LAW SOCIETY
Gazette
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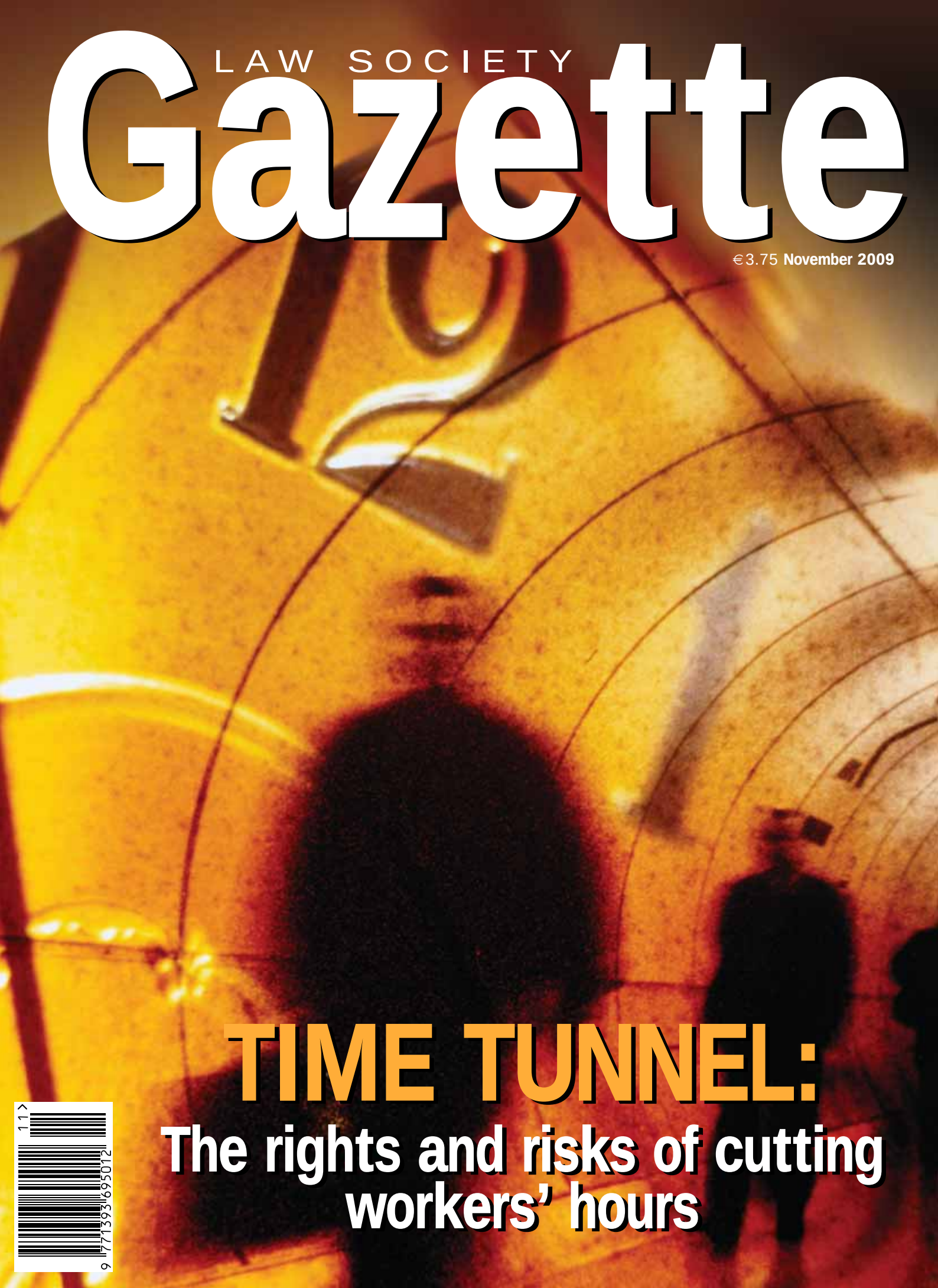

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A year of upheaval

As I write this, I have only a few days left to go until the end of my term and, as you might expect, I have mixed emotions. It has been a great honour to be your president but, equally, I will not pretend that it has been an easy ride.

In the Society's annual report, I have expressed some personal views on the challenges facing the profession going forward, but, in the past year, it has been the upheaval in the professional indemnity insurance market that has commanded our undivided attention in Blackhall Place. I have written to you separately to inform you of the changes to the regulations that we have made at the behest of the insurers. There is no easy solution and our best path lies in sticking together and working through the problem. It is all the more difficult, as some factors are beyond our control and the Council has had to make some big decisions to try and ensure that cover is available and affordable to as many as possible.

Obtaining stability

Unless there is a dramatic decrease in claims, we are facing similar problems next year and we may have to make further substantial changes in order to obtain some stability. However, we are well used to employing our problem-solving skills for our clients – now we have to be just as creative for ourselves.

In this regard it has been a great comfort to me that the individual members of the Council have engaged so positively. I take the opportunity to thank them, one and all, especially the members of the Professional Indemnity Insurance Task Force, led by Niall Farrell. I am also greatly encouraged by the constructive attitude of colleagues all across the country who understand that unprecedented times require unprecedented measures.

Both the director general, Ken Murphy, and I have been made very welcome at every bar association we attended – and during the year we got to meet, talk and listen to colleagues in Cavan, Clare, Donegal, Dublin, Galway, Kildare, Leitrim, Louth (and Drogheda), Meath, the Midland Bar, Sligo, Waterford, Wexford and Wicklow. By the time you read this, we will also have been in West Cork and Cork at the SLA AGM. We have been treated with great courtesy and hospitality, and it is great to see so many vibrant bar associations.

"We are well used to employing our problem-solving skills for our clients – now we have to be just as creative for ourselves"

'Meet your colleagues day'

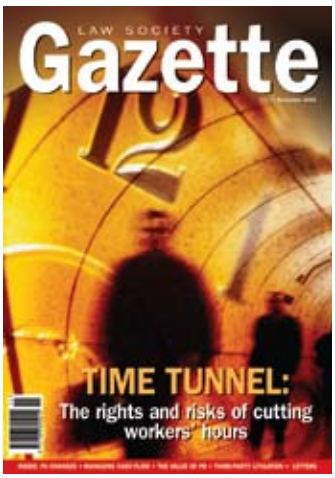
Don't forget that Thursday 12 November, has been designated as 'Meet your colleagues day'. Everybody is in the same boat, and your colleagues can be a great source of support and assistance to you.

