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# THE BIG PICTURE

## LONG SHOT

The remains of a Russian helicopter lie in a bomb-cratered field on 16 May 2022 after it was shot down in Biskvitne, east of Kharkiv, Ukraine. In mid-May, Russia began withdrawing forces around Kharkiv (Ukraine's second-largest city) and redirected its troops to the east of Ukraine, where fighting has intensified in recent weeks – particularly in the Donbas region. The Russian military apparently seeks to take full control not just of Donbas, but also of the southern region of Kherson and part of Zaporizhzhia, giving Russia a land bridge along the south coast to the Russian border. The Russian general Rustam Minnekayev has said that the aim is to extend control across the Black Sea coast beyond Odessa

PIC: JOHN MOORE/GETTY IMAGES

# Southern Law Association honours Mary Keane

At the Southern Law Association (SLA) Annual President's Dinner, co-hosted by immediate past-president Juli Rea and the current president Gerald AJ O'Flynn, were Barry Galvin, Mary Keane, Louise Smith and Frank Daly

At the SLA annual dinner on 6 May at the Maryborough Hotel, Douglas, Cork, were Don Murphy, Elaine O'Sullivan, Jonathan Lynam, Joan Byrne and John Tait

ALL PICS: DARRAGH KANE PHOTOGRAPHY

Joyce Good Hammond and Richard Hammond

Grace Toher and Amy Cahill

Breda Sheahan, Peter McKenna and Patricia Murphy

Michelle Ni Longáin and Mary Keane

Juli Rea made a presentation to Mary Keane (deputy director general, Law Society) to mark her impending retirement and to thank her for her friendship over the years to the SLA. Mary received a specially commissioned work of art, created by Cork artist and architect Paul Durcan, featuring an ink drawing of Mary's Wexford home

Kieran Moran, Mark Garrett, Mary Keane, Barry Galvin and Judge James O'Donoghue

Catherine O'Callaghan and Simon Murphy

Gerald AJ O'Flynn and Fiona O'Flynn

Brigid Napier and Michelle Cronin

Michelle Ní Longáin and Emma Meagher Neville

Members of the SLA Council: *(front, l to r)* Emma Meagher Neville, Gerald AJ O'Flynn and Juli Rea; *(middle, l to r)* Jonathan Lynam, Fiona Twomey, Catherine O'Callaghan, Don Murphy, Robert Baker, William Harvey and Louise Smith; *(back, l to r)* John Fuller, Sean Durcan, Joyce Good Hammond, Elaine O'Sullivan, Joan Byrne, Kieran Moran and John Tait

# Hibernian Law Medal presentations

At the presentation of the Hibernian Law Medals 2022 on 12 May were Mark Garrett (director general, Law Society), medal recipient Mary Robinson (seventh President of Ireland), Michelle Ní Longáin (president, Law Society), medal recipient Baroness Hale of Richmond (former president, UK Supreme Court), and Julia Launders (editor-in-chief, *Hibernian Law Journal*)

Nicholas K Robinson, Mary Robinson, and Baroness Hale

ALL PICS: CIAN REDMOND

Baroness Hale chats with Mary Keane (deputy director general)

Mary Robinson and Mary Keane

Mary Robinson is greeted by Law Society President Michelle Ní Longáin

# Ukraine appeal raises €22K for Irish Red Cross

ALL PICS: CIAN REDMOND

The Society's EU and International Affairs Committee hosted a fundraising table quiz on 21 April in aid of the Irish Red Cross Ukraine Crisis Appeal. As we went to press, almost €22,000 had been raised. MC and quizmaster for the evening was CCBE President James MacGuill SC. The profession lent its support in great numbers, with all tables being sold out. The winning team was Ronan Daly Jermyn, captained by Michael Quinlan. Donations can still be made at www.lawsociety.ie/ukrainetablequiz

Pictured at the event were James MacGuill SC (CCBE president), Cormac Little SC (EU and International Affairs Committee chair) and Michelle Ní Longáin (Law Society president)

At the cheque presentation were Ross McMahon (committee vice-chair), Cormac Little SC (chair), Irish Red Cross head of fundraising Charles Lamson, and Aedín Twamley (Law Society)

# President proudly presents Peart portrait

Mr Justice Michael Peart, Mary Keane (deputy director general) and Carey Clarke (artist). As chair of the board of the National Gallery, Mary Keane facilitated the collaboration between the artist and the sitter, ensuring a perfect match!

Carey Clarke describes the process to President Michelle Ní Longáin

ALL PICS: CIAN REDMOND

Rosemarie Loftus, Mary Keane, Jacinta Peart and Valerie Peart

The Law Society President formally unveils the portrait in the Council Chamber on 28 April

The Council and assembled guests show their appreciation for the expertise of both men – artist and sitter

# Viva Manila turns up heat at 'Comeback Ball'!

ALL PICS: CIAN REDMOND

The 'Comeback Ball' for PPC2 students proved a huge success at the Royal Marine Hotel, Dun Laoghaire, on 22 April. The trainees enjoyed their first social night in two years following the pandemic lockdowns, and swayed to the tropical sounds of Viva Manila

# Ground-breaking effort raises €7K for MND

**The Law Society was pleased to support a recent innovative approach to members' corporate social responsibility. It brought a winning collaboration between Donegal artists – writer for the spoken word Olive Travers, artist Barry Britton, musician/composer Eamon Travers, and others – to a new audience, while raising more than €7,000 for the Irish Motor Neurone Disease Association.**

**Brian J McMullin Solicitors brought this multi-artistic fundraiser to Blackhall Place as principal sponsor, in association with Donegal Dublin Business Network, Donegal Association Dublin, Allingham Arts Association, and the generous co-sponsorship of McCann FitzGerald, Matheson, Eversheds Sutherland, Reddy Charlton, Peart's Solicitors & Town Agents, McGroddy Brennan Solicitors, Peter Fitzpatrick Legal Costs Accountants, Bank of Ireland, Magee 1866, Click a Gift, Falcon Green, The Sand House Hotel, Kahm Swimwear and Laveesha Accessories.**

**Olive Travers' *Nets of Wonder: Stories on the Wall*, illustrated by Barry Britton, will be published in 2023.**

# Largest intake of trainees recorded since 2008

The Law Society has reported greater access and reduced barriers to the solicitors' profession for trainees across diverse educational, professional, and socio-economic backgrounds.

The *Annual Report on Admission Policies of the Legal Professions 2021*, published in May, signifies its commitment towards a more diverse and accessible profession, reflective of modern Irish society.

Key indicators of a progressive, thriving and diverse solicitors' profession included:

- 22,945 solicitors on the Roll on 31 December 2021 – 54% of the 876 solicitors admitted in 2021 were women,
- 538 new trainees started the two-year qualification process in 2021 (PPC1) – the largest intake of trainees since 2008 (women constituted 61% of new trainees),
- The flexible PPC Hybrid course is proving popular, with 109 trainees representing a 50% increase on 2020, and
- The Access Scholarship Scheme is being availed of by 184 trainees.

Since launching in 2020, the Law Society's Small Practice Traineeship Grant has provided €250,000 to enable aspiring solicitors to undertake their training contact in their local communities. To date, this grant has been awarded to ten trainees.

Education Committee chair Richard Hammond said: "The Law Society is dedicated to delivering world-class professional legal education to develop 21st century solicitors who can meet, and exceed, the demands of competing in a globalised Ireland. With the largest intake of trainees recorded since 2008, our new report reveals clear indications that pathways to becoming a solicitor are increasingly accessible. The public interest is best served when the legal professions reflect the diversity in Irish society."

# Access pathway has funded 300 solicitors

The Access Programme run by the Law Society is now over 20 years in operation and, to date, has provided financial and practical supports to over 300 aspiring solicitors.

The programme aims to assist students from socio-economically disadvantaged backgrounds to enter professional legal education, and be financially supported all the way from the FE1s right through to qualification.

Each year, the Society receives approximately 85 applications for funding, and around 80% of these are successful.

Richard Hammond SC (chair of the Society's Education Committee) says that the Law Society is proud of the programme, which helps promote greater diversity – vital in helping to build a legal profession that reflects the diversity of the society it serves.

"Since 2001, over 300 students have benefited from the programme, with one in four of these being from countries other than Ireland.

"Many recipients are now successfully practising in a wide range of legal positions, including as in-house solicitors, within top commercial law firms, and as sole practitioners," Mr Hammond said.

# Cross-country CPD clusters return

● Law Society Skillnet CPD clusters are taking place at several locations over the coming months, with a range of expert speakers and topics lined up.

Essential updates will cover an overview of general issues, as well as regulatory matters, management and professional development, including CPD hours, lunch and a welcome return to networking.

*19 May* – Midland's General Practice Update 2022 (Midland Park Hotel, Portlaoise, Co Laois): Áine Hynes SC (assisted decision-making), John Elliot (regulation), Caroline Reidy (dignity in the workplace), Richard Grogan (employment), and Richard Hammond (probate).

*23 June* – North-west Practice Update 2022 (Lough Eske Castle Hotel, Co Donegal): Anne Stephenson (probate and wills), Margaret Walsh (Fair Deal scheme), Colette Reid (litigation), Dorothy Collins BL (licensing), and Fergal Mawe (cyber-crime).

*30 June* – Essential Solicitors' Update 2022 (Strand Hotel, Limerick, Co Limerick): Áine Hynes SC (assisted decision-making), John Elliot (regulation), Raymond Delahunt BL (commercial leases), Fergal Mawe (cyber-crime), and Betty Nerney (dealing with difficult people).

Other dastes include:

- *15 September* – Essential General Practice Update Kerry 2022 (Ballygarry House Hotel, Tralee, Co Kerry).
- *20 October* – North-east CPD Day 2022 (Four Seasons Hotel, Co Monaghan).
- *9 November* – General Practice Update Kilkenny 2022 (Hotel Kilkenny, Co Kilkenny).
- *17 November* – Connaught Solicitors' Symposium 2022 (Breaffy House Hotel, Castlebar, Co Mayo).
- *24 November* – Practitioner Update Cork 2022 (Kingsley Hotel, Cork, Co Cork).
- *30 November* – Practice and Regulation Symposium (Mansion House, Dublin).

There will also be regular updates on these events in the 'Online and on-site CPD courses' section on www.lawsociety.ie.

# Casey to lead review of Central Bank code

● The Central Bank has appointed Patrick Casey as its new head of consumer policy and research. Casey is currently the Registrar of Credit Unions.

As a result, the bank has launched a recruitment process to find a new supervisor for the credit-union sector.

In his new role, Casey will lead the bank's review of its *Consumer Protection Code*. The Central Bank will launch a discussion paper in the third quarter of this year as part of the review process. A formal consultation will follow, setting out proposed revisions to the code.

Central Bank governor Gabriel Makhlouf said that the review offered the bank an opportunity to engage widely with stakeholders on critical consumer-related topics at a time of "unprecedented change" in Irish retail financial services.

He added that the credit-union sector played an important role at the heart of the sector.

"We want to continue to see a strong and vibrant credit-union sector, offering its members the products and services they need into the future, which the new registrar will take forward," he stated.

# TikTok star all set for discussion


**● Legal practice-management software firm Clio will host a discussion for practitioners and law-firm owners in Dublin on 23 June.**

**Tailored to business owners, managing partners and lawyers – including sole practitioners and those from SMEs – 'Innovate Legal' will include a networking session, as well as a panel discussion by legal innovators.**

**Legal marketing and firm-branding, legal technology, and the innovation required for law-firm growth will be among the topics to be discussed.**

**Law Society Council member, employment lawyer, and TikTok regular Richard Grogan (who has 265,000 followers who enjoy his catchphrase, "That's the law and that's a fact") will share his experience of growing his firm's brand, and his own personal brand, through social media. Other speakers will be announced in due course.**

**The event will take place at Medley, Unit 7, Old Irish Times Building, Fleet Street, Dublin 2, from 5.30pm to 9pm on 23 June. Drinks and food will be served. Early booking is recommended.**

## Employment law and remote working

**● 'Employment law and remote working' is the theme for the Diploma Centre's 2022 massive open online course (MOOC), which started on Tuesday 31 May. The course runs over a five-week period, and there is still time to join.**

**MOOCs are free online courses open to everyone, and are part of the Law Society of Ireland's public legal-education initiative. These courses feature online recorded and streamed presentations, together with interactive quizzes and discussion forums that allow participants to engage directly with expert presenters.**

**This year's MOOC will provide participants with a comprehensive guide to the key employment-law issues arising in the context of hybrid and remote-working models, together with other recent employment-law developments.**

**Expert speakers, employment lawyers and academics will examine many relevant topics, including the right to request remote working; the right to disconnect; health-and-safety considerations; the impact of hybrid working on wider society; dispute mechanisms; equality, diversity and inclusion in the workplace; data-protection issues around remote working; and professional wellbeing.**

**Seven CPD points are available for completing this MOOC. To sign up, visit https://mooc2022.lawsociety.ie.**

# Historic firsts for Council meeting

**The Law Society held its first in-person/hybrid Council meeting since the pandemic at Blackhall Place – and the first-ever Council meeting to be held in the Presidents' Hall – on Friday 29 April 2022**

# North rises to Peart challenge

● The Law School hosted the Michael Peart Challenge Cup competition on 19 May. The cross-border dispute-resolution competition is a collaboration between the Law Society and the North's Institute of Professional Legal Studies (IPLS).

The A&L Goodbody-sponsored contest promotes the value of resolving disputes through mediation, and is designed to help trainees from both institutions to develop their mediation skills in tandem with receiving feedback from practitioner experts.

Mr Justice Michael Peart presented the cup named in his honour to the winning IPLS team: Anne Kelly, Holly Johnston, Jamie Donnelly and Heather Alexandra. The Blackhall Place team were a very close second (Sinéad Flynn, Rachel Jones, Michael O'Halloran, and Niamh Shanahan).

# President unveils Peart portrait

PIC: CIAN REDMOND

● The first solicitor to be appointed to the superior courts in Ireland, Mr Justice Michael Peart, has been honoured by the Law Society with a specially commissioned portrait by renowned artist Carey Clarke.

The painting was unveiled in the Council Chamber at Blackhall Place by Law Society President Michelle Ní Longáin on 28 April. It will hang permanently in the chamber.

Michael Peart was admitted as a solicitor in 1970 and worked for more than 30 years with his well-known family firm, Pearts. He was elected to the Society's Council in 1995 and served on many of its committees. It was his work as chair of the Education Committee, however, that made the greatest impact. Michael led the expert group that produced the groundbreaking *Peart Commission Report* on legal education in 2018. His contribution to this report and his passion for delivering top-class legal education – accessible to all – continues to reap benefits for trainees who seek to enter the profession today.

Having fought with determination for 'parity of esteem' during his time on Council, Michael Peart made history in 2002 when he became the first solicitor in Ireland to be appointed to the High Court and, in 2014, he became a judge of the Court of Appeal upon its establishment. He retired in October 2019, just before his 70th birthday.

Hosting the unveiling ceremony, President Ní Longáin said: "I can say with surety that this [High Court appointment] was a proud day for our profession. Judge Peart, you are a trailblazer!" She continued: "On behalf of the Law Society of Ireland and all in our profession, I would like to thank Mr Justice Peart for his many years of dedicated service to his clients, the courts, and members of the solicitors' profession, past, present and future.

"Our thanks to Mr Clarke for his work in creating this painting, which will hang with pride of place in the Law Society for many, many years to come," the president concluded. (See also p10.)

# Irish M&A value soars

● Irish companies have attracted near-record levels of mergers and acquisitions (M&A) activity and volume in the year to April 2022, according to EY. Its data is sourced from live database Dealogic and excludes real-estate asset acquisitions.

The technology, media, and telecoms sector made up nearly two-thirds (63%) of the total deal value, while the volume of Irish M&A activity increased by 21% for the first four months of the year, compared with the previous two years. In all, 60 Irish M&A deals with a combined total value of almost US$3.3 billion were made in the first four months of 2022. Inbound investment accounted for most of this activity.

# Let your true self shine

**● Incoming lawyers should avoid trying to fit a mould in how they speak and act, Law Society President Michelle Ní Longáin advised trainees, at a 'Shrink Me' discussion organised by Law Society Psychological Services on 23 May.**

**She urged the value of authenticity, and warned the trainee lawyers against clichéd thinking, acting in a guarded manner, or pretending to be part of an elite group.**

**The president observed that the number of trainees and solicitors from diverse socio-economic backgrounds was growing exponentially with every passing year – thanks to the Law Society's hard work in encouraging intake from all backgrounds: "It would be a mistake to pigeonhole all lawyers in Ireland as cut from just one cloth," she said, "or to imagine that all practitioners come from 'legal families'. The law is open to everyone."**

**The law is a tough but interesting career, Ní Longáin added, and she warned against bottling up difficulties in an effort to present yourself as a "polished professional".**

**"Seek help if you need it, and do not be motivated solely by money – though the law should offer a good living," she told trainees. Self-awareness about your career and the type of work you find most fulfilling was very important, she suggested. "You know how you can best contribute," she told the trainees, adding: "Pay attention to what drives you and what you find interesting."**

# Ukraine bar seeks Russia's UN expulsion

● The Ukrainian Bar Association (UBA) has called for Russia to be isolated from any influence on decision-making in the United Nations.

The organisation has acknowledged, however, that there is no clear way of removing Russia from the Security Council – the only UN body with the authority to issue binding resolutions on UN member states. Russia is one of five permanent members of the council, where it has a veto.

The Ukrainian government is, however, attempting to challenge Russia's right to this position, which it took up after the break-up of the Soviet Union. The UBA says that the UN General Assembly was never asked to approve Russia's admission to the Security Council, and that the *UN Charter* was never amended after the dissolution of the Soviet Union.

An analysis document written by three members of the UBA's committee on international law – Olga Kuchmiienko (committee head), Anna Bukvych and Viktor Pasichnyk – states that expelling Russia from the UN is not an option, as such a decision would have to be recommended by the Security Council. It also rules out changing the charter to exclude Russia, as this would also need the backing of the Security Council. It concludes that the most realistic option would be to terminate Russia's delegation to the UN, meaning that it would remain a member, but lose the right to vote.

