initiative has proven to be a huge success and a big hit with the employees – and the cats. The policy has led to many other companies following suit.

While the pros totally outweigh the cons, there are some downsides: "Sometimes a cat will walk on a phone and cut off the call, or they shut down the computers by walking onto the off switch," the firm's boss said.

And of course, there's always the old 'the cat ate it' excuse.



NOBODY GONNA TAKE MY CAR

A New Zealand man who got so drunk that he forgot he sold his car called police the next day to report it stolen, according to the [NZ Herald](#).

He sold the car for NZ\$800 (€490) so he could buy more booze on a big night out, but had forgotten his actions the following day.

The case took an unusual turn when the man who bought the car came forward.

"Thankfully, the man who bought the car checked the registration the next day on the CarJam website, as he was worried it might be stolen," a police spokesman said.

"The man came into the station with the car to let us know what had happened. We were able to get in touch with the original owner and told them to sort it out between them,"



the spokesman continued. "The lesson here is don't drink and sell cars."

SELF-TAUGHT LAWYER WINS CASE

A Chinese farmer has won the first round of a legal battle against a powerful state-owned chemicals company, after spending 16 years teaching himself about the law, [The Independent](#) reports.

It is claimed that the Qinghua Group first dumped hazardous wastewater near Wang's land in 2001, preventing him from growing his crops.

When asked to produce legal evidence of the pollution, Wang began his studies: "I knew I was in the right, but I did not know what law the other party had bro-

ken or whether or not there was evidence."

Initially, he was forced to copy out information by hand in a bookshop, paying the store's owner in sacks of corn. He started receiving free legal advice in 2007, after half a decade of solo study, and finally filed a legal petition.

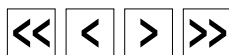
The case reportedly took another eight years to get to court, but the Angangxi District Court finally ruled against the Qinghua Group, awarding £96,000 to Wang and his neighbours.

INVASION OF THE BODY SNATCHERS

Police in New Mexico found a stolen trailer abandoned after the thieves apparently discovered its contents – the remains of the victim's father-in-law, [upi.com](#)

reports. The trailer and the car towing it were stolen from outside a local hotel, where the owners had stopped for the night on the way to bury their relative.

The car, trailer, and cargo were found abandoned in a golf course carpark about four hours after the disappearance had been reported. All were intact.



Pinsent Masons

Want to be part of a dynamic, innovative and global law firm?



Pinsent Masons is looking for ambitious lawyers in Financial Services, TMT, Corporate, Property and Employment. We want people who share our passion for being an international market leader in our key business sectors and who identify with our values - Approachable, Bold and Connected.

We offer the chance to work with the best of Irish and international clients using pioneering technologies – there is a reason we were voted the 'Most innovative law firm in Europe'. We provide a long term career path, high-calibre education programmes, early responsibility and an encouraging environment in which to develop your own client relationships.

With 22 global offices and over 1,500 lawyers, we have the footprint and expertise to support our clients wherever their commercial demands take them.

We are working exclusively with SSQ on these roles. For more information or to apply please get in touch with:

Jago Verna

Director

SSQ

T: +353 (0)1 695 0504

M: +44 (0)7908 142553

E: jago.verna@ssq.com



United Kingdom

France

Germany

Ireland

Spain

UAE

Qatar

China

Hong Kong

Singapore

Australia



Senior Lawyer – Irish Life

The Great-West Lifeco group includes some of Ireland's largest financial institutions including Irish Life, Canada Life, Irish Life Investment Managers and Irish Life Health.

We have an exciting opportunity within our Legal Team for a senior lawyer in our Dublin office. This is a permanent, full time role reporting directly to the General Counsel.

THE ROLE WILL REQUIRE:

- Extensive knowledge of legal issues relating to the provision of risk protection, pensions, savings and investment products for both the individual and group markets
- Managing the direction and control of external legal counsel; and
- Experience in mentoring of and management of qualified lawyers

THE SUCCESSFUL CANDIDATE WILL IDEALLY HAVE THE FOLLOWING:

- Extensive commercial experience with a focus on life insurance, pensions, and investments
- Seven years + PQE. Experience in-house would be advantageous
- Demonstrable experience in drafting and negotiation of legal documentation
- Proven ability to provide concise, commercial legal advice to directors and senior management
- Proven experience of successfully leading teams

APPLICATION PROCESS:

If you have the requisite skills and experience and wish to apply for this position please go to the Irish Life Careers Page at www.irishlife.ie

Job Vacancy ID Number: 003299

Recruiter Name: Orla Kennedy

Please ensure you upload your current curriculum vitae.