Nothing endures but change – do not underestimate your ability to adapt and change. Remember the theory of evolution – the survival of the fittest does not necessarily favour the strongest or the biggest, but the one who can adapt to the changing environment.

Finally, I also take this opportunity to wish my successor, Gerard Doherty, all the best as he takes over the role as president. It has been a privilege to have served you and I am very grateful to you all.

Thank you.

John D Shaw
President



On the cover

Reduced hours and lay-offs are part and parcel of many businesses' attempts to save costs in a recession. But both employers and employees need to be aware of their respective obligations and rights

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REGULARS

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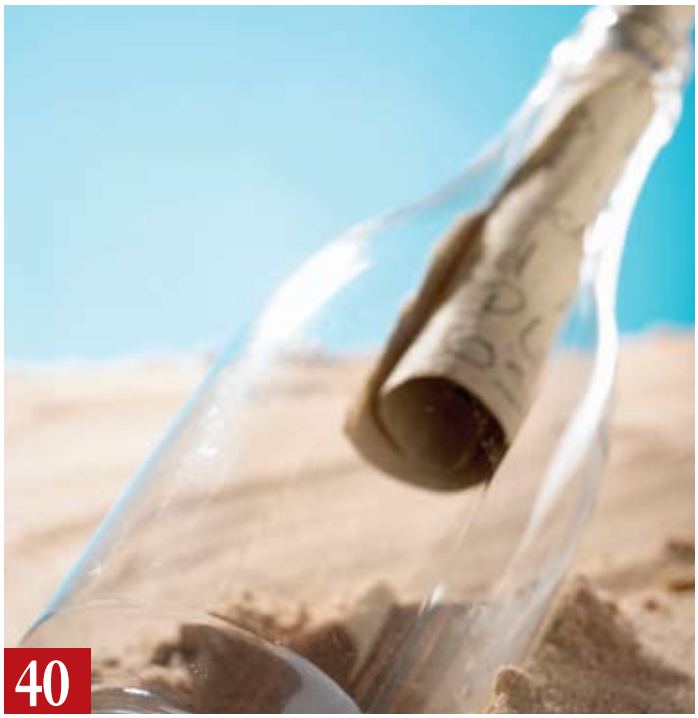

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CORK

President of the Southern Law Association (SLA) Mortimer Kelleher reports on a very busy period since the beginning of September. The SLA was the first bar association to hold a seminar in relation to the vexed question of professional indemnity insurance (PII). This took place at the Law Society's premises at Courthouse Chambers, Cork, on Monday 14 September. There was a record attendance of 225 solicitors. The assembled solicitors were addressed by Niall Farrell, chairman of the Law Society's PII Committee, and Jim Graham of the SMDF. Michael Enright, solicitor, was the moderator. Mortimer Kelleher was ably assisted by vice-president Gail Enright and Patrick Dorgan.

The SLA's annual conference took place in Lisbon from 17-19 September. The association was honoured by the attendance of Circuit Court Judge James O'Donohoe and his wife Helen. Prof Brian Carroll of UCC also joined the conference at the headquarters of the Conselho Distrital de Lisboa da Ordem dos Advogados Portugueses. The seminar was very kindly hosted by the vice-president for international affairs of the Lisbon Bar, Jaime Medeiros, and was chaired by Judge O'Donohoe. The SLA president spoke on the *Solicitors' Accounts Regulations*, while Brian Leahy BL and Michael McGrath BL spoke on judicial review and licensing, respectively. Mr Medeiros spoke about Portuguese law and the constitution. Meeting colleagues from another EU jurisdiction made for a very enjoyable and positive experience. Mortimer says that the delegates gave Lisbon a resounding 'yes!'

At the recent conferral of Diplomas in Family Law at the Law School in Cork were *(l to r)*: Marian Barry, Karen Bohane, Jennifer Smith, Jane Moffatt (Law Society, Cork), Rosemary Horgan (Law Society Family Law Committee), Aoife Byrne, Iseult Cronin, Mary O'Callaghan and James O'Sullivan (chairman, Education Committee)

Cork celebrated the start of Michaelmas Term with an ecumenical service of morning prayer at St Francis's Church in Liberty Street, Cork, presided over by Dr John Buckley (Catholic bishop of Cork and Ross) and the Rt Rev Paul Colton (Anglican bishop of Cork, Cloyne and Ross). Fr Charles Conroy MSC delivered a challenging homily. Fr Charles has been a professor of sacred scripture at the Gregorian University in Rome for many years. In particular, he drew a distinction between wisdom and knowledge and turned Nietzsche on his head. Among the large attendance were judges, solicitors, barristers, gardaí and others associated with the administration of justice in Cork city and county. The ceremony has been pencilled in for the first Monday of every October from now on. Mortimer expresses the gratitude of the SLA to the Franciscan Fathers and, in particular the guardian, Father Eugene Barrett, who permitted the use the church, arranged for the publication for the order of service and, importantly, arranged for the attendance of the choir, who performed magnificently on the day.

A cocktail party took place in the Long Island, Washington Street, Cork, on 15 October in aid of Cork's Simon Community. This extremely successful event raised the sum of €1,450 for charity.

DUBLIN

Not wishing to outdo Mortimer with his record attendance for the SLA's meeting on PII matters, the DSBA's event on the same topic in late September had them 'hanging from the rafters' in the Education Centre in Blackhall Place. Upwards of 250 colleagues attended for the interaction with President of the Law Society John D Shaw and the director general, Ken Murphy. While billed as a routine meeting, there was no doubting the interest in the main issue of the day. Great clarity was brought to the matter, with contributions from Niall Farrell, Laurence K Shields, Jim Graham (SMDF) and others. The reaction of colleagues afterwards was that it had been an informative and positive meeting. Since then, the situation has been fluid, and a series of Law Society Council meetings have been held. The best news emanating from the recent DSBA AGM was when, by way of an aside, Laurence K Shields indicated that the SMDF would be rolling out its proposal forms, which I expect all have received by now.