**Olga Kuchmiienko (head of the UBA's committee on international law)**



# ENDANGERED LAWYERS

## KHALIL MA'TOUQ, SYRIA

**● Khalil Ma'touq is a prominent human rights lawyer in Syria, a member of the Syrian Bar Association, and was executive director of the Syrian Centre for Legal Studies and Research until his disappearance in 2012. Over 20 years, he defended hundreds of political prisoners and prisoners of conscience in Syria, including political opponents of the regime, journalists, and peaceful protesters. This is his tenth year in detention.**

**In 2012, among his many activities, Ma'touq was a member of the defence team of journalist and human rights defender Mazen Darwish and his colleagues from the Syrian Centre for Media and Freedom of Expression. Ma'touq had regularly published articles and legal studies on human rights issues, including critical analysis of Syrian domestic legal provisions, assessing the Syrian criminal code for compliance with the *Rome Statute* and other international legal instruments. Having long drawn the attention of the state security authorities, he was banned from travelling between 2005 and 2011 and was the subject of harassment and intimidation.**

**He and his assistant, Mohammed Zaza, were driving from his home in the Damascus suburb of Sahanaya to his office on 2 October 2012, crossing government checkpoints, when they both disappeared. The authorities deny arresting the men, but there have been a number of credible reports from other prisoners that Ma'touq was seen in various places of detention over the years. His family has had no official news of him. He has not been charged with any offence. Particularly worrying is that he suffers from an inflammatory lung condition for which he has virtually no chance of treatment in the Syrian system, and there are reports that his health has severely deteriorated.**

**Every report about detention in Syria details horrific conditions. According to one 2018 report, the Syrian Observatory for Human Rights documented 16,055 civilian casualties (including 15,866 men, 125 children under the age of 18, and 64 women over the age of 18), out of at least 60,000 detainees, who were killed in government detention centres, including the Sednaya prison, over the previous seven years, either as a result of direct physical torture or deprivation of food and medicine.**

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

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Our 'Ask an expert' section deals with the wellbeing issues that matter to you

# Practising 'being present'

**Q I'm a solicitor with extensive expertise – I have put in the hours and sacrificed a lot. Recently, life has thrown huge changes at me and, as a result, I've been experiencing panic attacks. I have been to my GP about this, who recommended a number of things to help, including meditation. I have tried meditation before, but just can't seem to simply breathe and relax. In fact, the more I focus on my breath, the more anxious I become. Please help!**

A I have worked with lots of lawyers, at different levels, in many law firms, and I want to assure you that your experience is not at all unusual. We all struggle. We all feel stressed and anxious. Life is often challenging. Panic attacks are common – and the experience can be unpleasant and debilitating.

It's a relief to know, however, that we are not alone, and that this is normal. The mistake many of us make is to bottle it all up and pretend that everything is okay. This is exhausting, and is not sustainable in the long run. People who don't seek help can easily fall into a trap of self-medicating with drugs or alcohol. So, I congratulate you for being proactive in reaching out to your GP.

Meditation is one thing that many people find helpful. There are other options, too, like psychotherapy, diet, exercise, medication, and certain lifestyle changes.

'Meditation' is a very broad, catch-all term. There are many different forms of meditation. Perhaps the most popular and well-researched form is 'mindfulness', which has its roots in Buddhist practices.

There are lots of great apps that can serve as an introduction to mindfulness, but if you want to learn how to practice it, I suggest that you find a good teacher and consider joining a course. A good resource is the Mindfulness Teachers Association of Ireland, where you can find a list of qualified teachers, and courses (www.mtai.ie).

To your specific question, then: often people approach mindfulness with the misconception that all they have to do is 'breathe and relax'. In fact, the practice of mindfulness is about learning to be with our experience 'as it is'. We are practising 'being present'. The breath is often offered as an 'anchor' for our attention – something to gently rest our attention on so that the mind is less inclined to wander. However, not everyone finds the breath helpful as an anchor. Sometimes focusing on the breath can make us feel even more anxious, for instance: "Am I breathing correctly?"

I would encourage you to be very flexible in your approach and to experiment with alternative anchors for attention – like the feeling of your feet on the floor, or noticing different sounds coming and going. It might be helpful for you to practise with your eyes open, or to introduce some movement – whatever feels supportive and grounding for you.

It can also be counterproductive to have an expectation that we must feel relaxed. Remember, all we are doing is learning to be with our experience as it is. When we stop resisting our experience and we allow it to be as it is, there might be a natural sense of ease and relaxation. Years ago, my own teacher offered me this very helpful piece of advice: "Relax … you don't have to relax!" I hope this helps. g

*To submit an issue that you'd like to see addressed in this column, email professionalwellbeing@lawsociety.ie. Confidentiality is guaranteed.*

*This question and answer are hypothetical and were written by Barry Lee, founder of Mindfulness for Law, who worked for over ten years as a corporate and commercial lawyer and is a certified mindfulness-based stress-reduction teacher. Any response or advice provided is not intended to replace or substitute for any professional psychological, financial, medical, legal, or other professional advice.*

*LegalMind is an independent and confidential mental-health support available to Law Society members and their dependants, 24 hours a day: Freephone 1800 81 41 77 or text 'LegalMind' to 087 369 0010 (standard rates apply) for a call back.*

# Based in reality?

**The *GD* judgment and CJEU case law on data retention give the impression of vindicating privacy rights under the *EU Charter*, argues Aisling Kelly. However, the CJEU's suggested pathways fail to offer a real rule-of-law-based approach to this thorny issue**

WHAT THE COURT CANNOT DO IS TO BAN WIDESPREAD AND INDISCRIMINATE DATA RETENTION *SIMPLICITER*. IT IS STILL POSSIBLE TO RETAIN DATA FOR CERTAIN PERIODS, ONCE DONE IN ACCORDANCE WITH THE GDPR AND *E-PRIVACY DIRECTIVE* FOR A SET BUSINESS PURPOSE

The European Court of Justice delivered judgment in *GD v Commissioner of An Garda Síochána & others* on 5 April 2022. There were no major surprises. Some minor scuffles in relation to procedural law, and a shot across the bow of the French Conseil d'État, but really it was all over, bar the shouting.

The judgment confirms earlier case law (see *La Quadrature du Net & Others*) on the point that widespread and indiscriminate retention of mobile-phone data for the purposes of investigating crime is contrary to European law.

The judgment confirmed that there could be instances where retention of data would be permissible for the investigation of serious crime. Primarily, the court advanced two suggestions where this might be possible:

1) *Targeted retention of data per geographical area or category of persons* (see paragraph 67). The idea here – and it is currently in either draft legislative format in Belgium and finalised law in Denmark – is that a member state designates an area that is statistically prone to crime and allows a net to be cast over that area for a limited period of time, say 12 months. That time period can be extended. The idea is that if you live, work, or wander into that area, your data on your mobile phone or device is capable of being scooped up through the wonders of technology.
2) *Expedited retention or the 'quick freeze' of data retention*. The idea here is that the police obtain intelligence that a crime is *about to be* committed in a certain area, and can then apply to one or many telephone companies, internet-service providers, or one of the many other apps that retain data about your location. This is a phenomenon not unknown in modern policing. In the US, the use of a 'geo-fence' warrant is the idea that *after* the commission of an alleged crime, the police draws a box on a map around the crime scene and looks for all the data of the devices that were geolocated to that box. It is incredibly privacy intrusive, and only capable of being actioned by companies like Google, who store highly accurate location data. (More on these ideas below.)

## So, a win for privacy rights?

Well, yes and no. What the court cannot do is to ban widespread and indiscriminate data retention *simpliciter*. It is still possible to retain data for certain periods, once done in accordance with the GDPR and the *ePrivacy Directive* for a set business purpose – for example, financial billing records for various time periods. The case law is about who may access that data. The CJEU has made it clear it does not believe that state law-enforcement agencies should access it. However, what it cannot do is to prohibit state agencies accessing it for the purposes of national security. The reason being that the area of national security is outside the competence of EU law under the *Lisbon Treaty*.

It means that member states have the power to regulate the laws around national security as they see fit, according to their own constitutional law. Therefore, you have an incongruous situation where national authorities may use retained data for the investigation of national security events, but not for criminal matters.

This distinction between national security (being outside the competence of EU law) and law enforcement (inside the competence of EU law) is one only capable of making sense to an EU lawyer. In fact, Attorney General Paul Gallagher went so far as to say it would undermine public faith in EU law.

The proposition that threats to national security can be investigated with recourse to a deeper bucket of evidence – but serious crime cannot – is difficult to reconcile. The space between national security and serious crime is very blurred, especially in this age.

The CJEU talked about "national security protecting


PIC: ALAMY

Data retention of a different type

the essential functions of the State … through the prevention and punishment of activities capable of seriously destabilising the fundamental constitutional, political, economic or social structures of a country".

Think about what that could be – online misinformation, organised criminal-gang activity, economic cartels, targeted cybercrime at critical infrastructure (like, say, the HSE), or election interference. These are all arguably instances that would satisfy the 'national-security' test (paragraphs 63, 64).

## Defence of the realm

Take, for example, a bomb threat. That could be regarded as a threat to national security, or it could be regarded as an attempted murder of a group of individuals. Of course, one murder (as was the case in *GD*) is almost entirely unlikely to ever be regarded as a threat to national security.

Does this enhance EU citizens' privacy rights? Or does it invite member states to recategorise singular investigations, or declare the country to be in a general state of elevated national security so that their agencies may avail of blanket access to electronic data in criminal investigations? The latter is certainly the option that many believe France has taken. The *GD* judgment was clear that the French approach was living on borrowed time.

The judgment may also counter-intuitively act as an incentive for member states to introduce national legislation on checks relating to the identity of people buying phones or accessing the internet. The court made it clear that this was allowed for the purposes of criminal investigation (paragraph 73).

One also has to bear in mind that the *European Electronic Communications Code* will allow EU member states to recategorise their surveillance laws to include electronic communication services previously outside the scope of intercept law. So, law enforcement in various member states may be allowed access to prospective data of your calls, emails, and messages in the investigation of crime – but not access to retained data. This law is also hugely privacy invasive.

Lastly, while not linked to the *GD* judgment, there are multiple ways in which peoples' data is hoovered up, retained, sold and misused. The very existence of data brokers should be enough to wake us all up to our online behaviour. The fact is that data is retained, and sold, as a commodity. One may regard the ubiquity of data-harvesting to be a larger threat to privacy than time-limited retention of data for law-enforcement purposes.

## Blunt tool

Nobody likes the idea of being under constant surveillance. And, of course, that is why

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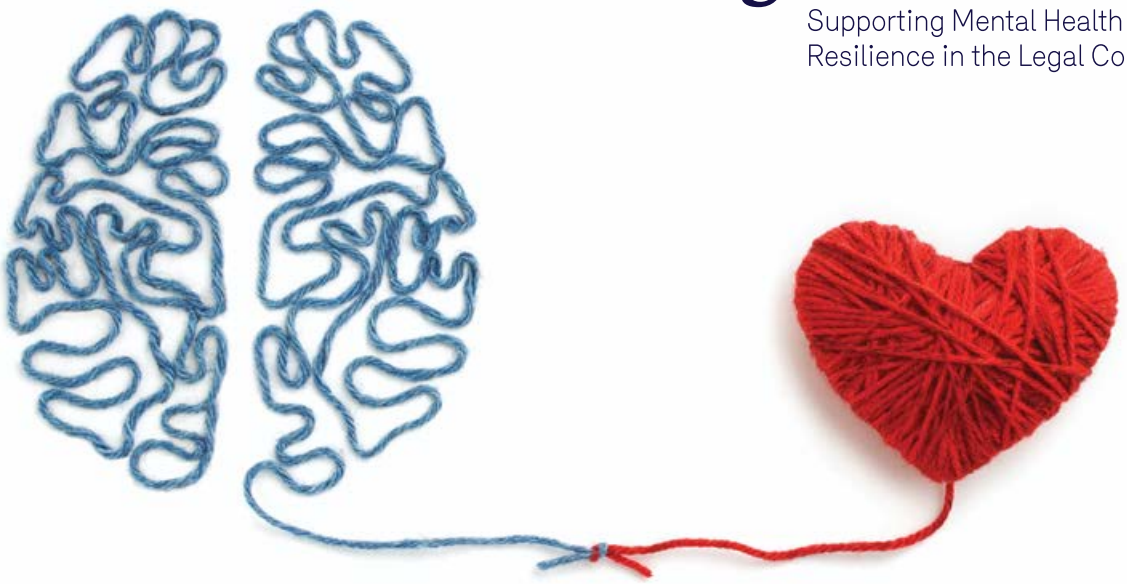

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privacy-aware people will turn off their location settings, use non-tracking web browsers, VPNs, and not visit websites like the *Daily Mail*! The CJEU knows this. The judgment (paragraph 46) points out that, just by retaining data, there is a risk of abuse and unlawful access. One has to agree. However, there are more meaningful ways to protect privacy rights, rather than this convoluted dance that the CJEU has proposed.

The member states argued that, instead of prohibiting the retention of widespread and indiscriminate data, proper safeguards should be introduced to address privacy concerns – for example, tight time limits and meaningful judicial oversight on the granting of the orders relating to digital evidence.

What is truly 'meaningful'? For starters: a proper hearing, on notice to a target of the investigation, with the use of the *in camera* rule to be the exception, and a proper audit of the system by a board made up of privacy, law-enforcement, and human-rights experts. Mandatory transparency reporting from all state agencies would also go a long way towards ensuring that there was proper civil-society oversight.

## Reality bytes

It is a deep shame that the rules on procedure within the CJEU do not allow for the court to hear evidence from experts before delivering judgment. The EU institutions invest heavily in the process of hearing from the public and subject-matter experts before any new legislation is drafted. So, too, do most national parliaments.

The issue with the data-retention line of case law is that no one has told the CJEU what is – and what is not – possible. In fact, Naomi O'Leary, an Irish journalist who was in the Grand Chamber and live-tweeted the hearing, made reference to a counsel stating that this information is available "at the press of a button". This is just not factually inaccurate. And, in addition, no one contradicted this inaccuracy.

The two suggested pathways are unworkable.

The geographically limited retention idea is based on a misunderstanding as to how mobile devices capture location data. Yes, in theory, it may be possible to obtain IP addresses from some of the internet-enabled devices within an area. But in order for it to be possible, the area would have to be large, say, for example, a city. Additionally, it will not capture the location of people using a VPN or other obfuscation technology on their phones. It won't capture devices that are not internet enabled. The geographic-targeted retention of data is the equivalent of a sieve for law-enforcement purposes. It is not possible to capture data by flicking on a switch once someone walks past an invisible fence. In order to capture *some* users' data, you must capture *all* users' data. So, how is this any more protective of *EU Charter* rights?

The second proposal is equally misconceived. The idea that a law-enforcement agency can decide to request a 'quick-freeze' presupposes that it has the ability to identify all of the mobile-phone networks, internet service providers, and other tech providers in a particular location – and request them all to capture all of the users in a particular area, for a particular time, at the drop of a hat.

The EU has 27 member states and hundreds of thousands of police officers capable of submitting criminal orders for data. The technology providers do not have interoperability with each other. There is no central authority for the mobile-phone networks, the ISPs, and the million other apps on your phone that collect location data. How is that possibly going to work in real life? It is entirely unworkable from a practical perspective.

The *GD* judgment and CJEU case law on data retention in the sphere of law enforcement do not do what they set out to do – that is, protect the privacy of EU citizens. They suggest pathways that are based on poor understanding of technology, while also counter-intuitively inviting member states to introduce legislation to track the identity of mobile-phone users as a way around this conundrum.

If the CJEU were really interested in protecting EU citizens' privacy rights within law enforcement, it would pay more attention to remedying the original complaint of these data-retention laws – that is, inappropriate judicial oversight – and less attention to designing pathways seemingly based on fantastical episodes of CSI.

*Aisling Kelly is a barrister working in the area of law enforcement, national security, and technology.*

> LAW ENFORCEMENT IN VARIOUS EU MEMBER STATES MAY BE ALLOWED ACCESS TO PROSPECTIVE DATA OF YOUR CALLS, EMAILS AND MESSAGES IN THE INVESTIGATION OF CRIME – BUT NOT ACCESS TO RETAINED DATA. THIS LAW IS ALSO HUGELY PRIVACY INVASIVE

## LOOK IT UP

**CASES:**

- *GD v Commissioner of An Garda Síochána & others* (C-140/20)
- *La Quadrature du Net & Others* (C-511/18)

**LEGISLATION:**

- *ePrivacy Directive* (2009/136/EC)
- *EU Charter of Fundamental Rights*
- *European Electronic Communications Code* (Directive (EU) 2018/1972)

# Post-colonial theory

**Malawi achieved independence from Britain in 1964. Macdara Ó Drisceoil looks at the effects of colonialism on the country's justice system**

> THE COLONISED REJECT THEIR LOCAL LANGUAGES AND TRADITIONS, AND THE IMPERIALIST TRADITION IS MAINTAINED BY THE NATIVE RULING CLASSES THROUGH A CULTURE OF 'PARROTRY'

In *Decolonising the Mind*, Ngugi wa Thiong'o described European colonialism in Africa as leading to a system of cultural alienation in which the colonised reject their local languages and traditions, and in which the imperialist tradition is maintained by the native ruling classes through a culture of 'parrotry', which is enforced on the 'restive population' through institutions such as the police and the judiciary.

Ngugi wrote that imperialism is a "cultural bomb" that annihilates "a people's belief in their names, in their languages, in their environment, in their heritage of struggle, in their unity, in their capacities and, ultimately, in themselves".

## On national culture

Following independence, Anglophone colonies (such as Ireland and Malawi) retained the entire corpus of laws introduced during the period of imperial domination: in Ireland, through article 73 of the 1922 Constitution and, in Malawi, through retaining the colonial era *Penal Code* (enacted in 1930). This included vagrancy laws contained in sections180 and 184 of the code, notwithstanding the fact that they were introduced to protect the interests of colonial landowners and ensure an abundant supply of cheap labour on European estates. While imprisonment was an unknown concept in pre-colonial Malawi, it was to become an integral part of both the colonial and independent systems of government.

Nyasaland (present-day Malawi) was described by the Scottish historian John McCracken as an "overwhelmingly racist" society. The attitude of the European settler population to the local population is exemplified by a writer in the settlers' newspaper, the *Central African Times*, in 1906, who complained of local people cycling bicycles, and demanded that "some control [should be] exercised over native budding cyclists" as "the principal streets of Blantyre are not intended as the playground of native cyclists".

Orton Chirwa – the founder of the Malawi Congress Party (MCP) and the first black Malawian barrister – was among a group of nationalists who campaigned against the federation of Nyasaland, Northern Rhodesia (present-day Zambia) and Southern Rhodesia (present-day Zimbabwe), which was introduced in 1953, despite strong opposition in Nyasaland because of fear of the "entrenchment of settler rule". In 1959, a commission of enquiry led by Lord Devlin was tasked with investigating political disturbances and the detention without trial of nationalists following the declaration of a state of emergency. Despite attempts to mollify its contents, the commission (in its final report) was highly critical of the colonial administration's policing, describing Nyasaland as a "police state".

Kamuzu Banda returned to Malawi in 1958, after 43 years of studying and working as a doctor in America, Britain and Ghana, to a choreographed welcome from thousands of Malawians, subsequently mythologised as spontaneous and sincere. In 1964, Banda became the first president of independent Malawi, which he turned into a one-party state. Chichewa was to become the dominant language and culture, notwithstanding the huge diversity of languages in the country, with the northern region suffering the brunt of Banda's autocratic cultural policies. Malawian writer Emily Mkamanga (herself a northerner) described in *Suffering in Silence* how the repressive colonial system was replaced, in 1964, by a "harsher repressive government" under which women suffered particularly.

In 1964, at the government's first cabinet meeting, it was agreed to amend the constitution to introduce detention without trial. The following year, legislation was introduced prohibiting the arrest by the police of members of the MCP's paramilitary wing, the Malawi Young Pioneers.