The company reserves the right to select a shortlist from the applications received. The selection process employed will be at the discretion of the company.

The closing date for applications is Friday 20 October.



Irish Life



Canada Life™



Irish Life
Investment Managers



Irish Life
health

We provide clear advice leading to informed decision making.

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

Banking Solicitor – Associate to Senior Associate – J00480

This Top 6 Dublin law firm requires an experienced solicitor to join its Banking and Finance Group dealing with Irish and international banks and also financial institutions and corporations. The role in question is for an experienced solicitor who can assist with a wide range of issues including; Portfolio sales; Secured facilities; Acquisition and infrastructure finance; Regulation & Compliance; Enforcement.

Commercial Property/Real Estate Solicitor – Associate to Senior Associate – MB0012

Our client, a progressive Dublin-based law firm, is seeking to recruit an experienced Commercial Property/Real Estate Solicitor to join its Commercial Property Department to assist both public and private sector Clients. You will be a qualified Solicitor with commercial property experience dealing with acquisitions, disposals, due diligence, landlord and tenant and asset management.

Commercial Property Solicitor – Assistant to Associate level – 2 years+ ppe – PP0313

Our client, a leading Property practice, is seeking to recruit a commercial property solicitor. The successful candidate will have at least two years' experience in landlord and tenant matters, sales and re-financings. The team works on a full range of practice areas which expand to construction matters, finance and green energy projects.

Competition and Regulated Markets Solicitor – Assistant to Associate – J00469

An opportunity has arisen in a Top 6 Dublin law firm for a solicitor to join its Competition & Regulated Markets Group dealing with European and Irish law including compliance & regulation. There is a wide variety of work on offer in a broad range of industrial sectors. You will have experience of mid to top tier practice coupled with a strong academic background and excellent technical skills.

Corporate – Commercial Lawyer – Assistant to Associate – J00307

A leading corporate and commercial law firm is seeking to recruit a Corporate Solicitor to join its long established and expanding Corporate Team. The successful candidate will be an ambitious solicitor based in Dublin or be a solicitor relocating from another common law jurisdiction with the following experience and attributes; Experience in corporate transactions; First-rate technical skills; Proven ability to work as part of a team.

Corporate Solicitor – 5 yrs+ ppe – J00445

Our client, a fast growing commercial law firm based in Dublin's City Centre, is seeking to hire an experienced Solicitor to join its Corporate Team. The successful Candidate will be a 5-year+ qualified Corporate Solicitor with experience in general commercial contract work including advising Clients on; Joint Ventures; Mergers and Acquisitions; Corporate Finance; Corporate Governance.

Data Protection Solicitor – Assistant to Associate level – 2 years+ ppe – MB0048

Our client, a well established yet progressive and innovative law firm, is seeking to recruit a Data Protection/Freedom of Information solicitor to service both public and private clients. This is a fast paced and evolving legal arena and requires an ambitious practitioner with at least two years' proven experience in this field. The role will involve:

- Drafting/reviewing data policies
- Advising Data Protection Officers
- Providing training to Clients
- Conducting GDPR Readiness Assessments.

Litigation Assistant – Recently Qualified/Assistant Level – MB0044

Our client is a well established commercial practice based in Dublin 4. The successful candidate will join a growing litigation team and will be expected to deal with commercial disputes to include debt recovery and insolvency. A strong opportunity for a junior solicitor to develop a career in this field.

Privacy/IT Lawyer – Associate to Senior Associate – MB0018

Our client, a full service business law firm, is seeking to recruit an experienced lawyer to join its Privacy and Data Security Team dealing with all issues pertaining to data protection and privacy law compliance. This is a complex and rapidly evolving area of law advising clients on a global scale. You will be a qualified solicitor or barrister with expertise in both private and data security law gained either in private practice or as in-house counsel.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.

T +353 (0) 6703997 E mbenson@benasso.com www.benasso.com