The opening of the Michaelmas law term was celebrated in the traditional way, with masses and services in St Michan's, where the Archbishop of Dublin Diarmuid Martin concelebrated, followed by a reception in the King's Inns, where a very large crowd attended. Dr Martin urged the congregation of judges, lawyers and diplomats to work to strengthen the fabric of society and make it more caring. Also speaking at the service, the bishop of Limerick and Kildare, Trevor Williams, called on all present to work to ensure that post-Celtic Tiger Ireland would become a compassionate society. He cited the recent words of former President Mary Robinson, when she said that the lack of a comprehensive vision of the sort of society we wanted was at the heart of the problems Ireland faced.

Perhaps it was the expectation that an election for positions on the DSBA council was at stake, but a record crowd attended the DSBA AGM. John P O'Malley takes over as president, and I know he will do a very fine job. Newcomers to council elected on the night were Aaraon McKenna, William Aylmer and Aine Hynes. G

'Nationwide' is compiled by Kevin O'Higgins, principal of the Dublin law firm Kevin O'Higgins.

Society conference looks to the future

The Law Society's 'New and Emerging Opportunities for the Legal Profession' conference will take place on Monday 30 November, with an impressive line-up of speakers. The conference, which is sponsored by Bank of Ireland, will consider business areas poised to go through significant change and development over the next few years. It will explore how Irish law firms and solicitors can carve out for themselves a significant share of work that will follow.

The conference will be chaired by incoming Law Society President Gerard Doherty and will review the following business areas:

- Governance,
- Environment,
- EU and international business, and
- Regulation and compliance.

Looking to the future

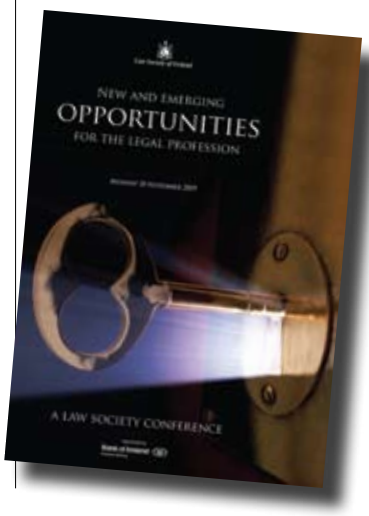
Rather than looking at what law firms are currently doing, this conference will focus on the views of non-solicitor experts – about how they see their areas of expertise progressing, and how they believe the legal profession should position itself in order to have a role in emerging opportunities.

The speaker list features some of Ireland's foremost authorities on governance, including Prof Niamh Brennan, who is academic director of the Centre for Corporate Governance at UCD, Aidan Horan who heads up the Governance Forum at the Institute of Public Administration, and Prof Liam O'Malley of NUI Galway.

Prof Niamh Brennan

Martin Territt BL

Dr Mary Kelly



CEO of the Environmental Protection Agency, Dr Mary Kelly, will address environmental developments and their potential impact on the legal world. Company secretary of Eirgrid, Niamh Cahill BL, and Denis Cagney of the Commission for Energy Regulation will both speak about energy production challenges. Also on the panel is David Geary of Imera Power, a company that aims to unlock the potential of renewable energy across Europe.

Dealing with EU and international business matters will be Martin Territt BL, director of the European Commission Representation in Ireland. He will be joined by Emily Gibson BL of the Irish Society for European Law, and Andrew Beck BL of the Irish Centre for European Law. Tom Byrne, a director with EcoSecurities, a company that has enjoyed huge international success in carbon trading, will focus on international business opportunities.

Kevin Prendergast of the Office of the Director of Corporate Enforcement will tackle the issues of regulation and compliance. Also on the panel will be Peter Oakes, managing director of Compliance Ireland, and Maurice Buckley, CEO of the National Standards Authority of Ireland.

Time spent at this conference qualifies for CPD management/group-study credits. Places can be reserved by contacting the CPD Focus team, tel: 01 881 5727 or email: cpdfocus@lawsociety.ie.

Outgoing High Court president issues warning on independence of judiciary

The outgoing President of the High Court, Mr Justice Richard Johnson, has warned against the independence of the judiciary being undermined. In an address to the High Court on his final day as president on 23 October, Mr Justice Johnson noted that certain members of the legislature had been recently critical of the independence of the judiciary. It would be a bad day for the country, he warned, if the judiciary did not remain independent.

Any undermining of the independence of the judiciary would lead to a situation where the judges would be subject to the same pressures as TDs, councillors and planning officials, he said, adding: "I doubt they would be accompanied by brown envelopes, but it is very necessary that we protect against it.

"The public do not want clever judges, they do not want brilliant judges, but they want honest judges and they want judges who they know have not been got at."

Paying tribute to the judge, attorney general Paul Gallagher reminded those present that Mr Justice Johnson, whose legal career dates back to 1960, had been appointed to the High Court in 1987. He became president in 2006 – the second-highest judicial appointment in the state. He had always dispensed his obligations with immense distinction, the attorney general said.

President of the Law Society John D Shaw said that, in his capacity as President of the High Court, Mr Justice Johnson had never lost sight of the ideals of the vindication of the rights of the ordinary Irish man and woman, and the importance of making justice accessible for all. "To your great credit, you have transformed the non-jury list, even if it means that some solicitors and counsel have had their horizons widened and have become better acquainted with the courthouse comforts of Cavan, Tullamore and Baltinglass. But you can be well and truly satisfied that you leave the ship in great shape in terms of the administration of the High Court."

PIC: CONOR MCCABE/JASON CLARKE PHOTOGRAPHY

The President of the High Court, Mr Justice Richard Johnson, at a recent Law Society parchment ceremony, with Law Society President John D Shaw and director general Ken Murphy

He continued: "As President of the High Court, you have also played a vital role in relation to the solicitors' profession. You have, of course, a very personal connection with the profession, in that your own father was a solicitor and then a distinguished district judge, and your daughter is also a solicitor.