PIC: JAMES BURKE/SHUTTERSTOCK

**British colonial troops advance towards a group of nationalist protestors in Nyasaland (now Malawi) in 1959. During the Nyasaland Massacre, 33 peaceful protesters were killed**

Section 10 of the *Young Pioneers Act* stated that every Young Pioneer "is granted all the powers, duties, and protection of a police officer acting in the execution of his duties". In his prison memoir, *And Crocodiles are Hungry at Night*, Jack Mapanje writes that, when Banda put the Young Pioneers above the police, it unleashed chaos; the prisons were "choked with thousands of dissenters" as Banda built a new prison in every district; and that victims were "neither tried nor charged with specific offences", but "languished in prisons indefinitely".

## National consciousness

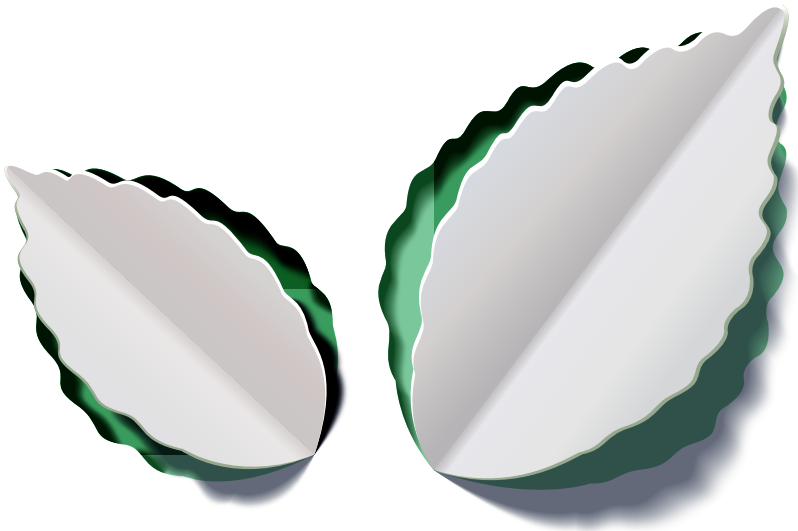
In 1966, Malawi was declared a republic under a new constitution, and the comprehensive bill of rights contained in the 1964 constitution was repealed.

Section 8 of the 1966 constitution stated that the president shall act "in his own discretion and shall not be obliged to follow advice tendered by any other person".

Section 9 stated that the president of Malawi "shall be Ngwazi Dr H Kamuzu Banda, who shall hold the office of president for his lifetime".

Banda also introduced legislation prohibiting women from wearing trousers (*Decency in Dress Act 1973*), banned over 840 books (*Censorship and Entertainment Act 1968*), declared men with long hair "idle and disorderly" (section180(g) *Penal Code*, amended 1973), and created a climate in which the population was terrified of criticising the government, with traditional pounding songs being one of the last forms of political dissent.

Africanisation of state institutions came slowly to Malawi: the judiciary continued to be dominated by Europeans, including James John Skinner from Clonmel, who served as Chief Justice of Malawi from 1970 to 1985. He had previously lived in Zambia, where he assisted Kenneth Kaunda (first president of



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Zambia, 1964-1991) in the fight for independence. A white-Irish African nationalist serving as chief justice in autocratic independent Malawi demonstrates the complexity of the continuing colonial influence on African states following independence.

It is estimated that, during Kamuzu Banda's time in power, there were approximately 250,000 political prisoners out of a population of 8.5 million. The *Public Order Act* provided for the detention without warrant of any person where it was considered necessary for the preservation of public order. Detention without trial was frequently justified on the basis that it was for the safety of the detainee – an argument that continues to be used today in court by prosecuting police officers when opposing bail applications.

## The basic confrontation

In 1961, the MCP manifesto had criticised the colonial government for subjecting its members to arbitrary arrest and detention without trial, and proclaimed its commitment to an independent and impartial judiciary and the maintenance of the rule of law.

Emily Mkamanga wrote that Kamuzu Banda betrayed the 1961 MCP manifesto by introducing indefinite detention without trial, which she described as causing mental torture.

This continues today, with many suspects held on remand in overcrowded prisons for years without any indication of a trial in the near future, and with no idea how long their detention is likely to last. Recently, a murder suspect – released after 14 years awaiting trial in prison – expressed his amazement at being released, as he had expected to die in prison.

Orton Chirwa was among six cabinet members who opposed Banda's increasingly autocratic system of government, for which he was forced into exile in 1964. He and his wife were captured by Malawian security forces in 1981 in neighbouring Zambia. He was found guilty of high treason by chiefs, following a trial before a traditional court at which defence lawyers were prohibited. He was sentenced to death, which was commuted to life imprisonment, and he died in inhumane conditions in Zomba prison in 1992. The year before this, poet and academic Jack Mapanje had been released after spending four years in Mikuyu prison without being charged with any offence or provided with any reason for his arrest. He was eventually released with the assistance of the Irish priest Fr Pádraig Ó Máille.

## Above all, dignity

Colonial-era vagrancy laws came under scrutiny in 2017, when the Malawian High Court found that the vagrancy law ('rogue and vagabond'), pursuant to section184(1)(c) of the *Penal Code*, was an unconstitutional violation of human dignity. This provision contained the offence of being in a public place in circumstances that led to the conclusion that the person is there for an "illegal or disorderly purpose". The applicant had been selling plastic bags in an effort to eke out a living: he had failed to provide a satisfactory account to the arresting police and spent three days in police custody.

Homeless children and poor adults are regularly subjected to police-sweeping exercises, in which they are arrested for the nebulous offence of being idle and disorderly, contrary to section 180 of the *Penal Code*. In such cases, suspects are held in police stations without food, without being taken to court, or without being formally charged. Vagrancy laws were used during the colonial period as a means of control over the local population, to consolidate autocracy during the period of one-party rule, and are in active use today as a means of preventive detention against the poor.

Arbitrary arrest and detention without trial have characterised Malawi's criminal-justice system since the colonial period. Constitutional and legislative changes have had very limited effect in changing norms, while the continued use of vagrancy laws against poor Malawians demonstrates Ngugi wa Thiong'o's description of the 'parrotry' of State institutions of the colonial system.

In 1993, a referendum was held in which 63.5% voted to introduce multi-party democracy, despite violence and intimidation by the Malawi Young Pioneers. The results reflected a strong regional divide in Malawi, with northern and southern regions voting overwhelmingly to end the one-party state (84.4% and 83.5% respectively). In contrast, in the central region – Kamuzu Banda's place of birth – 65.5% voted to maintain the status quo.

While autocracy brought with it regressive constitutional change, so too did democracy: following the first multi-party election in 1994, Malawi's parliament choose to repeal section 64 of the 1994 constitution (which provided for a system of recall by constituents of poorly performing MPs), and with it ushered in an era of impunity.

*Macdara Ó Drisceoil is Malawi programme lawyer with Irish Rule of Law International.*

> IT IS ESTIMATED THAT, DURING BANDA'S TIME IN POWER, THERE WERE APPROXIMATELY 250,000 POLITICAL PRISONERS OUT OF A POPULATION OF 8.5 MILLION. THE *PUBLIC ORDER ACT* PROVIDED FOR THE DETENTION WITHOUT WARRANT OF ANY PERSON WHERE IT WAS CONSIDERED NECESSARY FOR THE PRESERVATION OF PUBLIC ORDER


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THE
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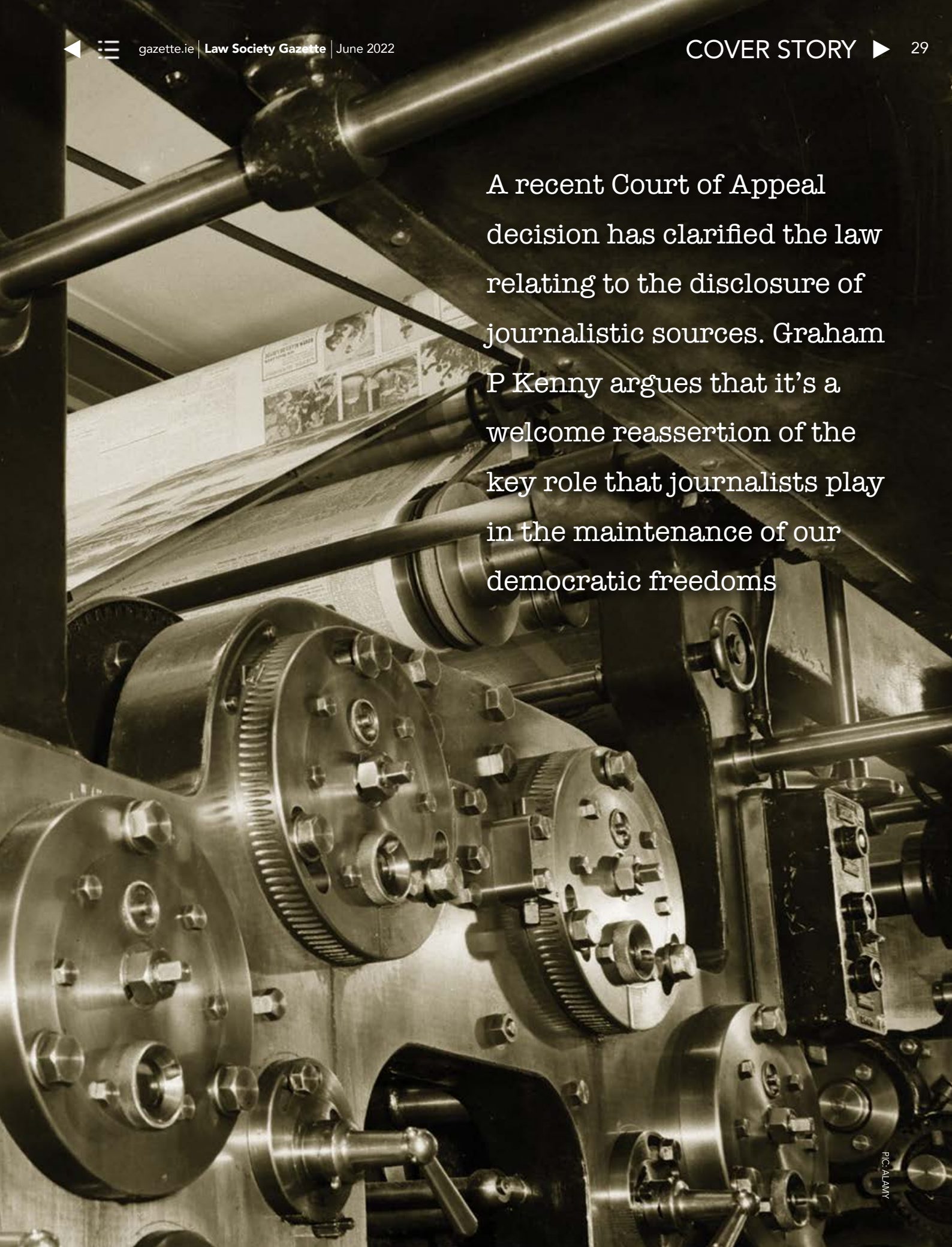


A recent Court of Appeal decision has clarified the law relating to the disclosure of journalistic sources. Graham P Kenny argues that it's a welcome reassertion of the key role that journalists play in the maintenance of our democratic freedoms

PIC: ALAMY

**t 5am on 16 December 2018,** a number of armed and masked men surrounded a property at Falsk, Strokestown, Co Roscommon. The property had been repossessed by way of a court order, and unsuspecting security personnel sat inside. The masked men stormed the property, violently beating those inside and setting fire to vehicles outside.

Eamon Corcoran was a journalist involved in the publication of a local paper called *The Democrat*. Mr Corcoran claimed he attended the aftermath of the incident and later uploaded photos and videos of it to *The Democrat*'s website. He was interviewed under caution by the gardaí, but refused to reveal his sources, asserting 'journalistic privilege'.

On 2 April 2018, the gardaí applied *ex parte* to a district judge in Roscommon for two search warrants – one in respect of Mr Corcoran's home, the other in respect of *The Democrat*'s premises. The application was made pursuant to section 10 of the *Criminal Procedure (Miscellaneous Provisions) Act 1997*. These warrants were granted and, on 4 April, Corcoran's phone was seized from his premises. The phone was powered off, and Corcoran refused to disclose its password.

Almost immediately, judicial review proceedings were instituted by Mr Corcoran. Justice Simons in the High Court held that An Garda Síochána had acted lawfully and made a limited order for the examination of the content on the mobile phone. Corcoran appealed this order. The Garda Commissioner cross-appealed the exclusion of all contact details from the data ordered to be disclosed.

## The paper

The Court of Appeal was thus faced with a direct test to so-called 'journalistic privilege' and the obligation or otherwise of journalists to disclose their sources. The court found that the seeds of the concept of journalistic privilege were laid in article 40.6.1.i of the Constitution, where the State guarantees: "The right of the citizens to express freely their convictions and opinions … the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State."

The court noted that, in actual fact, there is no such thing as 'journalistic privilege'. In this regard, the court observed Justice Hogan's 2012 comments in *Cornec v Morrice*, where he stated: "While I have thus far loosely spoken of a journalistic privilege, there is, in fact, in strictness, no such thing. The protection is rather the high value which the law places on the dissemination of information and public debate. Journalists are central to the entire process."

THE COURT OF APPEAL WAS THUS FACED WITH A DIRECT TEST TO SO-CALLED 'JOURNALISTIC PRIVILEGE' AND THE OBLIGATION OR OTHERWISE OF JOURNALISTS TO DISCLOSE THEIR SOURCES

PIC: ALAMY

The court further noted Justice Hogan's observations, at paragraph 43 of his judgment, where he stated that "the constitutional right in question would be meaningless if the law could not (or would not) protect *the general right of journalists to protect their sources*" [emphasis added].


## Network

In determining the applicable principles to be applied, the Court of Appeal gave particular consideration to *Mahon v Keena* (2007). This case arose when a journalist in *The Irish Times* received an anonymous and unsolicited confidential communication that had been sent to a witness in the *Mahon Tribunal*. The members of the tribunal sought to investigate the leak, and the defendants deliberately destroyed the copy of the document with the information. They also refused to answer questions that might provide assistance in identifying the anonymous sources.

Justice Fennelly considered the *European Convention on Human Rights Act 2003* and noted that it was enacted to give further effect to the *European Convention on Human Rights* (ECHR) in Irish law, subject to the Constitution. In particular, he noted that, in interpreting and applying any statutory provision or rule of law, the court should do so in a manner compatible with the State's obligations under the ECHR.

The court specifically noted that judicial notice should be taken of any judgment of the European Court of Human Rights (ECtHR) established under the ECHR, of any decision of the European Commission of Human Rights, and any decision of the Committee of Ministers established under the *Statute of the Council of Europe*.

Justice Fennelly endorsed the seminal 1996 decision of *Goodwin v United Kingdom*, where a company sought the disclosure from a journalist of information of a confidential and secret character. Justice Fennelly noted that the ECtHR laid emphasis on the need for any restriction on freedom of expression to be "convincingly established".

## Spotlight

Justice Costello in *Corcoran* stated that the decision of the Supreme Court in *Mahon v Keena* establishes that an order compelling journalists to answer questions for the purpose of identifying their source could only be justified by an overriding requirement in the public interest, or a pressing social need for the imposition of a restriction or encroachment upon the right to freedom of expression.

The Court of Appeal further considered the 1974 case of *Re Kevin O'Kelly*, a fascinating case where Mr O'Kelly was a journalist who interviewed an individual who was allegedly the chief of staff of the IRA. The individual was charged with being a member of a proscribed organisation. O'Kelly was called as a prosecution witness and refused to answer questions on the matter, stating that it would be a breach of confidence to identify a source. The court noted the *obiter dicta* comments of Justice Walsh, when he stated that "journalists or reporters are not any more constitutionally or legally immune than other citizens from disclosing information received in confidence".

The Court of Appeal also examined the more recent case of *Ryanair Limited v Channel 4 Television Corporation* (2017), where Ryanair sued Channel 4 for defamation. The court had to balance the competing rights of a journalist's ability to protect their sources, and the right of a party to vindicate their good name. Justice Meehan noted that the protection afforded to journalists extends beyond their sources and to the information so provided. He also noted that, unlike other forms of privilege, journalistic privilege is not absolute. He concluded: "A heavy burden rests on the person who seeks disclosure of journalistic source(s). The court must be satisfied that such disclosure is justified by an overriding requirement in the public interest, or is essential for the exercise of a legal right."

## The front page

Following this review of case law, the Court of Appeal very helpfully synopsised the current law into 28 principles to be applied when considering journalistic privilege.

They serve as an essential guide to any practitioner in this area, and may be briefly summarised:

1) Journalistic privilege should first be considered under the protections in article 40.6.1.i of the Constitution,
2) The court considers the protections under article 40.6.1.i to be largely the same as those under the ECHR,
3) These protections are to be attributed a high value,
4) The court should interpret laws in a manner compatible with the ECHR,
5) Judicial notice must be taken of the ECHR and the judgments of the ECtHR,
6) The constitutional protection of article 40 would be meaningless if journalists' sources were not protected,
7) The right to protect sources is not absolute,
8) The case for overriding journalistic privilege must be "convincingly established",
9) It is necessary for a judge to balance the competing rights,
10) A judge must apply "special" or "careful" scrutiny in their examination,
11) The onus of proof is on the party seeking to interfere with the right,
12) The court may only order disclosure of sources if there is an overriding requirement in the public interest or pressing social need,
13) The interference must be prescribed by law,
14) The interference must be for the furtherance of a legitimate interest,
15) The interference must be necessary,
16) The interference should be proportionate,

> JUSTICE COSTELLO FOUND THAT THE GARDAÍ WERE UNDER AN OBLIGATION TO MAKE FULL DISCLOSURE AT THE TIME THE WARRANT WAS SOUGHT, SO THAT THE DISTRICT JUDGE COULD "PROPERLY BALANCE THE COMPETING RIGHTS OF THE PUBLIC INTEREST IN THE INVESTIGATION AND PREVENTION OF CRIME, AND THE RIGHTS OF JOURNALISTS, THEIR SOURCES, AND THE GENERAL PUBLIC IN THE PROTECTION OF JOURNALISTIC SOURCES FROM DISCLOSURE

17) An order to search a journalist's home is seen as a more drastic measure than an order to divulge a source,
18) Not every person who provides information is a 'source' entitled to protection,
19) An order to surrender journalistic material that may identify a source is an interference with journalists' rights,
20) This interference exists, even if the source is not a source that attracts journalistic privilege under the ECHR,
21) The review by the judge may be *ex parte*,
22) When the review is made *ex parte*, the 'full picture' must be put before the court,
23) The court must be able to prevent unnecessary access to sources,
24) The judge should be able to make a limited disclosure order to protect sources,
25) Unless urgent, the review should take place before the seizure,
26) A review that takes place after is not compatible with the right to confidentiality,
27) An *ex post facto* review cannot retrospectively authorise a search that is invalid for breach of these requirements,
28) If urgent, it is permissible to seize, but not access, the material prior to the review of the court.

Justice Costello found that the gardaí were under an obligation to make full disclosure at the time the warrant was sought, so that the district judge could "properly balance the competing rights of the public interest in the investigation and prevention of crime and the rights of journalists, their sources, and the general public in the protection of journalistic sources from disclosure".