"It is no secret that it has been a difficult few years for our profession and, as a consequence, you have been cast in the limelight in dealing with many high-profile cases. On behalf of the Law Society, I wish to express our deep appreciation and thanks for the manner in which you have dealt with these matters. It is vital for the reputation of the profession as a whole that solicitors who fail in their duties – duties owed to their clients, to the courts, to their colleagues and the public generally – and who do not maintain high standards are dealt with appropriately. You have not been found wanting in this regard."

President Shaw thanked him for presiding over and speaking at the formal ceremonies in Blackhall Place at which solicitors are formally admitted to the Roll. "In your time as president, you have scarcely missed one of these ceremonies and the newly-qualified solicitors, and their parents, all comment on your great good humour and the ease with which you mix with everybody. When you address the parents, you give them one instruction, and that is to bring their newly-qualified offspring out for a good party and to pay for it!"

Other tributes were paid by Michael Collins SC (chairman of the Bar Council), John O'Malley (president of the Dublin Solicitors' Bar Association), Brendan Ryan (chief executive of the Courts Service) and Kevin O'Neill (chief registrar).

NICHOLAS KEARNS APPOINTED AS HIGH COURT PRESIDENT

The government has appointed Mr Justice Nicholas Kearns as President of the High Court.

Born in 1946 and educated at St Mary's College in Rathmines, University College Dublin and the King's Inns, Mr Justice Kearns was called to the Bar in 1968 and appointed judge of the High Court in 1998. In the High Court, he dealt with competition law matters as well as a wide range of topics, including defamation, judicial review and personal injuries. He was appointed to the Supreme Court in November 2004. He took up his new position on 27 October.

He is a co-founder of the Association of European Competition Law Judges (AECLJ). In 2008, he was elected vice-president of the AECLJ.

Mr Justice Kearns is married to Eleanor, who comes from Midleton in Cork, and they have four sons.

Opening date for new Criminal Courts

Construction work is now nearing completion on the new Criminal Courts of Justice (CCJ) located at the corner of Parkgate Street and Infirmary Road. The new building is being constructed and will be managed on the basis of a public/private partnership. It is due to be handed over to the Courts Service on 17 November next. Plans are in place to transfer courts and court offices to the new complex. This relocation will take place on a phased basis from 7 December to the first week in January, with all courts sitting in the CCJ at the start of Hilary Term.

The following courts will be sitting in the CCJ:

- Four District Court remand courts (replacing the three currently sitting in Chancery Street) and two district hearing courts (much of the business currently conducted in courts 50 and 52 in the Richmond),
- Circuit Criminal Courts and the District Court Appeals Court,
- Central Criminal Court,
- Special Criminal Court, and the
- Court of Criminal Appeal.

The Jury Office will also transfer to the CCJ.

The District Courts and the custody offices currently located in Chancery Street are moving on 4 December and will commence sitting in the CCJ on 7 December. All other offices will move on 6 January. The Jury Office will maintain a presence in both locations during the transitional period. It is also likely that some Central Court and Circuit Court trials will be transferred from the Four Courts to the CCJ from the end of November.

The Minister for Justice, Equality and Law Reform, Dermot Ahern TD, is shown around the nearly-completed Criminal Courts of Justice by the Chief Justice, Mr Justice John L Murray, together with John Mahon (project manager) and Brendan Ryan (CEO of the Courts Service)

What can be expected?

The facilities in the new building represent a vast improvement on what is currently available. There are 22 courtrooms on four levels, over 30 consultation rooms, offices for Courts Service staff, Bar Council and facilities for the Law Society, An Garda Síochána, DPP and the Probation Service.

The Prison Service will be responsible for the custody area located on the lower-ground floor, which can hold in excess of 100 people in custody. There will be a bail office on the ground floor, with the main Courts Service public counter on the fourth floor. There will be improved facilities for victims and a specifically-designed vulnerable witness room. A cafeteria will be available on site.

A significant feature of the new building will be dedicated 'circulation routes' for certain categories of users. In particular, jurors will have their own reception and dining areas, with access to and from court and jury retiring rooms. This will alleviate the current unsatisfactory arrangements, with jurors entering and exiting court using the same entrance as other parties to a trial. Defendants in custody will be brought to court through the custody area.

Consultation rooms will be available in the custody area, where legal practitioners will be able to consult with clients. Arrangements are being put in place in cooperation with the Prison Service and the Courts Service on how these rooms will be used.

The new building represents a significant level of public investment and will lead to modern facilities in one location. It will take time for offices relocating and users to become familiar with, and accustomed to, the new building, its facilities, layout and the improved services that its entails.

For further information, check out the Courts Service website at www.courts.ie.

CUT OFFICE SUPPLY COSTS

A new Irish buying group claims to be able to cut solicitors' office costs by up to 35%.The purchasing group, Procure, aims to help independent businesses to reduce their costs for items such as office supplies, computer back-up and couriers. MD of Procure, Carmel Coffey, says: "For an annual membership fee of just €99 plus VAT, solicitors can get access to savings normally only available to big businesses. They can buy what they want, when they want, and still get access to the same discounts." Find out more at www.procure.ie.

FLAC ANNUAL LECTURE

FLAC's third annual Dave Ellis Memorial Lecture will take place on Tuesday 1 December in the Presidents' Hall, Law Society of Ireland, Blackhall Place, Dublin 7 at 6pm. Dr Maurice Hayes will deliver this year's address. All are welcome. For more information, email doreen.mescal@flac.ie, tel: at 01 874 5690, or visit www.flac.ie ('Events' section).

LRC ANNUAL CONFERENCE

The Law Reform Commission's annual conference 2009 will be held in the main conference hall, Dublin Castle, on Wednesday 18 November 2009. The theme is 'Reforming the law on personal debt' and will be opened by Minister for Justice Dermot Ahern. Registration is essential. View the conference brochure at www.lawreform.ie. For information, email legalsupport@lawreform.ie or tel: 01 637 7600.

MOP TOPS M&A TABLE

Matheson Ormsby Prentice (MOP) advised on more Irish mergers and acquisitions transactions than any other law firm from January to September 2009, according to MergerMarket. The firm leads the way, both in terms of highest value deals and number of deals advised.

Are you making use of the Practice Advisory Service?

In June 2009, the Society launched the new Practice Advisory Service for solicitors' firms. The objective of the service is to:

- Improve awareness in the profession of the regulatory and financial management issues in running a firm,
- Advise practitioners on how they should run their firms,
- Benchmark against different sizes of firms within the profession,
- Focus on profitability, and
- Suggest the strategic options open to firms.

The service takes the form of a half-day forum conducted on a one-to-one basis in the solicitor's office. It is totally confidential. Any information given to the service will not be disclosed, for example, either to the Society or to the solicitor's reporting accountant.

The Society, while subsidising the service, has contracted the service to Outsource, which provides strategic and financial direction to Irish law firms.

The service is sponsored by the Regulation of Practice Committee of the Law Society. The committee has recognised that, particularly in the current economic climate, there are a number of firms facing especially severe difficulties. These could benefit significantly from a service focused on the needs of firms in such a situation, and available at low cost to the firm.

It is expected that this service will be of benefit, not only to those firms who avail of it, but also to the entire profession, by helping firms in particular difficulty to move towards improving their situation.

The cost to a member is €250 plus VAT. The service is a limited offer, subsidised by the Society, available on a 'first-come, first-served' basis.

A separate service has been developed aimed at new solicitors' firms. The Society will write directly to such firms about that service.

Contact: David Rowe, Outsource, Hambleden House, 19-26 Lower Pembroke Street, Dublin 2, tel: 01 678 8490.

Irish lawyers confront medical legal issues

At the Action against Medical Accidents (AvMA) support group meeting in Dublin on 21 October 2009 were *(l to r)*: Dr Simon Mills BL, Catherine Hopkins (legal director, AvMA), Dave Coleman (Lavelle Coleman), Mr John Bevan (consultant gynaecologist, QAH Portsmouth) and Avril Scally (Lavelle Coleman). For further information on AvMA, visit www.avma.org.uk

New prescribed forms for charges and judgment mortgages

The *Land and Conveyancing Law Reform Act 2009*, which provides for a comprehensive reform and modernisation of land and conveyancing law, comes into effect on 1 December 2009.

The act makes very significant changes in relation to many aspects of land law, including mortgages and judgment mortgages. As a result of amendments to the *Registration of Title Act 1964*, and to the changes in law provided for in the 2009 act, PRA rules, forms and practice directions require substantial revision.

New forms and rules have been approved by the PRA Rules Committee and await signing by the Minister for Justice. They will be enacted by way of statutory instrument in due course. Of major and urgent significance are the new forms of application for registration of judgment mortgages and the prescribed one-page form of charge for present and future advances. In the interim, draft forms are available on the PRA website, www.prai.ie.

Finance facility for members

The Law Society has negotiated a finance offer specifically for its members that should help them to meet a variety of payment requirements, while improving business cash flow. The Society has selected Allied Irish Banks as the provider of the new finance facility for members who wish to apply for funding for:

- Payment of preliminary tax,
- Pension contributions,
- Professional indemnity insurance, and
- Practising certificate(s).

The bank's short-term finance products, known as Insurance Premium Finance and PromptPay Finance, will enable members or their firms to spread the cost of any large annual payments over a term of up to 12 months, with the effect of improving cash flow.

Repayments vary,* depending on the amount borrowed and members' preferred term of up to 12 months (see panel, below).

If a member wishes to obtain details of the cost of credit, monthly repayment and APR for any particular amount, they can do so before submitting a finance application by contacting AIB's Customer Services Centre at 1890 47 47 47, dialling '2' for business.

If you are already an AIB customer and wish to apply for finance, you should contact your 'relationship manager' at your AIB branch. If you are not an AIB customer and wish to apply for finance, simply contact your nearest AIB branch.

Finance decisions are made quickly where all necessary information is available. In assessing a finance application, the following information may be requested, especially for non-AIB customers:

- The latest set of audited accounts for the practice,
- The asset/liability profile of the applicant,
- Background details of the partnership and/or
- Copy bank statements.

This is the normal, up-to-date information for any finance application and its availability will expedite any finance application. Finance approved is subject to AIB's standard lending criteria.

Once finance has been approved and the finance document signed, AIB will arrange with the member for the transfer of funds, either to the member's bank account or, in the case of professional indemnity insurance, to the broker or insurance company.

If you require any further information on this finance offer, please contact your local AIB branch, tel: 1890 47 47 47, or visit www.aib.ie.

Terms and conditions apply. Allied Irish Banks Plc is regulated by the Financial Regulator.

Loan amount	APR	Term in months	Monthly repayment	Total cost of credit
€10,000	11.75%	12	€879.00	€611.49
€20,000	10.85%	12	€1,756.00	€1,135.49
€30,000	10.63%	12	€2,634.00	€1,671.49
€50,000	8.82%	12	€4,355.17	€2,325.53

**Above rates are correct as at 19 October 2009, but rates/ repayments can vary. The total cost of credit includes a documentation fee of €63.49 payable with the first monthly instalment.*

ADVOCACY CHALLENGE

Third-level law students are being offered the chance to pit their powers of persuasion against the best in the country at 'The Advocate' – an all-Ireland advocacy challenge sponsored by McCann FitzGerald.

The total prize fund is €3,500, with €2,000 for the winning team, €500 for the winning individual (best oralist), €500 for the best written submission, and €500 for the best online submission.

The competition is being run in association with the Courts Service and the Northern Ireland Court Service. More information at www.mccannfitzgerald.ie/theadvocate.asp.

NEW SENIOR COUNSEL

Twenty barristers 'took silk' in ceremonies conducted by the Chief Justice in the Supreme Court on 6 October 2009.

The new SCs are: Caroline Biggs, Marguerite Bolger, Declan Buckley, Bernard Condon, James Devlin, Adrienne Egan, Mary Rose Gearty, Sean Gillane, Paul Greene, Margaret Heneghan, Richard Humphreys, David Keane, Jonathan Kilfeather, Brian McCartney, Colm MacEochaidh, Desmond Murphy, Úna Ní Raifeartaigh, Bláthna Ruane, Willis Walshe and Peter Ward.