The court found that the trial judge was, therefore, wrong to hold that the District Court had no jurisdiction to consider the issue of journalistic privilege. The court found that the gardaí had failed to bring matters of relevant law and fact to the attention of the District Court, and that the warrant should therefore be quashed. The court thus ordered the return of Mr Corcoran's phone.

## Broadcast news

This carefully crafted judgment synopsises and clarifies the current law relating to the disclosure of journalistic sources. In these globally turbulent times, it is a welcome reassertion of the strong protection afforded to journalists under our Constitution and the key role they play in the maintenance of our democratic freedoms.

It should not be forgotten, however, that the High Court did initially order access to a journalist's phone. This case serves as a cautionary reminder of how quickly freedom of expression can be limited, and how careful the courts must be in exercising the delicate balancing act between the pursuance of so-called public interest and the dismantling of the architecture of democracy itself. g

*Graham P Kenny is a partner at Eversheds Sutherland, Dublin.*

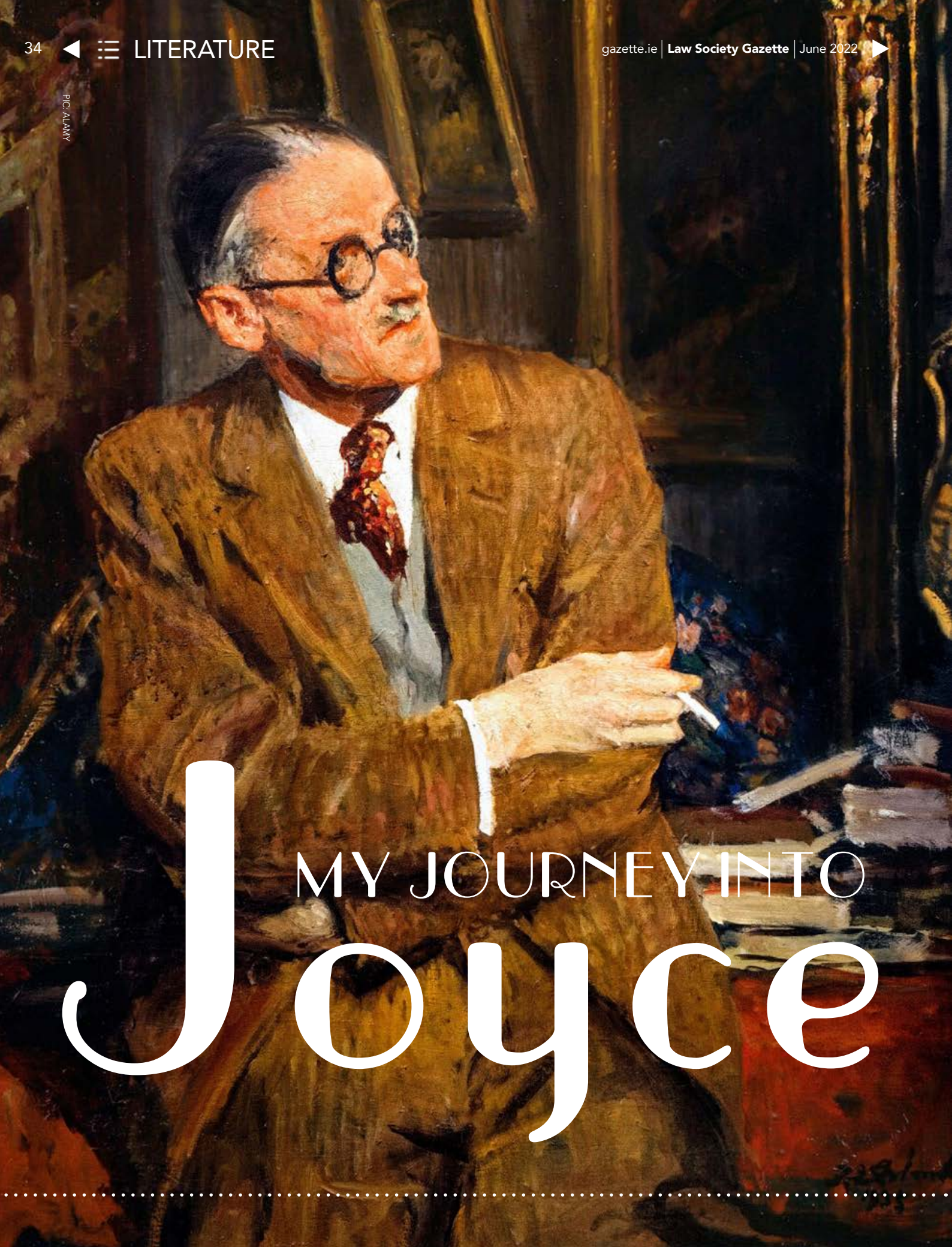
## LOOK IT UP

**CASES:**

- *Emmett Corcoran, Oncor Ventures Limited T/A 'The Democrat' and Commissioner of An Garda Síochána and the Director of Public Prosecutions* [2021] IEHC 11, 2019 no 200 JR
- *Corcoran and Anor v Commissioner of An Garda Síochána and Anor* [2020] IEHC 382; [2022] IECA 98
- *Cornec v Morrice & Ors* [2012] IEHC 376
- *Goodwin v United Kingdom* [1996] 22 EHRR 123
- *Re Kevin O'Kelly* [1974] 108 ILTR 97
- *Mahon v Keena* [2007] IEHC 348
- *Ryanair Limited v Channel 4 Television Corporation* [2017] IEHC 651

**LEGISLATION:**

- Article 40.6.1.i of the *Constitution of Ireland*
- Section 10 of the *Criminal Procedure (Miscellaneous Provisions) Act 1997*
- *European Convention on Human Rights Act 2003*
- *Statute of the Council of Europe*



PIC: ALAMY

# MY JOURNEY INTO Joyce

This year marks the 100th anniversary of the first publication of James Joyce's *Ulysses*. Michael Peart shares how he first dipped into that seminal work – with the hope that he will inspire others to investigate Joyce the writer, and Joyce the man

**I am not a 'Joycean scholar'.** I am an enthusiastic amateur, whose interest in things Joycean was sparked serendipitously in the summer of 1966 as I commenced my apprenticeship in my father's office at 27 Upper Ormond Quay, Dublin 7.

I recall a bright sunny afternoon that year as I gazed out of the second-floor window at a crowd gathered on the other side of the River Liffey outside The Irish House, a licensed premises then situated at the corner of Wood Quay and Winetavern Street.

That pub was a beautiful Victorian hostelry, famed for its remarkable ornate stucco plasterwork on the exterior depicting, among other things, life-size figures of Daniel O'Connell and Henry Grattan addressing parliament. Unforgivably, it was soon to be demolished as part of a site-clearing exercise on Wood Quay to make way for the Dublin City Council offices, which obliterated over a thousand years of Dublin's history. It is tempting to wonder what Mr Joyce would have made of that.

My curiosity brought me across the bridge at the Four Courts to see what was happening. I soon discovered that a scene for a film was being shot, which turned out to be *Ulysses*, directed by Joseph Strick. The scene was part of the 'Cyclops' chapter in *Ulysses*, which is set in and outside Barney Kiernan's pub on Little Britain Street, close to Green Street Courthouse. That pub was closed by 1966, though the building itself remained. But The Irish House was clearly an excellent substitute.

## Rowdy scene

I can clearly recall a rowdy scene being filmed outside the pub. The well-known actor Milo O'Shea (as Leopold Bloom) was to be seen atop a conveyance of some kind, exclaiming at the top of his voice as he was driven off into the distance: "Well his uncle was a Jew ... Your God was a Jew … Christ was a Jew like me."

Not untypically for a Dublin pub, there had been an earlier exchange of views inside the pub with, among others, 'The Citizen', which bore upon the Jewish origins of Mr Bloom. That discussion had led to the landlord ordering everybody out of the premises. Some things do not alter over time!

That scene has remained a memory ever since. My teenage interest in *Ulysses* increased exponentially with the news, a year later, that the film had been banned in Ireland because it was "subversive of public morality" – a ban not lifted until September 2000. It is now freely available on YouTube and, while somewhat dated, is still well worth a watch. It was nominated for an Oscar for 'Best Adapted Screenplay'.

Beyond reading *Dubliners* and *Portrait of the Artist as a Young Man*, I did not pursue my interest in Joyce, and in particular *Ulysses*, until 1988. That year, Dublin celebrated its millennium, and to mark that event I determined to complete a reading of *Ulysses*. This turned out to be a challenging but fulfilling undertaking, which, in the years that followed, led to the reading of many books in and around the life and writings of Joyce, including biographies of his wife Nora Barnacle, his sister Lucia, and of his father John Stanislaus Joyce. Sadly, there is not, so far as I know, a biography of Joyce's mother, May.

## Beyond my powers

I have not succeeded in reading *Finnegans Wake*. I have decided that it is beyond my powers. I even bought *A Readers Guide to Finnegans Wake*, and failed to understand much of that either! But who knows – maybe I will devote some of my remaining years to that task.

I would encourage anyone, who has not already done so, to venture into the world of Joyce. An ideal beginning is to read the wonderful short stories in *Dubliners*, and then *Portrait of the Artist as a Young Man*. Thereafter, I would recommend beginning the adventure into *Ulysses* by confining your reading to the first four chapters, and to take them slowly.

In his writing, Joyce was fearless, provocative, argumentative, raw, savage, angry, honest, vulgar, and courageous. Other adjectives can be added, but those suffice for now. I feel he inherited these qualities from his father John Stanislaus – a larger-than-life, drinking, garrulous and aggressive Corkman whose qualities, I have heard it said, can be found in 'The Citizen' character in the 'Cyclops' episode.

But Joyce could write with exquisite tenderness too – a quality, I suspect, that was an inheritance from his long-

MY TEENAGE INTEREST IN *ULYSSES* INCREASED EXPONENTIALLY WITH THE NEWS, A YEAR LATER, THAT THE FILM HAD BEEN BANNED IN IRELAND BECAUSE IT WAS "SUBVERSIVE OF PUBLIC MORALITY"

PIC: ALAMY

**Milo O'Shea in *Ulysses*: "subversive of public morality"**

suffering and devoted mother, May. Take, for example, the beauty and tenderness in *Eveline* – one of my favourite stories in *Dubliners*, and in particular Eveline's final agonising, climactic parting from Frank at the dockside, as the boat to England on which they were both to sail is about to leave without her.

Take also the final utterly heart breaking scene set in The Gresham Hotel in *The Dead*, where Gretta breaks down at the memory of the delicate young Michael Furey, a lad she had known in Galway years previously, and who she believed had died of a broken heart when she left for Dublin.

## Art imitating life

Joyce's art imitated his life – save perhaps that the perfection of the former was often lacking in the latter. He will not have been an easy man to live with – his wife Nora and his younger brother Stanislaus ("his keeper") would attest to that, despite his devotion to, and dependence on, both of them.

Joyce was a genius – though, for many years, this would have passed unnoticed by the world he shunned; other than those close to him who breathed the same clear air of the exile (whether in Trieste, Zurich or Paris), or had taught him as a precocious schoolboy in Clongowes Wood College, or later in Belvedere College. As with many whose prodigious talents bring them beyond the ordinary and into a stratosphere whose air only a chosen few can breathe, Joyce's life – both literary and domestic – presented challenges, both for him and for those around him.

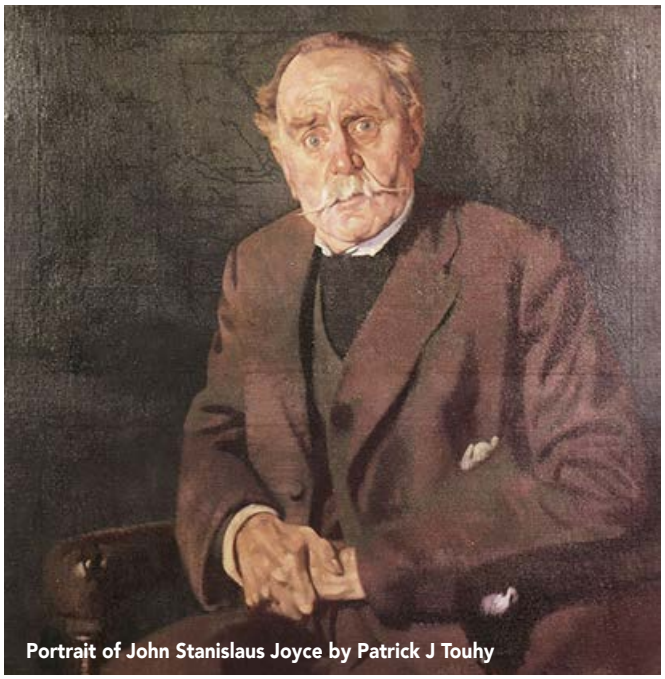
The intensity of his intellect, and his selfish and selfless pursuit of his life's work, drove Joyce relentlessly where no writer in any language (except, perhaps, Proust) had ventured before or since, and eventually to his own physical exhausted destruction.

Joyce's genius was a seedling bestowed upon him at conception. The fertile ground in which that seed first saw light and flourished was the love of his devoted mother.

## Cruel and unusual punishment

Her short life was one of cruel and unusual punishment meted out by an oft-drunken husband, some ten years older than her, and whose preference for the pursuit of his own pleasures and entertainment at the expense of his spousal and paternal duties ensured the Joyce family's gradual descent from a middle-class life of relative comfort to a life of overcrowded and miserable penury in a multiplicity of rented accommodations throughout the county and city of Dublin.

Between her marriage at the age of 21 in 1880 and her death at the age of 44 in 1903,


PIC: WIKIMEDIA COMMONS

Portrait of John Stanislaus Joyce by Patrick J Touhy


PIC: SHUTTERSTOCK

The Joycean labyrinth is a dark and impenetrable place into which few will dare to enter

May gave birth to 13 children, the eldest of whom died eight days after his birth, and two more who died at birth. Of the ten children who survived, James was the eldest.

## Pretence of affluence

John Stanislaus had inherited a decent portfolio of property in Cork upon his father's death in 1866. But he borrowed heavily and constantly against these properties after he moved to Dublin, in order to maintain the pretence of comfortable affluence that his salary as a rates collector did not support. Eventually, he lost his job due to the neglect of his duties, and, to put it kindly, some alleged loose accounting.

In due course, all his properties were sold to pay off his creditors, leaving him encumbered only with his wife and ten children. Thereafter, John Stanislaus struggled to provide for his family who endured a life of poverty, and indeed some cruelty, for he was a heavy drinker.

Despite this life of deprivation that the young James Joyce was forced to endure in Dublin prior to his lifelong, self-inflicted exile in Europe, and despite never seeing his father again following his final visit to Dublin in 1912, John Stanislaus remained a seminal influence on his eldest son's writing. A very strong mutual bond of love endured between them to the end. They never met again, but many letters were sent back and forth.

## *Pater familias*

Joyce fully acknowledged his father's many faults, but stated in a letter to Harriet Shaw Weaver (his patron) in January 1932 (a few weeks after his father's death) that his father had given him "hundreds of pages and scores of characters for his books, as well as his portrait, a waistcoat, a good tenor voice, and an extravagant licentious disposition (out of which the greater part of any talent I may have springs); but apart from these, something else I cannot define".

The aforementioned portrait of John Stanislaus Joyce (*above*) is magnificent. It is by an artist named Patrick J Touhy, and Joyce kept it at home always. It now hangs at the State University of New York in Buffalo, and graces the cover of the biography of John Stanislaus Joyce, by John Wyse Jackson and Peter Costello.

I say it is magnificent, because it was painted in about 1923 when John Stanislaus was 73. The angry, cantankerous aggression of his character is visible in his face, as well as, I think, a certain fear of his parlous state in life, and what the future might hold for him in his old age. There is also a visible sense of sadness and tragedy.

A knowledge of John Stanislaus is important for a complete understanding of Joyce's writing. So much of his work is inspired by his own childhood experiences growing up within his dysfunctional family that, in order to understand Joyce, one must understand the *pater familias* who bore responsibility for that dysfunction.

I expect that, for all but a few solicitors, the Joycean labyrinth is a dark and impenetrable place into which few will dare to enter, lest (not having a ball of thread with which, like Theseus in search of the Minotaur, to retrace their steps) they never regain the light.

I have written this short piece as an encouragement to those who, like the young apprentice I was in 1966, need a spark to light the fuse of interest in Joyce the writer, and Joyce the man. It is a journey well worth embarking upon. g

*Michael Peart is a solicitor and retired judge of the Court of Appeal.*

WE LOVE TO TRAVEL, AND SO DOES OUR DATA – OR RATHER, COMPANIES WANT TO SEND OUR DATA AROUND THE WORLD. ELAINE MORRISSEY ZOOMS IN ON THE INTERNATIONAL TRANSFER OF PERSONAL DATA AND NOTES THAT NEW STANDARD CONTRACTUAL CLAUSES HAVE INCREASED DUE-DILIGENCE OBLIGATIONS ON DATA EXPORTERS

**Protection granted to personal data** must travel with the data. The *General Data Protection Regulation* (GDPR) provides that, for personal data to leave the European Economic Area (EEA), there must be an appropriate mechanism (safeguards) in place. Standard contractual clauses (SCCs) are a commonly used mechanism, and have been around for over a decade.

The European Commission has also granted 'adequacy' status to a number of countries, which means that no additional mechanisms/safeguards are required before a transfer takes place to those countries. The UK, Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Republic of Korea, Switzerland and Uruguay all hold adequacy status.

Why are international transfers of personal data such a hot topic? In the last two years, we have had the 'Privacy Shield' transfer mechanism invalidated, SCCs upheld, new SCCs issued, new European Data Protection Board (EDPB) guidelines and recommendations, varying opinions, data protection authority decisions, new obligations, and a joint statement from Joe Biden and Ursula von der Leyen regarding personal-data transfers from the EU to the US. So, yes, it's a hot topic, requiring much time and attention to keep up.

### What are SCCs?

The SCCs were initiated by the commission as a mechanism to allow personal data to be transferred globally under a single set of data-protection rules or standards that fall in line with the GDPR. In essence, they are a contractual agreement between the parties agreed on by the commission.

While the 'old' SCCs were developed under the now-repealed *EU Data Protection Directive* (95/46), SCCs have become more prevalent with the introduction of the GDPR, as they are listed as an appropriate safeguard for the transfer of personal data outside of the EEA (article 46 of the GDPR). Unfortunately, however, the old SCCs could only be used for very specific purposes (due to the way they were drafted). The old SSCs only provided for transfers between a data controller in the EEA and a data processor or

# All over the world

PIC: GAZETTE STUDIO/SHUTTERSTOCK

a data controller in a third country (non-EEA country). The commission had been working on the new SCCs at the time of the *Schrems II* decision.

## Schrems II

In July 2020, the EU Court of Justice (CJEU) delivered a ruling in the case known as *Schrems II*, in which the mechanisms for personal-data transfers between the EEA and the US were challenged. The challenge was based on the argument that US law cannot adequately ensure protection of EU personal data.