Society issues advice

The Law Society has made further changes to the PII regulations in order to encourage a viable stable market. The advice to all firms seeking PII cover for 2009/10 is 'act immediately', 'fully complete the proposal forms' and 'shop around'

The Law Society has been very well aware of the level of concern that has existed in the profession in relation to the availability and cost of professional indemnity insurance (PII) in the current annual renewal period. The Council has held a number of special meetings solely devoted to this issue. The Society's objective has been to take all reasonable measures it can to try to ensure a competitive market for the new insurance year.

President John D Shaw sent a letter to members on 11 September 2009, informing them of changes to the Society's PII regulations, which were approved by the Law Society Council on 27 August 2009. Details in relation to these changes were published in the October 2009 issue of the *Gazette* (p22).

The Society has continued to monitor developments in the PII market. The special Law Society task force has continued to take independent expert advice from a number of sources in Ireland and London. In addition, task force members have continued to meet with insurers and potential market entrants.

Law Society's advice on PII

Members continue to face a very fluid and uncertain market, making for an increasingly difficult situation. The Society has very reluctantly felt obliged to make further changes to the regulations in order to do what it can to encourage a viable stable market. These further changes were approved at a special meeting of the Council held on 16 October 2009. Details in relation to these changes can be found in this *Gazette* (p22).

Before outlining these changes and the Council's reasons for making them, in summary, the essence of the Society's advice now to all firms seeking to renew (or, indeed, to obtain for the first time) PII for the forthcoming year is as follows:

a) **Act immediately** – the mandatory renewal date of 1 December 2009 is rapidly approaching. The Society urges all firms who have not already done so to contact brokers and/or insurers without delay.

b) **Fully complete the proposal forms** – the proposal forms this year are more lengthy and complex than ever before, so members are advised to provide comprehensive and accurate information. Every possible effort should be made to complete the forms fully and truthfully to ensure speedy decisions by the insurers and to avoid any risk of subsequent avoidance of the policy for inaccuracy or non-disclosure.

c) **Shop around** – seek a number of competitive quotes with a view to securing PII cover on the minimum terms and conditions as soon as possible. Just because a proposal form is issued, do not assume that an insurer will, in fact, offer terms to you. The more applications you make, the greater the likelihood of securing cover and ensuring competition in the market.

> *"The Society has very reluctantly felt obliged to make further changes to the regulations in order to do what it can to encourage a viable stable market"*

Further changes to the PII regulations

Turning to the further changes that the Council has felt compelled to make to the regulations, which establish the minimum terms of cover that must be offered by all insurers, the changes are as follows:

1) The Assigned Risks Pool (ARP) will be suspended for the next indemnity period.

The ARP is the safety net for firms unable to obtain cover in the market.

Without suspension of the ARP, there would be high risk that no insurer, or at best very few insurers, would quote, due to the increasingly uncertain exposure that the ARP presents. Any insurers that did continue in the market would be likely to look for a lower market share and/or very substantially increased premiums to cover this increased exposure, and the ARP would act as a significant deterrent to the entry of new insurers needed to ensure a viable stable market. This could result in a large number of firms being unable to obtain insurance due to lack of capacity in the market and extremely high premium levels. Suspension should create a more competitive market by encouraging existing qualified insurers to expand their market share and by encouraging new entrants into the market.

The risk of some firms ending up without insurance due to suspension of the ARP is undoubtedly a serious concern, but has to be weighted against the distinct lack of viable alternatives and the overall objective of securing cover for the maximum possible number of firms and the maximum realistically achievable degree of protection for clients.

The ARP relating to

PII HELPLINE

The Society has put in place a PII Helpline to assist firms in dealing with the renewal process in these radically changed circumstances.

Queries relating to the PII regulations should be addressed to
tel: **01 879 8790**
or email: **piihelpline@lawsociety.ie**.

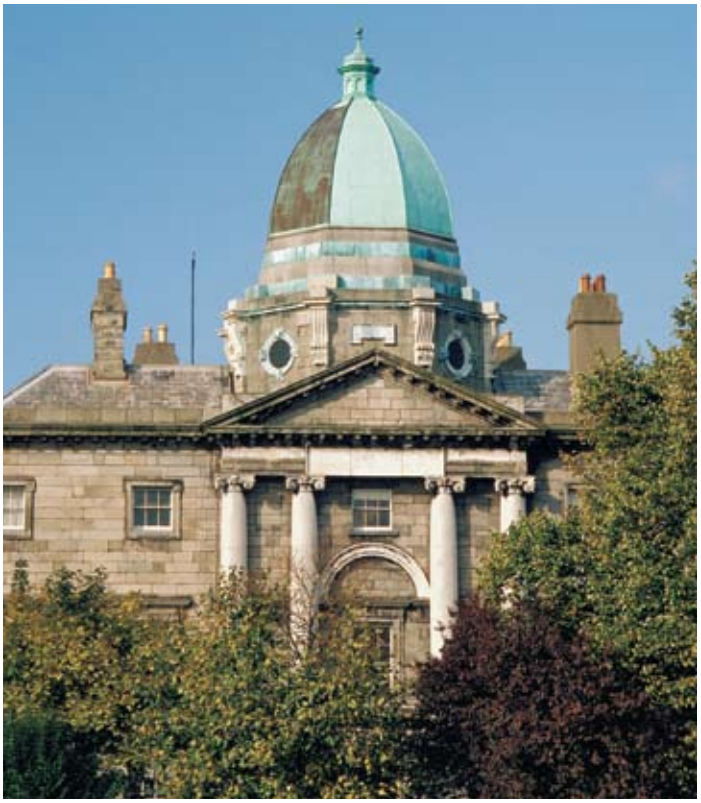
on PII cover changes

the current and previous indemnity periods will be unaffected, and the ARP for the 2010/11 indemnity period will be subject to review in due course.

It is imperative for all firms intending to continue in practice after 30 November 2009 to obtain PII cover with a qualified insurer by this date.