In a momentous decision, the CJEU invalidated Privacy Shield as a valid transfer mechanism, thereby disallowing companies to transfer and store EU personal data in the US, unless they comply with another appropriate mechanism. In the same decision, the CJEU upheld SCCs as a valid mechanism for transatlantic data transfers, noting that this does make it possible, in practice, to ensure compliance with the level of protection required by EU law.

New appropriate safeguards needed to be created to meet the demand for companies acting as processors in the EU to transfer to controllers and other processors in third countries. The commission, following a detailed consultation period, issued the new SCCs on 4 June 2021, which provide appropriate safeguards when transferring personal data from the EEA to a third country.

The new SCCs increase obligations on the data exporter to conduct due diligence, including considering whether the importing company and third country can provide adequate safeguards, to be documented in a 'transfer impact assessment'. This has put companies and their advisors into a tailspin in obtaining a balance between their obligations and what is achievable – a risk-based approach.

While the EDPB, in its June 2021 recommendations, adopted a risk-based approach, recent comments by the French data protection authority caused concern, as they said that a risk-based approach could not be adopted in completing a transfer impact assessment. It is difficult to align the comment with the overall GDPR philosophy, which is built on principles and a risk-based approach.

Despite being almost a year old now, the 'new' SCCs will likely retain that title for some time. To keep us all on our toes, there is also the possibility of 'SCCs-lite' – however, they have not landed yet.

## What do the new SCCs look like?

The new SCCs (issued on 4 June 2021 and effective from 27 June 2021) are provided as an 'à la carte' document. Controllers and processors should select the appropriate modules, of which there are four:

- Controller to controller,
- Controller to processor,
- Processor to processor, and
- Processor to controller.

The new SCCs cannot be amended, unless to increase protection of personal data and data subjects and to complete the annexes, which include details of exporter, importer, details of processing, and technical and organisational measures. The good news is that negotiation should not be needed, with the exception of agreeing the modules and completing the annexes.

How do the new SCCs affect your client's relationship with its suppliers and clients? Clients will need to consider whether they transfer personal data outside the EEA to another entity (client, vendor, affiliate), and ensure that they have in place an appropriate mechanism permitting the transfer – for example, entering into the new SCCs. Practitioners will also need to consider any transfers they are making – for example, personal data stored in the cloud by a US vendor.

How long do companies have to implement the new SCCs (grace period)? Only the new SCCs should be entered into. If the old SCCs are in place, companies have until 27 December 2022 to replace any old SCCs with the new SCCs. For any transfers that do not have a transfer mechanism in place, that needs to be attended to as soon as possible.

## 'Privacy Shield 2.0'

Since the invalidation of Privacy Shield in June 2020, the EU and the US have been in constant talks to address the shortcomings identified by the CJEU. This culminated in Joe Biden and Ursula von der Leyen making a joint announcement on the "agreement in principle on a new framework for transatlantic data flows" on 25 March 2022. This is being hailed as the long-awaited key step to 'Privacy Shield 2.0'.

What this means is that, for US companies who certify to Privacy Shield, no additional mechanism (such as SCCs) are needed to transfer personal data to that company. While the devil is in the detail, and there is a lot to be worked out, this is seen as a very positive step for EU/US transfers.

In terms of timelines, the best estimate is the end of 2022 or early 2023. Whether it will come into play before the deadline to have the new SCCs in place is unclear. Even if it does, it will likely take first-time organisations some time to have their certification approved.

However, not everyone is happy. Max Schrems has already indicated that Privacy Shield 2.0 will be challenged. So expect a lot more discussion, debate, and turbulence.

## Brexit and data transfer

When the Brexit transition period ended on 31 January 2020, the UK formally became a third country for the purposes of EU data-protection law.

In June 2021, the commission adopted two adequacy decisions for the UK – one under the GDPR and the other for the *Law Enforcement Directive*. This means that personal data can now flow freely from the EU to the UK where it benefits from an essentially equivalent level of protection to that guaranteed under EU law (without the need for additional data-transfer safeguards

> SURELY, THIS ALL SEEMS VERY DIFFICULT AND NOT CONDUCIVE TO A GLOBAL ECONOMY? WHILE ENTERING INTO THE NEW SCCs IS THE EASY BIT, THE DUE DILIGENCE AND POSSIBLE SUPPLEMENTAL MEASURES ARE VERY ONEROUS AND CHALLENGING FOR COMPANIES

under article 46 of the GDPR). This means that SCCs are not needed when transferring personal data to the UK.

For the first time, the adequacy decisions include a 'sunset clause', which strictly limits their duration. This means that the decisions will automatically expire four years after their entry into force, on June 2025, unless it is renewed. The adequacy decision will only be renewed if the UK continues to ensure an adequate level of data protection. During these four years, the commission will continue to monitor the legal situation in the UK and can intervene at any point if the UK deviates from the level of protection currently in place.

If the adequacy decision is not renewed, the next best alternative is for EU entities to enter into SCCs with UK entities. As a 'belt-and-braces' approach, many companies are entering into the new SCCs with UK companies now.

There are no additional requirements for the transfer of personal data from the UK to the EU.

In March of this year, the UK issued its own version of SCCs – the *International Data Transfer Agreement* (IDTA) and the *International Data Transfer Addendum to the EU SCCs*. These are for use where UK personal data is being transferred to a third country (for example, the US). The UK is currently considering adopting its own adequacy decision system – for example, the UK granting an adequacy decision to the US. It is expected that the UK will piggyback on Privacy Shield 2.0 to adopt its own version. While the UK had indicated a move to be more 'flexible' in terms of data transfers, they are mindful not to jeopardise their own EU adequacy status. This is likely to keep the UK aligned with the GDPR.

In short, for UK/EU transfers:

- Entities can rely on the adequacy decision to transfer EU personal data to the UK,
- There are no additional requirements to transfer UK personal data to the EU,
- The UK has adopted its own SCCs for use in transferring data to a third country (for example, the US),
- The UK is currently considering its own adequacy decision system, paying particular attention to what is agreed between the EU and US.

## What to do?

International transfers will continue to remain a hot topic. What does this mean for practitioners and clients?

- For transfers outside the EU, where no adequacy decision exists, a transfer mechanism must be in place. For the moment, the new SCCs are the most appropriate transfer mechanism. These need to be executed between the parties before that transfer can take place. It's important to note that executing the SCCs does not, of itself, bring any additional obligations on a company – unless the transfer takes place. While some companies may have regular data transfers, others may be more *ad hoc*. Regardless, it's a breach of the GDPR to transfer personal data without an appropriate mechanism in place.
- It is not simply a matter of signing the SCCs and letting the data fly free – due diligence must be carried out in advance and kept under review.
- Supplemental measures may also need to be put in place (see the EDPB's June 2021 recommendations).
- For UK/EU transfers (there is nothing to be done unless out of an abundance of caution), the new SCCs are entered into with UK entities.

Surely, this all seems very difficult and not conducive to a global economy? While entering into the new SCCs is the easy bit, the due diligence and possible supplemental measures are very onerous and challenging for companies. Given the challenges with complying with the obligations, much attention is falling on Privacy Shield 2.0. As a significant trading partner with the US, having Privacy Shield 2.0 in place will likely lead to a stampede of new registrations – and the companies who have retained their certification cruising to Privacy Shield 2.0. g

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*Elaine Morrissey is a member of the Law Society's Intellectual Property and Data Protection Law Committee and is data-protection legal counsel at ICON.*

## LOOK IT UP

**CASES:**

- *Schrems II (Facebook Ireland and Schrems* (C-311/18)

**LEGISLATION:**

- Commission Implementing Decision (EU) 2021/914 (4 June 2021) on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council
- *Decision on the adequate protection of personal data by the United Kingdom: Law Enforcement Directive*
- *EU Data Protection Directive* (95/46)
- *General Data Protection Regulation*
- *International Data Transfer Addendum to the EU Commission Standard Contractual Clauses* (Information Commissioner's Office, Version B1.0, 21 March 2022)
- *International Data Transfer Agreement and Guidance* (Information Commissioner's Office)
- *Privacy Shield Framework* (International Trade Administration, US Department of Commerce)

**LITERATURE:**

- *EDPB Recommendations 01/2020 on Measures that Supplement Transfer Tools to Ensure Compliance with the EU Level of Protection of Personal Data* (European Data Protection Board, Version 2.0, adopted on 18 June 2021)
- *Commercial Sector: Ongoing Talks on a Successor Arrangement to the EU-US Privacy Shield*
- *Fact Sheet: United States and European Commission Announce Trans-Atlantic Data Privacy Framework*

PIC: SHUTTERSTOCK

**A trend appears to be emerging of a reduced tolerance by the judiciary for plaintiffs who delay in prosecuting their claims. Eoin Pentony and Edward Murray assess the pitfalls of 'stalling the ball'**

# THE TIME HAS COME

**In the normal course of litigation,** the parties to a case exchange pleadings to either advance or defend against a plaintiff's claim – like the back-and-forth of the ball between players in a tennis match, until the claim is settled or the pleadings are closed and the case is ready for hearing.

There is a recent trend in some types of litigation (including civil and commercial litigation) in which the courts are becoming less tolerant of plaintiffs who fail and/or delay in progressing their claims. Multiple cases from 2021 indicate that, if a plaintiff engages in delay and/or does not progress their claim for two years or more, the courts are amenable to dismissing the proceedings on grounds of such delay.

## The power

Under order 122, rule 11 of the *Rules of the Superior Courts 1986*, a defendant can bring a motion to dismiss the proceedings for delay – for want of prosecution – where a plaintiff fails for a period of two years to progress matters by continuing to exchange pleadings or taking steps in the proceedings. The courts also have an inherent jurisdiction to dismiss proceedings for delay at their own discretion.

Order 122 states: "In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. *In any cause or matter in which there has been no proceeding for two years from the last proceeding had, the defendant may apply to the court to dismiss the same for want of prosecution, and on the hearing of such application the court may order the cause or matter to be dismissed accordingly* [emphasis added] or may make such order and on such terms as to the court may seem just. A motion or summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this rule."

## The test

The seminal case on this issue of dismissing proceedings for delay (and the one that is followed by all courts by way of precedent) is *Primor Plc v Stokes Kennedy Crowley*, a 1996 decision in which the Supreme Court established the three-step test:

1) The court should consider whether the delay in question is inordinate,
2) If the delay is inordinate, then the court should consider whether the inordinate delay is inexcusable,

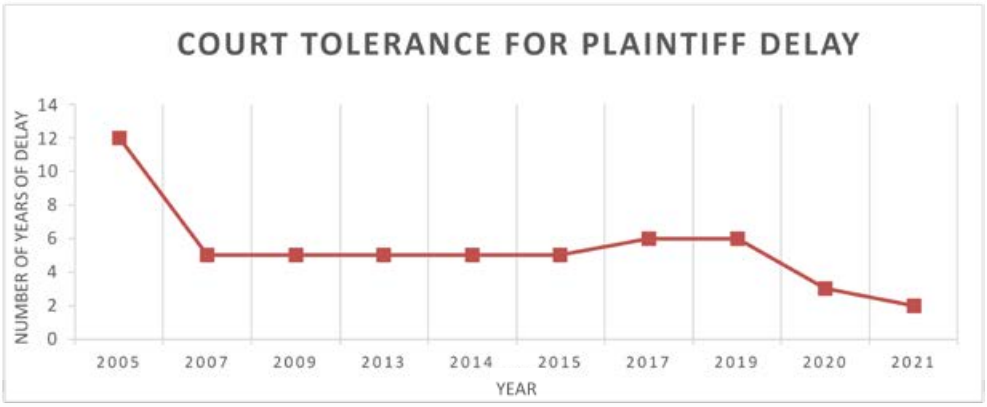
3) If the delay is both inordinate and inexcusable, the court should then consider whether the balance of justice favours the dismissal of the proceedings.

The *Primor* test establishes that delay, in itself, is not sufficient to dismiss proceedings. A defendant must also establish that the delay is inordinate, inexcusable, and that the balance of justice favours the dismissal of the proceedings.

Despite the possibility of a defendant bringing a motion under order 122 to dismiss proceedings for delay of two years or more, historically (pre-2015), the courts required a larger passage of time to pass before it would consider dismissing proceedings for delay. In some cases, in addition to the *Primor* test, the courts also sought evidence on whether the delay prejudiced the defendant. This created an additional bar for the defendant to reach and, unintentionally, created a sedentary plaintiff-favoured court environment.

In 2005, in *Hughes v Duffy*, a case that concerned an application for restriction of a director pursuant to section 150 of the *Companies Act 1990*, Ms Justice Finlay Geoghegan in the High Court considered a delay of nearly 12 years. The judge took the view that the delay was inordinate and inexcusable, and was solely that of the plaintiff, stating: "At the date of issue of this motion, a period in excess of 12 years had expired since the commencement of the winding-up and a period in excess of eight years from the last contact between the liquidator and either of the respondents." Ms Justice Finlay Geoghegan dismissed the proceedings.

In 2009, in *Mannion v Bergin and Bradley & Ors*, Mr Justice Hedigan in the High Court considered a delay of nearly five years for proceedings that concerned a claim of negligence. In applying the *Primor* test and in allowing the application, the court granted the order to dismiss the proceedings "on the grounds of inordinate and inexcusable delay, and on the basis that the balance of justice including the right of the defendants' to a trial of the case within a reasonable time, requires it". In this case, a delay of five years was sufficient to cause the proceedings to be dismissed.




In 2014, in *Nolan v Chadwick*, Mr Justice Keane in the High Court considered an application to dismiss proceedings for a delay of five years. The court concluded that the plaintiff's delay in progressing the proceedings was both inordinate and inexcusable. However, in circumstances where there was no specific prejudice against defendants, the balance of justice favoured permitting the proceedings to continue, and the court rejected the application to dismiss the proceedings. Accordingly, the court rejected the defendant's motion.

## The turning point

There was a notable shift in the courts from 2015. In *Minister for Justice, Equality and Law Reform v Gorman*, Mr Justice Noonan (High Court) granted an application to dismiss proceedings for a delay of nearly five years, in circumstances where over 11 years had passed since the event giving rise to the cause of action. The proceedings related to a claim by the plaintiff in respect of assault, battery, and false imprisonment.

The matter was appealed to the Court of Appeal and, in refusing the appeal, Ms Justice Irvine (as she was then) stated that "in dismissing this plaintiff's claim, the decision of the High Court ha[s] the effect of ending his constitutional right of access to the courts. However, this is not an unqualified right and is one which must be balanced against the right of the defendants to protect their good name."

This decision marks a change in judicial thinking from focusing on protecting the plaintiff's right of access to justice, towards a more balanced approach of the plaintiff's right of access to justice against the defendant's right to protect their good name.

From 2015, we also see a general trend in the reduction of the passage

> THIS DECISION MARKS A CHANGE IN JUDICIAL THINKING FROM FOCUSING ON PROTECTING THE PLAINTIFF'S RIGHT OF ACCESS TO JUSTICE, TOWARDS A MORE BALANCED APPROACH OF THE PLAINTIFF'S RIGHT OF ACCESS TO JUSTICE AGAINST THE DEFENDANT'S RIGHT TO PROTECT THEIR GOOD NAME

of time that the courts will tolerate for a plaintiff to progress their proceedings. This noticeably reduced tolerance culminated in 2021 with (a) the courts noticeably counting the passage of time as a matter of months rather than years, and (b) not tolerating a failure to progress proceedings in some cases for two years (that is, 24 months).

In 2021, in *Gibbons v N6 (Construction) Limited and Galway County Council*, Ms Justice Butler in the High Court considered an application to dismiss proceedings on foot of a three-year delay. Applying the *Primor* test and highlighting "the court's obligation to ensure the efficient conduct of litigation", the court dismissed the proceedings.

*Kehoe & Anor v Promontoria (Aran) Ltd and Anor*, is a recent case where Mr Justice Twomey in the High Court considered an application to strike out the plaintiff's proceedings for delay of three years and to vacate a *lis pendens*. Applying the *Primor* test, the court found the delay of 37 months was inordinate and, as "neither of [the] explanations sufficiently excuse the delay of 37 months", the delay was found to be inexcusable. As the plaintiffs put forward no evidence to suggest any defect in the deed of mortgage or other security documents, the court found that the balance of justice lay in favour of striking out the proceedings. This decision is currently under appeal.

The High Court, in *Diamrem Limited v Clare Co Council*, considered a claim seeking damages for, among other things, misfeasance of public office. Mr Justice Twomey considered a delay of 22 months and, in granting the motion, cited an earlier Supreme Court judgment stating that there is "sea-change in the indulgent attitude of the courts to litigants who are guilty of delay in the prosecution of their proceedings".

In *Cabot Financial (Ireland) Ltd v Heffernan & Ors*, Mr Justice Meenan considered an application by the defendants to dismiss summary proceedings of €2.5 million against the defendant/borrowers on the basis of a delay of between 12 and 17 years. In applying the *Primor* test, and in circumstances where the defendant/borrower did not acquiesce to the delay, and taking account of the age and health of the defendant, the court dismissed the summary judgment claim.

Our analyses of applications seeking to strike out proceedings for delay from 2004 to 2021 observe a general trend by the courts for a reduced tolerance of plaintiffs who fail to progress their proceedings expeditiously. This reduction in judicial tolerance is illustrated in the graph *(previous page)*.

## The effect

With the judiciary's (arguably) increased intolerance for plaintiff delay, combined with the two-year threshold highlighted in the 2021 cases mentioned above, motions to dismiss proceedings under order 122 will potentially become more widely utilised by legal practitioners.

> THERE IS A RECENT TREND IN SOME TYPES OF LITIGATION (INCLUDING CIVIL AND COMMERCIAL LITIGATION) IN WHICH THE COURTS ARE BECOMING LESS TOLERANT OF PLAINTIFFS WHO FAIL AND/OR DELAY IN PROGRESSING THEIR CLAIMS

From our review of the case law in the area of delay, a trend appears to be emerging where the judiciary seems to be less tolerant towards plaintiffs engaging in delay to progress their claim. This trend culminated in 2021, where three decisions indicate that a two-year delay in progressing proceedings is sufficient grounds for bringing an application for delay under order 122.

The increased popularity of motions under order 122, or even the increased awareness and/or threat of using this order, should (in theory) result in litigating parties moving claims more expediently through the courts system. This, in turn (or at least in theory), should result in a reduction in the presence of historic proceedings, smaller court lists, and overall lower legal fees for litigating parties. In light of the foregoing, the lesson to all litigating parties is that time matters – avoid delay! g

*Eoin Pentony is a partner in Edward Healy Solicitors LLP, Dublin 2; Edward Murray is a Dublin-based barrister.*

## LOOK IT UP

**CASES**

- *Cabot Financial (Ireland) Ltd v Heffernan & Ors* [2021] IEHC 823
- *Diamrem Limited v Clare Co Council* [2021] IEHC 408
- *Gibbons v N6 (Construction) Limited and Galway County Council* [2021] IEHC 138
- *Minister for Justice, Equality and Law Reform v Gorman* [2010] IEHC 210; [2015] IECA 41
- *Hughes v Duffy & Anor* [2005] IEHC 145
- *Kehoe & Anor v Promontoria (Aran) Ltd and Anor* [2021] IEHC 573
- *Mannion v Bergin and Bradley & Ors p/a O'Connor and Bergin Solicitors* [2009] IEHC 165
- *Nolan v Chadwicks Limited* [2014] IEHC 542
- *Primor Plc v Stokes Kennedy Crowley* [1996] 2 IR 459

**LEGISLATION**

- Order 122, rule 11 *of the Rules of the Superior Courts*

**LITERATURE**

- Eoin Pentony and Edward Murray (2022), 'Time's up for delay', *Commercial Law Practitioner*, 29[1] 9-13

**The aim of the *Electoral Reform Bill 2022* is not to place duties of 'balance' on online platforms, but to create a mechanism to ensure that the electorate has transparency and information on the political adverts they might see. Jennifer Kavanagh clicks 'share'**

# BALANCE of power

PIC: SHUTTERSTOCK

**Among the changes proposed** by the *Electoral Reform Bill 2022* is an attempt to create some form of transparency for online political advertising. The form of political-speech regulation that we are used to in Ireland normally focuses on broadcasting moratoriums before elections and balance when it comes to broadcast media. The proposals contained in the bill will try to give people access to the identity of those who are buying advertisements, and how much has been spent.

The experiences of the 'Repeal the Eighth' (abortion) referendum regarding online political advertising demonstrates that Ireland is not immune from the need to have some form of transparency. During that referendum, Google and YouTube suspended all advertisements relating to the referendum, and Facebook banned all adverts from being bought, unless the buyer could prove that they lived in Ireland.

During the Brexit campaign, the practice of micro-targeting social-media users to show certain users adverts that would particularly resonate with them, due to data analysis, was queried. Online platforms, especially the social-media giants that also have their European headquarters in Ireland, are being scrutinised in relation to not only their efforts to counteract disinformation and misinformation, but also their own contributions towards electoral integrity through their own policies to monitor and review the use of their platforms by those who may have undemocratic intents.

## Ah, referee!

Having seen the experience and challenges of refereeing online political advertisements, the approach that is proposed by the legislation is not to place positive duties of 'balance' on platforms, but to create a mechanism to ensure that people have transparency and information on the political adverts that they may see, for future Irish elections and referendums.

Political discourse is essential to a functioning, healthy democracy. The use of regulation for

THE EXPERIENCES OF THE 'REPEAL THE EIGHTH' (ABORTION) REFERENDUM REGARDING ONLINE POLITICAL ADVERTISING DEMONSTRATES THAT IRELAND IS NOT IMMUNE FROM THE NEED TO HAVE SOME FORM OF TRANSPARENCY

political speech is something that is traditionally avoided, since any form of interference – irrespective of the intention – can either restrict debate or distort the free flow of information.

Political-speech protections are found in the Constitution, as part of the civil and political-rights section. Traditionally, they have only been restricted on the grounds of national security or 'authority of the State', such as the old section 31 broadcasting restrictions, which were reviewed in the case of *State (Lynch) v Cooney*.

There must be a balance of time given to candidates or parties in elections, and to each side of the argument in referendums. For example, in *Coughlan v Broadcasting Complaints Commission*, the uneven distribution of time to either side in the divorce referendum was held to be unconstitutional.

## Code blue

The traditional ways that Irish people have seen coverage and posters is regulated tightly. For the usual posters that dot the land during election and referendum campaigns, there are regulations on their placement contained in the *Road Traffic Acts* and time limits for when they can be visible under the *Littering Acts*.

To ensure transparency and accountability for those putting up posters, every notice bill or poster must have the name and address of the printer or publisher written on it, with criminal sanctions for non-compliance under the provisions of electoral legislation.

The current guidance in Ireland regarding elections and referendums can be found in the 2018 *Broadcasting Authority of Ireland Rule 27 Guidelines*, the Broadcasting Authority of Ireland *Guidelines in Respect of Coverage of Referenda* (2019), and its 2013 *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, made pursuant to section 42(1) of the *Broadcasting Act*.

These codes are created to ensure that balance, impartiality, and objectivity are employed in the production and editing of news and current-affairs programmes during elections and referendums. Issues such as the moratorium on broadcasts for certain durations prior to the ballot, and on party-political broadcasts, are also covered.

## Aims and means

The *Broadcasting Act 2009* specifically states that advertising directed towards a political aim is prohibited, and broadcasters are placed under a general duty of objectivity regarding news reporting. This now holds even before a referendum date has been appointed, but the desirability to hold a referendum is well known.

For example, the BAI found against *The Mooney Show* in August 2014, on the basis that a discussion of same-sex marriage should have had a balancing voice. This was outside the time of a proposed referendum, but the authority still found against RTÉ. Even though the discussion was primarily a personal story, the fact that the discussion moved towards the legal and current-affairs issues surrounding recognition of same-sex marriage meant that the broadcaster was bound by its duties regarding fairness and equality.

The online world, on the other hand, is not subject to moratoriums, and currently does not have any form of accountability, such as the restrictions detailed above. It is now more part and parcel of pre-election and pre-referendum debates, with no accountability or transparency regulations.

## Ad lib

Part 4 of the *Electoral Reform Bill* seeks to create a regulatory framework for online political advertising. The regulation and enforcement of the provisions will be one of the functions of the Electoral Commission to be set up in the same draft legislation.

Online political advertisement is defined as any form of communication in a digital format for political purposes, purchased for placement, display, promotion, or dissemination on an online platform during an electoral period, and for which a payment or payment in kind is

made to the online platform concerned.

Therefore, this legislation is not targeted at countering the online disinformation or misinformation that is currently an issue for many. In this case, the focus is solely on the placement of paid adverts. It is, in effect, taking the essence of the rules on posters on lampposts and applying them to banner adverts on websites. However, micro-targeting of an audience will be monitored and subject to transparency notices, which should make people more aware of the reasons they are seeing political adverts.

Such paid-for political adverts will need to be labelled as a political advert in a conspicuous manner, and include a transparency notice. People will also be made aware if they were shown the advert due to targeting. The fee for the advert will also need to be visible in the transparency notice. This information will have to be maintained and updated in real time and archived.

Online platforms will have to verify the identity of buyers, and there will also be obligations placed on these buyers by law. It will not be possible, under the proposed laws, for anyone outside the State to purchase online political adverts.

The Electoral Commission will have the power to monitor online advertising and to both encourage compliance and investigate alleged non-compliance with the regulations. The new body will also have the power to appoint authorised officers to investigate any suspected contravention of the legislation. They may issue compliance notices, and these may be appealed to the District Court.

The offences detailed can be guilty on summary conviction to a 'Class A' fine or imprisonment not exceeding 12 months, or on indictment to a fine or imprisonment for up to five years. Where the offence is committed by a body corporate, but with the consent, connivance, or wilful neglect of a director, manager, secretary or other officer, then they will also be exposed to similar criminal punishment.

## I can see-saw clearly now

What the Electoral Commission proposals seek to do is to create an online version of the rules related to 'posters for the virtual world'.

When trying to formulate a system of regulation for the online world, there are two choices: either to balance the discourse in question, or to create transparency regulations.

> MICRO-TARGETING OF AN AUDIENCE WILL BE MONITORED AND SUBJECT TO TRANSPARENCY NOTICES, WHICH SHOULD MAKE PEOPLE MORE AWARE OF THE REASONS THEY ARE SEEING POLITICAL ADVERTS

Balance will always require a choice to be made between sides – generally on time requirements, as in the current broadcast media regulations. Even though such balance requirements help to achieve a democratic and equal hearing of views, in the regulatory landscape of online and social media, they would be harder to implement. It may also lead to other issues, such as algorithms making decisions, and how such decisions can be reviewed.

By contrast, transparency requirements don't require a choice to be made but, rather, for information to be made available to the public. This mirrors our current rules for real-life political posters and literature.

There is no 'balance call' to be made – rather, an increase in transparency, so that people who are being canvassed virtually can view financial information and the identity of the entity that bought the advert.

With further regulation on social media and online platforms in general emanating from Europe (such as the proposed *Digital Services Act*), this is a first step by Ireland in demonstrating that the online world is no longer a virtual 'wild west', but a place where law and order, and accountability, are developing when it comes to political advertising.

The benefit of the proposed system is that people will be able to access information to explain who is funding what they are seeing, and why they are seeing specific adverts. It will not have similar provisions to the current broadcasting regulations, but it will allow for accountability and prevent foreign funds or entities from becoming involved in the purchase of adverts.

By eschewing the balance issue, it removes some of the areas that may be litigated, as per the broadcast experience. However, with increasing scrutiny of social media and online platforms, this will probably only represent the start of more accountability and regulation for the online world – and not just for politics. g

*Dr Jennifer Kavanagh is a law lecturer in Waterford Institute of Technology, specialising in constitutional, administrative and electoral law.*

## LOOK IT UP

**CASES:**

- *Coughlan v Broadcasting Complaints Commission* [1998] IEHC 62; [2000] 3 IR 1
- *State (Lynch) v Cooney* [1982] WJSC-SC 2278; IR 337

**LEGISLATION:**

- *Broadcasting Act 2009*
- *Digital Services Act (Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services and amending Directive 2000/31/EC)*
- *Electoral Reform Bill 2022*

**LITERATURE:**

- *Broadcasting Authority of Ireland Rule 27 Guidelines, Guidelines for Coverage of General, Presidential, Seanad, Local and European Elections* (September 2018)
- *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* (Broadcasting Authority of Ireland, April 2013)
- *Guidelines in Respect of Coverage of Referenda* (Broadcasting Authority of Ireland, April 2019)

# Amongst women

**Legal directory *IFLR1000's* latest list of global women leaders includes 33 from Ireland. Andrew Fanning reports**

Thirty-three Irish lawyers were recently named in a list of women leaders compiled by the legal directory *IFLR1000*. The fifth edition of the 'women leaders' list featured around 1,000 lawyers from across the world – a 33% increase over the number recognised last year.

A&L Goodbody and Arthur Cox each have seven lawyers on the list, while McCann FitzGerald has six. Those honoured also include five lawyers from Matheson, and two each from Maples Group, Walkers, and William Fry. Dentons and Simmons & Simmons each have one representative.

*IFLR1000* ranks law firms and lawyers on the basis of their work on financial and corporate deals. It describes those placed on the list as "an exclusive group of lawyers with outstanding reputations within their markets, who either have expertise and experience of working on complex deals, or who have risen to hold leadership roles with their firms or their practices". The directory's teams in Hong Kong, London, New York, and Sofia compile the list after analysing research submissions, conducting interviews with law-firm partners, and surveying "tens of thousands" of clients. Here are this year's Irish leaders.

> THE FIFTH EDITION OF THE 'WOMEN LEADERS' LIST FEATURED AROUND 1,000 LAWYERS FROM ACROSS THE WORLD – A 33% INCREASE OVER THE NUMBER RECOGNISED LAST YEAR

## A&L Goodbody

***Laura Butler*** – a partner in A&L Goodbody's asset-management and investment-funds group, whose areas of expertise are the formation, authorisation and operation of regulated investment funds. She has advised a broad range of clients in a number of high-profile transactions. She was awarded the Investment Funds Rising Star award in 2020.

***Marsha Coghlan*** – a partner in two of the firm's departments (litigation and dispute-resolution, and restructuring and insolvency), she has wide experience in general commercial litigation, including financial-services litigation, litigation involving directors, and regulatory investigations. She has advised companies such as Ladbrokes and Homebase on their successful restructuring through examinership.

***Sheena Doggett*** – a partner in A&L's corporate and M&A practice, she heads the practice's team in London, splitting her time between there and Dublin. She advised the Irish Government on the sale of Bord Gáis Energy, and Investec Bank on its disposal of Start Mortgages and Nua Mortgages.

***Catherine Duffy*** – served as chairman of A&L Goodbody from 2016 to 2019 and is a consultant in the firm's finance department. She was recognised as one of Ireland's most influential and successful businesswomen at the Women's Executive Network (WXN) 2017 Awards.

***Sinéad Lynch*** – a partner in A&L's corporate and M&A practice, who specialises in insurance. She has been involved in a large number of domestic and cross-border deals in the sector – including advising Friends First on the combination of its two Irish life assurance operations, and advising Aviva on the sale of its health insurer, Aviva Health, to Irish Life.

***Laura Mulleady*** – another of the firm's insurance specialists and a partner in its corporate and M&A practice, she has been involved recently in business transfers and amalgamations involving insurers and reinsurers, and in advising on Brexit-related projects. Her experience includes advising Carlyle Cardinal on its acquisition of AA Ireland Limited and subsidiaries from AA Corporation Limited.

***Marie O'Brien*** – a partner in A&L's finance department, she is the firm's head of aviation and transport finance. She also heads the firm's China Business Group and was listed in the 2020 Top 100 Elite Lawyers in Foreign Firms by *China Business Law Journal*.

## Arthur Cox

***Sarah Cunniff*** – a partner in the firm, Cunniff has extensive experience in asset management and investment funds. She set up the first exchange-traded fund (ETF) in Dublin in 1998, and has chaired the Irish Funds Legal and Regulatory Committee, as well as serving on a number of other industry committees.

***Laura Cunningham*** – a partner in the firm's aviation group, she specialises mainly

PIC: SHUTTERSTOCK

in aircraft finance and leasing. She has represented leasing companies, international financial institutions, equity investors, and airlines in a broad range of cross-border transactions, and advised AirAsia Group on the sale of its leasing unit to entities managed by BBAM.

***Caroline Devlin*** – a senior partner in Arthur Cox's tax practice, as well as co-chair of its aviation group. She also leads the firm's Asia-Pacific team and has among her experience advising Paddy Power's parent company Flutter Entertainment on the Irish-tax aspects of its accelerated acquisition of US company, FanDuel.

***Grainne Hennessy*** – a partner in the firm's banking-and-finance team, she is currently the only banking-and-finance lawyer in Ireland to be ranked as a 'star individual' by Chambers and Partners. Hennessy has advised a number of large Irish and international companies, such as Greencore, property-investment firm Kennedy Wilson, Bank of Ireland, and Wells Fargo.

***Maura McLaughlin*** – a partner at Arthur Cox since 2007, working in the corporate and M&A sector. She has been involved in many significant deals involving international and domestic companies – including the flotations of Permanent TSB and Aer Lingus, and Paddy Power's acquisition of Betfair. She won the 'Best in Capital Markets: Equity' award at the Women in Business Law Awards Europe 2020.

***Orla O'Connor*** – chair of the firm, O'Connor is also a partner in its finance group and a member of its financial-regulation practice. She advises banks on reorganisations and on a wide range of regulatory issues linked to payments, anti-money-laundering, mortgage arrears, and consumer credit. O'Connor has also been involved in advising Irish and international banks on the sale of assets.

***Niav O'Higgins*** – a partner who heads the firm's construction-and-engineering group. She is also a member of the Construction Contracts Adjudication Panel and has advised the DAA on infrastructure projects and Center Parcs on the construction aspects of its development of a holiday village in Co Longford.

***Tara O'Reilly*** – a partner in the practice that deals with asset management and investment funds. She has extensive experience in advising global and domestic clients and is a regular contributor to international journals and publications. She has a particular expertise in ETFs and is a leadership member of the Irish chapter of Women in ETFs.

## Dentons

***Eavan Saunders*** – the managing partner of Dentons' Dublin office, joining the world's largest law firm when it opened its Irish business in 2020. She has more than 20 years of experience working as a top-flight lawyer in the City of London and in Dublin, and is one of Ireland's leading private-equity lawyers.


Catherine Duffy (A&L Goodbody)


Orla O'Connor (Arthur Cox)


Maire O'Brien (A&L Goodbody)


Tara Doyle (Matheson)


Catherine Deane (McCann FitzGerald)


Myra Garrett (William Fry)

*IFLR1000* RANKS LAW FIRMS AND LAWYERS ON THE BASIS OF THEIR WORK ON FINANCIAL AND CORPORATE DEALS

## Maples Group

***Elizabeth Bradley*** – a partner in Maples and Calder (Ireland) LLP's banking-and-finance team in Dublin. She acts for Irish and global financial institutions across a wide range of domestic and cross-border deals – including property financing, acquisitions, project finance, and fund financing. Bradley was ranked as a 'leading individual' in *The Legal 500*'s 2020 and 2021 guides.

***Sarah Francis*** – also a partner in the firm's banking-and-finance team in Dublin, she has extensive experience advising on domestic and cross-border banking deals. Her main focus is on advising lenders and borrowers on corporate-debt facilities, acquisition financing, property financing, fund financing, and debt restructurings. *The Legal 500* 2021 named her as a 'next-generation partner'.

## Matheson

***Tara Doyle*** – last year, became the first woman to be appointed chair of Matheson, having been a partner since 2002. She heads the department that advises on asset management and investment funds and has advised leading UK investment managers on their Brexit planning. Doyle is a member of the Council of the Law Society of Ireland, having been elected in November 2020.

***Rhona Henry*** – a partner in the firm, heading its construction-and-engineering team, with over 19 years' experience in the sector. She advises on complex capital projects – including data centres, commercial offices, corporate headquarters, and major infrastructural projects. She was named a 'leading individual' in the European *Legal 500* in 2020.

***Yvonne McWeeney*** – appointed a partner in 2019, McWeeney works in Matheson's finance-and-capital-markets department, advising on all aspects of aviation, shipping, and rail, as well as the financing, trading and leasing of other assets. In addition, McWeeney lectures and tutors on the Law Society of Ireland's diploma and certificate courses in aviation leasing and finance.

***Julie Murphy-O'Connor*** – a partner in the department responsible for commercial litigation and dispute resolution. Murphy-O'Connor's practice includes complex Commercial Court disputes involving

international companies and financial institutions. She is co-author of the Commercial Litigation Association of Ireland's *Practitioner's Handbook for the Commercial Court* and of the Law Society's textbook on insolvency law.

***Michelle Ridge*** – a Matheson partner dealing with asset management and investment funds, specialising in Irish financial-services law. She was the International Law Office Client Choice Awards 2017 winner for the 'banking law in Ireland' category. She was also listed as one of the '50 Leading Women in Hedge Funds 2019' by *The Hedge Fund Journal*.

## McCann FitzGerald

***Catherine Deane*** – the firm's chair and a partner specialising in aircraft transactions, Deane advises a wide range of aircraft lessors on the reorganisation of substantial parts of their businesses and fleets, and on the registering, operation and establishment of aircraft facilities in Ireland. Deane advised SAS on setting up a platform in Ireland for the management of its fleet.

***Judith Lawless*** – a partner specialising in advising banks, investment funds, insurance companies, and other buyers and sellers of financial instruments. She also works with clearing houses, exchanges, and other participants in financial markets on issues linked to trading, clearing, settlement, and custody. Lawless has advised the Central Bank on issues like the introduction of Ireland's special liquidation regime.

***Gill Lohan*** – a partner specialising in IPOs and equity issues by public companies, she advised pharmaceutical giant AbbVie on its acquisition of Allergan, which was named the European 'M&A Deal of the Year' at the IFLR Europe Awards 2021. Lohan also advised Allied Irish Banks on its IPO, and has also been involved in a number of significant deals in the hotels sector.