2) **There will be no cover for claims by financial institutions if there is any material misrepresentation or non-disclosure (other than innocent misrepresentation or non-disclosure) in placing the insurance.**
This change is justified on the same grounds as the suspension of the ARP. Full cover will continue for claims by non-financial institutions. The objective of the highest possible level of protection for ordinary clients will be achieved. At the same time, typical PII market terms will apply to claims by financial institutions.

3) **The insurer will be entitled to cancel for non-payment of premium in relation to run-off cover triggered by cessation during or after the next indemnity period.**
This change is justified on the same grounds as suspension of ARP. The change will result in a position that will be no worse than that which existed prior to 2008, and should increase the likelihood of sole principals obtaining cover on reasonable terms. All sole principals are encouraged to 'shop around' to secure the best possible run-off cover premium to minimise the difficulties that might result from an excessively high premium.



The Society has taken all reasonable measures to try to ensure a competitive PII market for the new insurance year

4) **The mandatory period of run-off cover will be reduced from six years to two years in relation to run-off cover triggered by cessation during or after the next indemnity period.**
This change is designed to address the difficulties that sole principals wishing to retire are likely to have in affording run-off cover in the next indemnity period.

The change will result in a position that will be no worse than that which existed prior to 2008. It is generally accepted that most claims arising after cessation of practice tend to arise within the first two years after cessation, meaning that a sole principal can be most vulnerable to claims during these first two years.

A guide to the further changes will be published on the Law Society's website as soon as possible.

The Society continues to be fully aware of the concern that is felt across the profession on this issue. It will continue to monitor the situation closely and advise members accordingly. G

Global CEOs focus on the re

Chief executives of law societies and bar associations from around the world converged on the headquarters of the Law Society of Ireland for a unique joint conference of the CEEBA AND IILACE organisations

Blackhall Place hosted its biggest-ever international conference when chief executives of law societies and bar associations from no less than 50 jurisdictions around the world attended a unique event.

This was by far the largest gathering of CEOs of law societies and bar associations that has ever taken place. The conference was held in Dublin over three days from 30 September to 3 October 2009. It was the first-ever joint conference of two separate organisations, namely the Chief Executives of European Bar Associations (CEEBA) and the International Institute of Law Association Chief Executives (IILACE).

That the conference was held in Ireland was due to the influence of the Law Society of Ireland director general Ken Murphy, who is a former president of CEEBA and is currently the vice-president of IILACE.

The bar associations and law societies represented at the meetings in Blackhall Place have a collective membership of well over a million lawyers. They comprise a diverse range of organisations that have representative, regulatory, educational or other responsibilities – some with compulsory and some with voluntary membership. The CEOs who participated were key figures with a vast collective experience of how law societies are run.

ALL PICS: LENSMEN

President Mary McAleese welcomes director general Ken Murphy and Czech Bar Association CEO Michaela Strisova to Áras an Uachtaráin

The legal profession everywhere is facing massive challenges, not least those caused by the global economic and financial crises. Responding effectively to these difficulties is itself a major challenge for the law societies and bar associations around the world. The need for CEOs of law societies and bar associations to come together to learn from each other's insights and experience – in the interest of the legal professions and publics they serve – had never been greater.

Speakers discussed topics of relevance to the daily work of a CEO of a law society or bar association, in addition to hearing a number of expert guest speakers, including the internationally-renowned guru and author Richard Susskind.

The special value of this conference lay in the willingness of colleagues to share with each other their knowledge, experience and expertise as CEOs of similar, if not identical, organisations.

Recession and profession

'The recession and the profession' was the main topic discussed at the conference. CEOs discussed in detail the major challenges for those who represent the legal profession and how best to assist lawyers

That's a good one! Douglas Mill (speaker from DM Consulting), Ken Murphy and Henry F White (executive director of the American Bar Association)

A panel of speakers – Malcolm Heins (Law Society of Upper Canada), Lorna Jack (Law Society of Scotland), Jan Suyver (Nederlandse Ordevan Advocates), Nalini Gangen (Cape Law Society of South Africa) and Koulia Vakis (Cyprus Bar Association)

cession and the profession

seeking to survive in practice. The major challenges for those who regulate the legal profession in a recession were also analysed. Other topics included 'The financing of law societies and bar associations', 'Education and admission to the profession' and 'Corporate governance'.

Jaime Watt from Navigator Consulting in Canada gave a presentation entitled 'What does international research tell us about the public's perceptions of the legal profession?' and discussed options to improve these perceptions.

Management authority Glenn Tecker, from Tecker Consulting in the US, provided guidance on 'How to manage not-for-profits in a downturn'. Unexpectedly, this lecture had to be delivered live by video-link over the net from New Jersey. This was the first time the Law Society had hosted an international video link over the Skype system, but the Blackhall Place IT department ensured everything ran smoothly.

Joint chairs of a joint conference – John Hoyles (CEO of the Canadian Bar Association and president of IILACE) and Anne Ramberg (CEO of the Swedish Bar Association and president of CEEBA)

Jan Martin, executive director of the Law Society of South Australia

Raymond Ho, secretary general of the Law Society of Hong Kong

Andrew Fryer, a senior London-based manager of the insurance brokers Willis, provided an insight into the current problems of the professional indemnity insurance market with a paper entitled 'A looming crisis of unavailability?'

The conference concluded with a paper from Richard Susskind, who discussed the central thesis of his most recent book *The End of Lawyers? Rethinking the Nature of Legal Services*.

Presidential honour

Farmleigh House was made available by the state as the venue for the first night's welcome reception and dinner. Minister for Justice Dermot Ahern was unable to attend due to campaigning commitments for the *Libson II* referendum. However, he had been a strong supporter of the conference coming to Ireland, and it was through his intervention that Farmleigh had been made available.

There was a special honour for the conference when President Mary McAleese hosted a reception in Áras an Uachtaráin for delegates on the first day of the conference. She delivered a speech expressing her appreciation and strong support for the vitally important work of chief executives of law societies and bar associations across the world, which touched a chord with everyone present.

WHAT ARE CEEBA AND IILACE?

CEEBA

CEEBA (formerly ESSEBA) was formed in 1960. Its members have been meeting annually to discuss issues of common interest and to learn from each other for just short of 50 years. It comprises chief executives of national law societies and bar associations from all over Europe. The current chair is the CEO of the Swedish Bar Association, Anne Ramberg.