***Hilary Marren*** – a partner in the firm's finance group specialising in asset-finance and leasing transactions. She has acted for many of the leading operating lessors, financiers and export-credit agencies in the aviation industry, and has extensive experience of international aviation deals. Marren has advised Dublin-based aircraft-leasing giant AerCap on a number of transactions.

***Georgina O'Riordan*** – a partner heading the firm's finance group, focusing on banking and asset-finance deals. She advises leading aircraft lessors, lenders and arrangers on all aspects of aircraft-financing and leasing. O'Riordan advised a number of aircraft lessors in connection with the Irish examinership of Norwegian Air Shuttle and some of its Irish-incorporated affiliates.

***Lisa Smyth*** – a partner, Smyth specialises in restructuring, examinership, receivership, liquidation, and contentious work for insolvency practitioners, companies and state agencies. Smyth's experience also includes acting for the Charities Regulator in its presentation of a petition to wind up the Inner City Helping Homeless charity, and advising shopping-centre owner Hammerson on a number of disputes.

## Simmons & Simmons

***Rachel Stanton*** – a finance partner at Simmons & Simmons, Stanton has 20 years' experience advising on all aspects of corporate lending and financing transactions. She has advised Irish banks, financial institutions, funds and corporates, as well as international financial institutions, private-equity firms, and funds operating within the Irish market.

## Walkers

***Sarah Maguire*** – a partner in the group that advises on asset management and investment funds. Maguire has extensive experience in advising on the establishment, authorisation and operation of all types of Irish investment funds. A member of the Irish Funds' legal and regulatory working group, Maguire is also a lecturer on the Law Society's Finance Law Diploma programme.

***Noeleen Ruddy*** – a partner and co-head of the team responsible for finance and capital markets. She advises international financial institutions, investment banks, private equity, and hedge funds on a wide range of deals involving structured-finance products. Named as a 'leading individual' in the 2022 *Legal 500*, she lectures in the Law Society on the principles of securitisation.

## William Fry

***Myra Garrett*** – a former managing partner at William Fry and now a partner in the firm's corporate team, specialising in mergers and acquisitions, public takeovers, initial public offerings, and capital-market transactions. A council member of the International Bar Association, Garrett also advises companies and boards of directors on corporate governance.

***Elaine Hanly*** – a former senior partner and now a consultant on banking and financial services at William Fry, providing advice on a wide range of financial transactions. She has been providing ongoing advice to packaging giant Ardagh Group on its debt issuances, while she has also advised Eirgrid on a proposed 700MW Celtic Interconnector submarine power cable between Ireland and France.

*Andrew Fanning is a freelance journalist who works for the* Law Society Gazette.

> THOSE ON THE LIST ARE DESCRIBED AS 'AN EXCLUSIVE GROUP OF LAWYERS WITH OUTSTANDING REPUTATIONS WITHIN THEIR MARKETS, WHO EITHER HAVE EXPERTISE AND EXPERIENCE OF WORKING ON COMPLEX DEALS, OR WHO HAVE RISEN TO HOLD LEADERSHIP ROLES WITH THEIR FIRMS OR THEIR PRACTICES'

# Too hot to handle!

**Corporate entities and individuals face various risks from infringing EU sanctions relating to Russia. Cormac Little warns solicitors to tread carefully in this fast-moving area**

> RUSSIA, BEING A PERMANENT MEMBER OF THE SECURITY COUNCIL, HAS THE RIGHT TO VETO ANY UN RESOLUTIONS, SO CLEARLY NO UN SANCTIONS ARE LIKELY TO ARISE FROM THIS CONFLICT

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

Like 6 June 1944 and 11 September 2001, Russia's invasion of Ukraine on 24 February 2022 is a major historical and political landmark. Moreover, this unprovoked military action has had significant legal consequences – most notably, the imposition of a series of sanctions on Russian businesses/individuals by the EU. These sanctions (or, in 'EU-speak', "restrictive measures") are contained in various revised and new regulations adopted by the EU's Council of Ministers.

## What is a sanction?

In essence, a sanction is a legal instrument adopted by the United Nations, the EU, or an individual country, such as the US or the UK, to achieve a foreign-policy and/or national-security goal. Usually, sanctions are imposed in response to armed conflict, the invasion/annexation of an independent sovereign country, and/or violations of international law/human rights. Sanctions adopted by the EU often originate from resolutions adopted by the UN Security Council.

The overriding aim of a sanction is, without resorting to military action, to stop/change the policy or activity of the target(s), who has been/is suspected of having committed serious crimes or behaved in a manner that breaches international law or norms. Sanctions also have a limited deterrent effect.

At any given time, the EU (and, by extension, the Irish State) has a series of sanctions in place regarding various 'rogue' countries and/or terrorist groups. Leaving aside sanctions resulting from the war in Ukraine, the EU/Ireland currently has restrictive measures in place regarding countries such as Syria, North Korea, and Venezuela, plus terrorist groups such as al-Qaeda and ISIS.

## Types of sanctions

Various categories of sanctions may be imposed by the EU. These include:

- *Trade sanctions*: the adoption of export and/or import bans, investment prohibitions, or the withdrawal of tariff preferences,
- *Admission restrictions*: the imposition of travel or visa bans for named individuals,
- *Asset freezes*: preventing any change in volume, amount, location, ownership, possession, character, destination, etc, enabling the use of funds held by the targeted natural or legal persons,
- *Financial sanctions*: prohibiting financing/the supply of financial services or imposing restrictions on the raising of new equity or debt,
- *Economic sanctions*: preventing economic activity being carried out by the target(s) – for example, banning transactions or dealings or prohibiting other forms of commercial action,
- *Diplomatic sanctions*: the interruption of diplomatic relations with a target country (for example, recall of ambassadors and/or other diplomats), and
- *Military sanctions*: targeted military strikes and/or embargoes regarding weapons and other military equipment.

This division into 'types' of sanctions is, to some extent, artificial. In practice, many legal instruments comprising sanctions contain elements of two or more of the above categories.

Often, UN, EU and US sanctions are closely coordinated with a view to maximising their impact on the target country, group or individual. As all EU member states are also members of the UN, the Council of Ministers generally adopts laws to give effect to relevant UN sanctions. However, the EU may also adopt stricter measures than those required by the UN.

Separate to the implementation of UN resolutions, the EU may, as part of its Common Foreign and Security Policy (CFSP), adopt sanctions with a view to promoting its own foreign-policy objectives. Such restrictive measures are contained in a CFSP decision under article 29 of *Treaty on European Union*. Economic sanctions are


PIC: SHUTTERSTOCK

typically, then, put into effect by means of an EU regulation adopted by the Council of Ministers under article 215 of the *Treaty on the Functioning of the European Union*.

The war in Ukraine is an example of where the EU and the UN have differing foreign policy objectives, with the result that the EU has taken independent action. Specifically, Russia, being a permanent member of the Security Council, has the right to veto any UN resolutions, so clearly no UN sanctions are likely to arise from this conflict.

For EU sanctions to apply, it is sufficient that an EU natural or legal person is involved, or that the relevant parties act in whole or in part within the EU. Restrictive measures adopted by the EU by regulation are directly applicable/automatically binding on all natural and legal persons in the state (and elsewhere in the EU).

## Irish secondary legislation

Although the State is, as mentioned above, automatically bound by all EU regulations, Irish secondary legislation – that is, a specific statutory instrument (SI) referring to the relevant EU legislation – is also usually adopted by the Minister for Finance.

The timing of the entry into force of such SIs varies. Some have taken months. Others, including the secondary legislation triggered by the 2022 EU regulations resulting from the invasion of Ukraine, have been adopted much more quickly.

Typically, the relevant SI provides that a person contravening a provision of the relevant EU regulation is guilty of an offence. It also usually stipulates the relevant penalty/penalties, which can include fines on entities and/or individuals (in both cases, on indictment, of a maximum of €500,000) and/or prison sentences on individuals (on conviction on indictment of up to three years).

Since article 34 of the Constitution arguably prevents significant administrative fines, criminal offences are generally chosen as the primary enforcement tool for infringement of EU sanctions.

## Sanctions in 2014 and 2022

While the February 2022 invasion of Ukraine clearly represented a significant intensification of the ongoing conflict, Russia's 2014 direct (that is, annexation of the Crimea and Sevastopol in southern Ukraine) and indirect (military campaign by a Russian-backed separatist movement in the Donbas region of eastern Ukraine) actions had already resulted in the adoption of restrictive measures against relevant Russian/other interests/individuals by the EU.

These sanctions are primarily contained in Council Regulation 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining the territorial integrity, sovereignty, and independence of Ukraine, and in Council Regulation 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the

PIC: ROBIN UTRECHT/SHUTTERSTOCK

**Just one of 12 superyachts belonging to Russian oligarchs that have been detained at Dutch shipyards**

CLEARLY, ENGAGING WITH OR ON BEHALF OF RUSSIAN NATURAL OR LEGAL PERSONS HAS, SINCE LATE FEBRUARY 2022, BECOME MUCH MORE FRAUGHT WITH RISK

situation in Ukraine.

Regulation 269/2014 contains measures including the freezing of funds and economic resources of relevant Russian/Ukrainian individuals in response to the Crimean situation. On the other hand, Regulation 833/2014 prohibits the export of dual-use goods and technology to Russia if those products are for military use. ('Dual-use' means the relevant item is suitable for both civil and military purposes.) This law also bans the sale of such goods and technology to certain Russian entities, while also prohibiting the provision of related technical support and financing. In addition, Regulation 833/2014 prevents the Russian state and certain Russian financial institutions from accessing capital markets in the EU. (Other 2014 EU sanctions targeted certain Ukrainian politicians and other individuals accused of misappropriating exchequer funds and/or undermining the rule of law, including former Ukrainian president Viktor Yanukovych.)

As Russia was assembling its troops near the border with Ukraine in late 2021 and early 2022, both Regulation 269/2014 and Regulation 833/2014 provided a 'ready-to-use' framework for the adoption of a deeper and broader set of restrictive measures by the EU against relevant Russian/Ukrainian legal and natural persons. The amended laws have added a significant number of individuals and entities (including Vladimir Putin) to the sanctions list, while also adopting measures aimed at weakening Russia's economic base/ability to wage war by depriving it of both critical technologies/access to the EU market.

Since 2014, restrictions on trade and investment have been imposed by the EU regarding Crimea and Sevastopol. Earlier this year, a similar set of restrictions was adopted by the EU regarding the non-government-controlled territories of the Donetsk and Luhansk regions. In 2020, an array of financial, economic and trade sanctions had been applied by the EU to Belarus – these rules were expanded this year in response to that country's support of Russia's actions in Ukraine.

All EU sanctions may be subject to regular change and revision. For a current overview of the measures adopted in

response to Russia's attack on Ukraine, see the 'Sanctions adopted following Russia's military aggression against Ukraine' page on the European Commission website.

## Overview of sanctions in place

The relevant EU trade sanctions target commerce with Russia in a long list of specific economic sectors. In addition to the ban on the export of dual-use goods, by way of a small sample, this list contains a prohibition on new investments in the Russian energy sector; a ban on public support or financial assistance for trade with Russia; an EU broadcast-ban on Russian state-owned media outlets, including the English-language TV channel Russia Today; a ban of the import of iron and steel from Russia; and a prohibition on exports of advanced semiconductors to Russia.

Travel bans and asset freezes now apply to hundreds of individuals and legal entities purportedly responsible for undermining Ukraine's territorial integrity. In the financial-services sector, specific measures have been adopted regarding matters/functions such as insurance/reinsurance, acceptance of deposits, engagement with the Russian central bank, sale of securities, access to the SWIFT system, crypto-assets, and refinancings.

EU regulations containing sanctions typically contain derogations – that is, permit the otherwise-prohibited activities in limited circumstances, such as allowing the purchase of goods or services required to satisfy the basic needs of the designated or sanctioned individual, releasing funds to pay for legal services, and/or paying for the maintenance of the frozen funds or economic resources. In addition, EU restrictive measures often allow an exemption for contracts concluded before the entry into force of the relevant sanctions. If granted, such derogations usually require the relevant EU member state to inform the other EU member states and the European Commission.

The relevant EU regulations prohibit activities that thwart the objective of the restrictive measures. However, any person or entity who did not know, and had no reasonable cause to suspect, that their action would violate the relevant EU rules will not be liable. Indeed, any freezing of funds and economic resources that is done in good faith on account of the EU sanctions rules will also not result in liability, unless the funds were frozen negligently.

## Competent authorities

EU sanctions rules contain a list of competent authorities who, as mentioned above, are permitted to release frozen funds/economic resources in line with the relevant derogations. The three competent authorities in Ireland are the Department of Foreign Affairs; the Department of Enterprise, Trade and Employment; and the Central Bank of Ireland. Relevant details regarding Russian-related sanctions are available on each of their respective websites. (In addition to the above-mentioned websites, a section of lawsociety.ie provides links to relevant resources on this wide-ranging, nuanced and dynamic topic.)

## Next steps

Corporate entities and individuals face various risks from infringing EU laws on sanctions. These include business disruption, loss of investment, major reputational damage, the requirement to devote management time to compliance issues/defending potential allegations plus, and perhaps most importantly, severe penalties including fines and/or jail terms for the relevant offenders. Clearly, engaging with or on behalf of Russian natural or legal persons has, since late February 2022, become much more fraught with risk.

While already an obligation for solicitors under AML/CFT rules, conducting proper client due-diligence has only increased in importance. Moreover, the real purpose, particularly of instructions from new clients with links to Russia, must be carefully considered.

In both onboarding and subsequently advising Russian-related clients, solicitors must keep abreast of all relevant legal developments in this fast-moving area. g

*Cormac Little SC is partner and head of the competition and regulation unit of William Fry LLP and chair of the Law Society's EU and International Affairs Committee.*

RECENT DEVELOPMENTS IN EUROPEAN LAW

# TRADEMARKS

**Case T-668/19, *Ardagh Metal Beverage Holdings v EUIPO*, 7 July 2021**

**Ardagh filed an application for registration of a sound sign as EU trademark with the European Union Intellectual Property Office (EUIPO). An audio file was submitted that sounded like a drink-can being opened, followed by silence of one second, and a fizzing sound lasting for nine seconds. Registration was sought for various drinks and metal containers for storage or transport.**

**EUIPO rejected the application, on the ground that the mark was not distinctive. The court dismissed the action brought by Ardagh. It held that a sound mark must have a certain resonance that enables the consumer to perceive it as a trademark.**

**The consumer must be able to associate the sound mark with its commercial origin. The existing case law relating to their dimensional marks cannot, in principle, be applied to sound marks. EUIPO incorrectly applied that case law.**

**However, the court found that the error is not such as to vitiate the reasoning in the contested decision. The sound produced by the opening of a can is a purely technical and functional element. Such a sound will not be perceived as an indication of the commercial origin of the goods. The public associates the sound of fizzing bubbles with drinks. The sound element and silence of a minute have no inherent characteristics that would make it possible for the public to identify them with the commercial origin of the goods.**

**Those elements are not resonant enough to distinguish them from comparable sounds in the field of drinks. Therefore, the court confirmed the original EUIPO finding.**

# PRACTICE NOTE

PRACTICE NOTES ARE INTENDED AS GUIDES ONLY AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL ADVICE.
NO RESPONSIBILITY IS ACCEPTED FOR ANY ERRORS OR OMISSIONS, HOWSOEVER ARISING

GUIDANCE AND ETHICS COMMITTEE

# TEN STEPS TO PLANNING FOR DISASTER

A disastrous or emergency event can happen to anyone at any time and can come unexpectedly. If it does, you and your firm may need to adapt quickly to the situation to ensure the survival of the firm. Solicitors have an ethical and moral obligation to implement reasonable measures to safeguard property and money they hold for clients or third parties, prepare for business interruption, and keep clients informed about how to contact them.

How your firm reacts and adapts to a disastrous or emergency event can mean the difference between resuming work with relative business continuity, or leaving your clients stranded or – in the worst scenario – closing your firm. Being unprepared for emergencies can also leave your firm's staff, clients, and data vulnerable and at risk.

Here are some steps to help a firm create a response plan.

1) *Carry out an inventory* – you should always know exactly what your firm has on hand so that anyone following your plan knows what needs to be recovered or replaced. You should consider including the following in your inventory:

- Software: make a list of any software your firm uses. How many licences do you have? Do you need to have passwords or other ways to access it?
- Hardware: how many computers, servers, or other pieces of physical hardware does your firm have – and where are they located?
- Client files: should a disaster occur, have a list of all client files in your firm's possession so that they can be recovered.
- Location: note the locations of everything. For example, are files stored in the cloud or a physical location?

2) *Do a risk assessment* – include everything on your inventory carried out at Step 1. Identify the impact of each risk and ways to mitigate risks.

3) *Identify and group critical services, systems, and data* – for example, if client data is located on a single server or has no backup, this could be considered critical. Items that can be easily replaced or are backed-up in multiple places could be considered low risk.

4) *Identify supporting tools* – do you back-up your data? How often? Where is it located (is the backup site located in the same region as the primary site)? Assess your current situation and make note of any gaps that could be an issue. Consider using automation technology to remove or reduce human error to help protect your firm in case of disaster. Consider outsourcing any critical functions (like data-hosting backups) to mitigate risk in case of a physical disaster such as a fire.

5) *Assign responsible individuals* – tell someone what plans and procedures you have in place in the event of a disastrous or emergency event. Should an emergency occur, people should know in advance what their responsibilities are. Identify members of your response team and assign roles and responsibilities. Ensure each person is aware of their specific responsibilities. For example, who would be responsible for client communication? Identify any service providers to be contacted.

Is there a member of the firm who knows or has access to the plan? Have executor/alternative/substitutes been notified? Are they aware of the plan? What if they cannot assist?

6) *Determine how to handle sensitive information* – consider documenting a plan for handling essential records (like employment records, financials, and client files) in terms of confidentiality, security, and integrity following a disaster.

7) *Communication* – consider having a written plan to document the communication in case of disaster or emergency. Detail the specific means of communication your team members will use. How and when will your firm communicate with essential personnel, service providers, and clients? Who will be responsible for each type of communication?

8) *Test and review the plan* – testing the plan helps ensure that everyone at your firm knows what to do, and it also helps account for normal business factors like staff turnover or moving offices. Consider doing a walkthrough or simulation testing of the plan. See what works and what doesn't work, so you can adjust the plan and train staff accordingly.

9) *Finance* – try to maintain a buffer to cover unexpected expenses that may occur. This might not always be possible, and will vary from firm to firm.

10) *Don't panic; ask for help* – emergency situations can be very stressful. An already stressful situation can be made much worse when you don't keep your cool. Colleagues are usually happy to step in to assist in times of an emergency. They may have experience in dealing with this matter and may provide a valuable insight as to how to minimise disruption.

Further information on emergency succession planning is available in the Law Society practice note *Emergency succession planning in a sole practitioner's or principal's firm* (2nd edition).

GUIDANCE NOTE

CONVEYANCING COMMITTEE

# LPT – NEW VALUATION PERIOD

A new valuation period for Local Property Tax (LPT) commenced on 1 November 2021 and will apply for the period of four years from 1 January 2022 to 31 December 2025.

Revenue has not yet finalised revised guidelines for the transfer of property during the new valuation period, but as soon as these are available, the Conveyancing Committee will review them and will issue guidance to the profession.

A number of significant changes have been brought about by the *Finance (Local Property Tax) (Amendment) Act 2021*.

The exemption from LPT that previously applied to builders' trading stock is no longer available beyond 2021. If builders or developers have houses suitable for use as a dwelling on a liability date (that is, 1 November in any year), they must now register them with Revenue and, as owners on the relevant liability date, must pay the LPT due in respect of those properties. A builder or developer who owns a house suitable for use as a dwelling on a liability date is, in respect of that (finished) house, in the same position as any other owner of a residential property.

A property that becomes suitable for use as a dwelling after 1 November in any year in a valuation period will not be liable for LPT until the following 1 November. The property will be valued as of the valuation date for the valuation period – that is 1 November 2021 in the current valuation period. For example, if a new house is built and becomes suitable for use as a dwelling on 1 July 2022, the property will become liable to LPT for the first time on 1 November 2022, but the valuation date is 1 November 2021.

To facilitate builders and developers, Revenue has set up a new service on its website ('Register a property for Local Property Tax') for the registration of properties that are completed between liability dates. There is no obligation on a builder or developer to avail of this service. Houses that are completed and become suitable for use as a dwelling after 1 November in any given year do not require an LPT ID number in order to stamp the deed of assurance.

**Interest on deferred liability**

Revenue has advised that a change has been made whereby, since 25 October 2021, interest on deferred liabilities will be calculated on a weekly basis, and the amount of interest due will be reflected in the liable person's online records and also on the 'property history summary' screen. In other cases (that is, where there are arrears for the previous period), solicitors should continue to exercise care when there are arrears of LPT showing on the LPT property history summary, as the interest due in respect of such arrears is not reflected on the property history summary. Solicitors are referred to the practice note 'LPT interest', issued by the Conveyancing Committee on 2 July 2021 in this regard. g

# LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for Professional Education and Lifelong Learning

LAW SOCIETY OF IRELAND

## IN-PERSON CPD CLUSTERS 2022

| | | |
|---|---|---|
| 23 June | North West Practice Update 2022 | Lough Eske Castle Hotel, Donegal |
| 30 June | Essential Solicitor Update Limerick 2022 | The Strand Hotel, Ennis Road, Limerick |
| 15 Sept | Essential General Practice Update Kerry 2022 | Ballygarry House Hotel, Tralee, Co Kerry |
| 21 Oct | North East CPD Day 2022 | Four Seasons Hotel, Monaghan, Co Monaghan |
| 9 Nov | General Practice Update Kilkenny 2022 | Hotel Kilkenny, Kilkenny, Co Kilkenny |
| 17 Nov | Connaught Solicitors' Symposium 2022 | Breaffy House Hotel, Castlebar, Co Mayo |
| 24 Nov | Practitioner Update Cork 2022 | Kingsley Hotel, Cork, Co Cork |
| 30 Nov | Practice and Regulation Symposium | Mansion House, Dublin |

**To book visit www.lawsociety.ie/cpdcourses**

| DATE | EVENT | CPD HOURS | DISCOUNTED FEE* | FULL FEE |
|---|---|---|---|---|
| | **ON-SITE** | | | |
| **14 June** | **Effective Communications Skills Workshop**<br>Law Society of Ireland, Blackhall Place, Dublin | 3.5 Management & Professional Development Skills (by Group Study) | €160 | €185 |
| **15 June** | **Project Management**<br>Law Society of Ireland, Blackhall Place, Dublin | 5.5 Management & Professional Development Skills (by Group Study) | €160 | €185 |
| **21 June** | **Project Management**<br>Law Society of Ireland, Blackhall Place, Dublin | 5.5 Management & Professional Development Skills (by Group Study) | €160 | €185 |
| **19 July** | **Irish Sign Language (ISL) in the Legal Setting**<br>Law Society of Ireland, Blackhall Place, Dublin | 5 Management & Professional Development Skills (by Group Study) | €270 | €330 |
| **26 July** | **Handling Difficult Conversations for Managers**<br>Law Society of Ireland, Blackhall Place, Dublin | 3 Management & Professional Development Skills (by Group Study) | €135 | €160 |
| **30 Sept** | **Employment Law Masterclass:**<br>A practical guide to new developments<br>Law Society of Ireland, Dublin | 6 General(by Group Study) | €210 | €255 |
| | **ONLINE** | | | |
| **20 June** | **International Arbitration in Ireland**<br>Live Webinar | 2 hours general (by elearning) | See website for details | |
| **13 July** | **Assisted Decision Making & Capacity**<br>Live Webinar | 3 General(by eLearning) | €160 | €185 |
| **Available now** | **International Arbitration in Ireland**<br>Online, On-Demand | 1.5 General (by eLearning) | Complimentary | |

For a complete listing of upcoming courses visit www.lawsociety.ie/CPDcourses or contact a member of the Law Society Professional Training or Law Society Skillnet team on Tel: 01 881 5727 | Email:Lspt@lawsociety.ie or lawsocietyskillnet@lawsociety.ie

*Applicable to Law Society Skillnet members

## WILLS

**Cahill, Richard (deceased),** late of Cloonbanane, Shrule, Co Mayo, H91 K1HR, who died on 11 October 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact Mitchell & Co, Solicitors; tel: 093 36622, email: mitchellandcompanysolicitors@gmail.com

**Condron, Shane (deceased),** late of Whitewood, Nobber, Co Meath, who died on 28 December 2021. Would any person having knowledge of a will made by the above-named deceased please contact Patrick J Carolan, Solicitors, Market Square, Kingscourt, Co Cavan; DX 184001; tel: 042 966 7433, email: info@pjcarolan.com

**Lawler, Brian (deceased),** late of 20 Plunkett Terrace, Cobh, Co Cork, who died on 31 March 2022. Would any person having knowledge of the whereabouts of any will, or if any firm is holding same, please contact Frank Kelleher & Co, Solicitors, 1 Pearse Square, Cobh, Co Cork; tel: 021 481 6300, email: vkelleher@fks.ie

**McCarthy, John (deceased),** late of Willow Brooke Care Centre, Castleisland, Co Kerry, and formerly of 2 Parkhill Close, Kilnamanagh, Tallaght, Dublin 24, who died on 11 April 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Cadogan O'Regan LLP Solicitors, 22 Denny Street, Tralee, Co Kerry; tel: 066 711 8307, email: info@cador.ie

**Mulcahy, Mary (May) (deceased),** late of 2 Belcourt, Navan, Co Meath, who died on 12 April 2022. 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 McAlister O'Connor, Solicitors, Abbey Road, Navan, Co Meath; tel: 046 902 2223, email: declanpoconnor@gmail.com

**Stirrat, Terence (deceased),** late of 3 Wentworth Grove, Wicklow, Co Wicklow, who died on 18 December 2020. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Edel O'Brien, Augustus Cullen Law, 7 Wentworth Place, Wicklow; tel: 0404 67412, email: edel.obrien@aclsolicitors.ie

**Thompson, Breda (née Mooney) (deceased),** late of Ballylusk, Ballyfin, Co Laois, who died on 16 February 2022. 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 Messrs James E Cahill & Co, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 1246, email: donalwdunne@securemail.ie

## MISCELLANEOUS

**For sale – thriving conveyancing, probate and litigation practice.** Over 40 years in existence, located in a prominent coastal town along the Wild Atlantic Way where the principal hopes to retire in the near future, but will remain as consultant, if required. Replies to **box no 02/05/22**

## RATES

# PROFESSIONAL NOTICE RATES

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

- **Wills** – €155 (incl VAT at 23%)
- **Title deeds** – €310 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €155 (incl VAT at 23%)

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for July *Gazette*: 15 June 2022.**

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

## TITLE DEEDS

**Monaghan, Joseph (deceased), late of 13 Heather Drive, Grange Road, Rathfarnham, Dublin 16, D16 WV61**

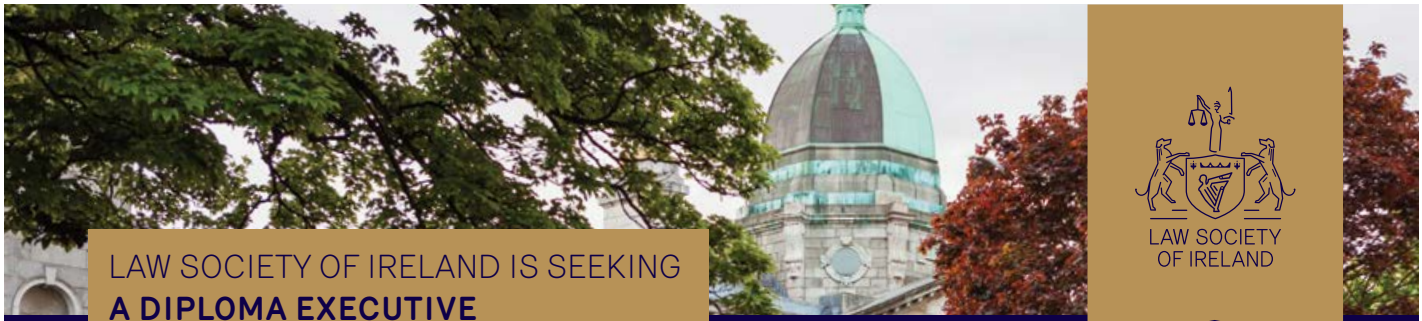
Would anyone having knowledge of the whereabouts of title deeds of the properties described in the schedule below, or if any firm is holding same, please contact Brian Matthews & Co, Solicitors, 7 Main Street, Dundrum, Dublin 14, D14 Y3X9; email: info@bmatthews.ie.

*Schedule:*

1) 13 Heather Drive, Grange Road, Rathfarnham, Dublin 16, D16 WV61.
2) 8 O'Moore Street, Mountmellick, Co Laois, R32 P663.
3) 39 Eyre Street, Galway, H91 P3XV.

**In the matter of the *Landlord and Tenant Acts 1967-2020* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978***

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in all that and those 11 Proby Square, Blackrock, Co Dublin, being the entirety of premises held under a lease dated 6 January 1940 between Patrick McAneney of the one part and John Jerome O'Doherty of the other part for a term of 999 years from 25 March 1939, at a yearly rent of £15 in consideration of a lump sum payment of £1,450, the premises the subject of the lease being therein described as "all that and those the piece or plot



LAW SOCIETY OF IRELAND

## LAW SOCIETY OF IRELAND IS SEEKING **A DIPLOMA EXECUTIVE**

Applications are invited for the position of Diploma Executive in the Law Society's Education Department. The Diploma Centre offers a range of postgraduate Diplomas, Certificate courses, Masters programmes, and a Professional Doctorate in Law. As Diploma Executive, the successful candidate will have responsibility for all aspects of a portfolio of courses, including recruitment of associate faculty, co-ordination of course delivery, liaising with students, and facilitating the assessment process.

The work will involve using innovative course-delivery methods. New course development is also a key aspect of the role. Successful candidates will become experts in professional legal education.

As the Diploma Centre courses are delivered to solicitors in practice, the course contact hours take place outside office hours. The candidate must be available to work weekday evenings and Saturdays when required during course time.

**Role:**
- Be methodical, flexible and capable of undertaking multitask driven work,
- Be an effective project manager and creative thinker,
- Be willing to work onsite for course delivery.

**Experience:**
- Be a qualified solicitor or barrister.
- Experience in education or training sector an advantage.

**Contract duration:** 2 years' fixed term

Appointment to this role is subject to the candidate's eligibility to work in Ireland, without any restrictions.

**To apply for the role and for further details:**
www.lawsociety.ie/diplomaexec

**Closing date:** Monday, 20 June 2022

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of ground being part of the lands of Stillorgan Park, Blackrock, in the barony of Rathdown and county of Dublin, upon which a newly erected dwellinghouse now stands, measuring in front to Carysfort Avenue 61 feet, and in depth from front to rear on the north side 199 feet, and in breadth in the rear 61 feet, as more particularly shown on the plan or map annexed hereto and thereon edged red", which lease was the subject of an arbitration award 1/186 dated 5 June 1986 in an arbitration under the *Landlord and Tenant (Ground Rents) Act 1967* between John Fleetwood Senior and Ann Fleetwood of the one part and Kathleen Mulrooney of the other part, whereby the then Dublin county registrar, Michael T Neary, granted the said John Fleetwood Senior and Ann Fleetwood the right to enlarge into a fee simple their leasehold interest in the premises under the lease by acquiring the fee simple and all intermediate interests for the sum of £115, payable as to £105 to the Mulrooney estate and the balance of £10 payable into court to the credit of all other unknown and unascertained superior owners, with Peadar M O'Reilly, court officer, being appointed to execute a deed conveying and assigning the interest of these other persons.

Take notice that Emma Fleetwood and Conor Fleetwood (as legal personal representatives of John Fleetwood Senior) and Frank Marmion, Patrick Duggan, John Murphy and Joan Fleetwood (as the persons currently entitled to the leasehold interest under the lease) (such persons being hereinafter collectively referred to as 'the applicants') intend to submit an application to the county registrar for the county of Dublin seeking an order confirming the 1986 award and all consequent orders under section 8(2) of the *Landlord and Tenant (Ground Rents) Act 1967* necessary to give effect to same, including, without prejudice to the foregoing, an order appointing an officer of the court to execute for and in the name of all unknown and unascertained superior owners a conveyance of the fee simple and an assignment of all other outstanding superior interests to Conor Fleetwood and Emma Fleetwood as personal representatives of John Fleetwood Senior or, in the alternative and without prejudice to the foregoing, an order that the Frank Marmion, Patrick Duggan, John Murphy and Joan Fleetwood, as the persons currently entitled to the leasehold interest under the lease, are entitled to acquire the fee simple and any intermediate interests in the said premises, and all consequent orders under section 8(2) of the 1967 act necessary to give effect to same, including, without prejudice to the foregoing, an order appointing an officer of the court to execute a conveyance for and in the name of the respondents of the fee simple and all other outstanding superior interests to them, and any party asserting that they hold a superior interest in the said premises (or any of them) are called upon to furnish evidence of their title to the said premises to the below named within 21 days from the date of this notice.

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

*Date: 3 June 2022*
*Signed: Mullany Walsh Maxwell LLP (solicitors for the applicant), 19 Herbert Place, Dublin 2*

**In the matter of the *Landlord and Tenant Acts 1967 and 2008* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 338A North Circular Road, Dublin 7: an application by Joseph Costello and Emer Costello**



Any person having a freehold estate or any intermediate interest in all that and those 338A North Circular Road, Dublin 7, including lands between 336A and 340 North Circular Road and the private laneway at the rear of those properties off Phibsborough Avenue, being currently held by Joseph Costello and Emer Costello ('the applicants') under a lease dated 9 April 1920 between Josephine Hickey and Francis Flynn of the one part and Henry G Penie of the other part, and a lease dated 20 April 1920 between Josephine Hickey and Francis Flynn of the one part and JJ Bailey of the other part, as well as a superior lease dated 25 August 1877 between Sir Francis William Brady of the one part and William Martin of the other part, take notice that the applicants, as lessees under the said leases, intend to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and any other intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to 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 county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for 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 premises are unknown or unascertained.

*Date: 3 June 2022*
*Signed: Ferrys LLP (solicitors for the applicants), Inn Chambers, 15 Upper Ormond Quay, Dublin 7*

## RECRUITMENT

**Exciting opportunity for a conveyancing/probate solicitor** to join the well-established dynamic, niche firm of Catherine Allison & Company, Solicitors, (www.callison.ie), 6 Roden Place, Dundalk, Co Louth, and Newry, Co Down, NI. Our firm is the largest firm in the north-east and the only firm in the north-east to practise in all jurisdictions of Ireland, Northern Ireland, England and Wales. Our main office is centrally located in Dundalk and consists of 15 long-term staff. The role involves acting for large developers in housing estates, together with a good mix of commercial and residential conveyancing and general probate practice. Great fun office with strong reputation. Benefits include life cover, staff pension and competitive rates, and up to 25 days' holidays plus bank holidays. Replies with CV to email: catherine@callison.ie

**Assistant solicitor required** for busy, well-organised general practice in north Tipperary, focused on litigation, probate and conveyancing. Opportunity to live and work close to Lough Derg, where everything from housing, schools, and childminding is accessible, affordable, and enjoyable. Possible partnership opportunity. Replies to **box no 01/05/2022**

PRO BONOBO

# It's all over now, baby blue

● A couple in India are being sued by the husband's parents for not producing a grandchild, the BBC reports.

His parents claim they blew their nest egg in 2016 on their 35-year-old son's over-the-top wedding, extravagant honeymoon, and €75k car – as well as pilot training in the US that cost $65,000. They say that they arranged the marriage because they hoped for a "grandchild to play with" when they retired.

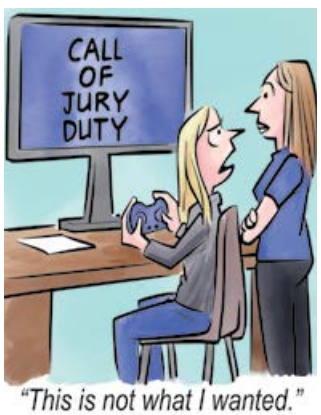
Their lawsuit cites the "mental cruelty" they claim to have suffered, and seeks almost €615,600 if there's no child within a year.


# When duty calls – answer

● A Scottish graduate has ditched her legal career to play *Call of Duty* full time.

Jade MacIntyre (aka 'The Real Slim Jadey') has a first-class law degree and a Diploma in Professional Legal Practice.

The 24-year-old boasts 21,000 followers on her Facebook Gaming channel. According to STV's *Scotland Tonight*, she makes more from donations and advertising than she would as a trainee solicitor in Glasgow.



"This is not what I wanted."

"I'm way happier doing this than I would be in a law firm." she says. "I think that's what it really comes down to – and I know myself that I've found something that I'm passionate about and I enjoy. I never had that for law. Really, I'm dropping it for something that I feel better in."

# *Street Fighter 2: The Legaling*

● 'Final Verdict' regular and apparent wannabe robot-beastmaster Elon Musk is set to create a "hardcore litigation department" staffed with "hardcore streetfighters" to help defend electric vehicle giant Tesla against lawsuits.

Announced via a series of tweets, the billionaire said aspiring recruits must submit three to five bullet points "describing evidence of exceptional ability" as well as "links to cases you have tried". But "white-shoe lawyers" (roughly equivalent to England's 'Magic Circle') need not apply, with Musk warning: "There will be blood."

He continued: "My commitment: we will never seek victory in a just case against us, even if we will probably win. We will never surrender/settle an unjust case against us, even if we will probably lose."

# A boy named sued

● A man in Kingsland, Arkansas (birthplace of Johnny Cash), has been arrested for shooting a hole in the town's tribute to the country legend, the NME reports.

The town's water tower has a silhouette of Cash, with guitar, on it – which now has a bullet hole at crotch level. The steady stream of water that has ensued gives the impression that Cash is peeing. The damage reportedly costs the town roughly $200 every day in lost water, and it is estimated the repair will require another $5,000.

Timothy Sled has received two felony charges – one for impairing the operation of a vital public utility, and another for criminal mischief.

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