IILACE

IILACE had its first meeting in Edinburgh in 1999. It is an organisation with a similar purpose to CEEBA – but with a worldwide perspective, as evidenced by its meeting last year in Windhoek, Namibia. It is scheduled to meet next year in Vancouver, Canada. Chief executives from dozens of countries all over the globe participate in its annual meetings. Its current president is CEO of the Canadian Bar Association, John Hoyles.

Dr Martin McAleese and President Mary McAleese greet Merete Smith (secretary general of the Norwegian Bar Association)

The supporters' club

Six months after taking up the role, the Society's career support advisor Keith O'Malley talks to *Gazette* editor Mark McDermott about what the job means in practice

When the position of career support advisor was announced six months ago, there was significant media reaction – principally around the fact that a professional organisation was assisting its members in this fashion during a time of recession. The man chosen for the job, Keith O'Malley, has filled a hectic 184 days since then. Some of the comments sent to Keith reveal the depth of gratitude that many out-of-work solicitors feel towards Career Support for being a 'listening ear', for its astute guidance, and steady direction (see panel). "One of the things most commented on," says Keith, "is the weekly email round-up that we send to out-of-work solicitors. People seem to value these a lot and regularly say thanks to us for staying in touch. It seems to help job-seeking solicitors in combating the isolation they feel when they lose their jobs."

Keith speaks about how Career Support has set about assisting unemployed solicitors. "We set out a three-pronged plan," he says. "This three-pronged approach includes information provision, support provision and opportunity generation."

During the information-provision phase, a lot of information is disseminated about career-related matters. It starts first with the online 'Expand' programme – a career-management, job-seeking plan aimed at ensuring that participants cover all the basics when job-seeking. A typical career-management, job-seeking programme involves self-appraisal, sourcing opportunities, self-marketing, preparing a CV and cover letter, and presenting yourself at interview.

Keith O'Malley

Information leaflets have been prepared on all these issues and are available in the Career Support section on the Society's website for easy access.

CV feedback

The next step, support provision, involves a number of elements, including the very popular CV review. "The CV review service allows people to email their CVs to us. We take a look at them, review them, and get back to their authors with feedback. We have been able to offer some useful advice, especially encouraging job-seekers to look at their CVs from an employer's perspective," says Keith.

"The second strand of support provision has been one-to-one consultation. We sit down with candidates, who tend to have a list of questions and concerns that they're looking for clarity on – and we go through those with them. The most common concerns for people include issues around moving abroad, setting up in practice and, of course, getting a job – which is, by far, the biggest area of concern."

When dealing with out-of-work solicitors on a one-to-one basis, Keith always takes the opportunity to remind them that they should take a wider perspective on job-seeking. "Anybody who knows anything about career management will always argue that the best kind of job-seeking approach is one done on several levels.

"One thing that has surprised me is the number of people who get jobs outside of legal practice, only to very quickly be offered a job within practice in a very short period. So the idea that people are going to lose their relevance for legal employers by taking a job outside practice simply doesn't add up. Employers tend to be more impressed by candidates who are working than candidates who are not."

Another aspect of the support provision phase has been training seminars. These ran over five consecutive weeks during the summer months in Dublin and Cork, and will be offered again in the near future. "Initially, numbers started off relatively low," says Keith, "but grew, week by week, to groups of between 20 and 40 people."

Those attending looked at self-appraisal, sourcing opportunities, preparing a strong CV and doing a great interview.

Jobs club

The final aspect of support provision has been 'WorkSearch'. This 'jobs club initiative' started in September 2009 and has been proving

USER TESTIMONIALS

- "Career Support has been a great aid … I hope I won't have to rely on Career Support for too long, but while I do, I know I will be in good hands." *(From a solicitor qualified for two years).*
- "In respect of interviews, Career Support offers a very thorough grounding in how to prepare, as it has been a long time since I have had to think about selling my skills, experience, and knowledge in looking for work." *(From a solicitor qualified for three years).*
- "My experience of Career Support to date has been wholly positive. Participation in the 'WorkSearch' group acts as extra eyes and ears for job seekers." *(From a solicitor qualified for one year).*
- "I will not forget the importance of the career service, which, above all, provided me with the security of knowing that I was not alone." *(From a solicitor qualified for three years and just appointed to a new job).*

very successful.

"Each Monday morning, a group of job-seeking solicitors meets at Blackhall Place. We review how everyone has got on during the previous week. People bring information to the meeting about job opportunities they have heard about that might be of interest to others within the group. We focus on approaching the week ahead in a structured and proactive way," says the career support advisor.

About eight to ten people take part in these groups at any one time. "A surprisingly high number have got jobs – I would say some of it is due to coincidence, but certainly some of it is due to their determination to succeed," says Keith. "We're encouraging more people to join, but a high level of attrition due to job success is exactly what we want to achieve!"

Does he think that the current attrition rate reveals some strengthening in the jobs market? "The market *has* picked up, and more people have been getting jobs since late summer. I would say that, since mid August, there has been an increase in the number of lawyers getting jobs."

The final strand of the Career Support service over the past three months has been 'opportunity generation'. "This was always something that was going to be primarily done after we had got the first two areas battened down," says Keith. "It's about trying to open up new jobs and new work opportunities for solicitors."

Does this mean that he will be visiting prospective employers to encourage them to employ solicitors based of their useful skills – though not necessarily as legal advisers? "From the start of 2010, Career Support plans to get involved in encouraging non-legal employers to hire solicitors. We would be of the view that, just as most medium-sized and larger firms have at least one accountant on their payroll, they might also consider employing solicitors, for example, in company secretarial roles. In some instances, this is happening already. If you look at the kind of skills and qualities solicitors have, they make for very good management material.

"We have a range of other plans. Opportunity generation is something that goes way beyond the Career Support service and moves right across everything the Society does. For instance, the Society's Coordination Committee has asked all 14 advisory committees to take this on board as an action for 2010. So all advisory committees within the Society, as part of their usual work, will be on the lookout for anything they can do to facilitate the generation of new job opportunities. So, for instance, taking the Human Rights Committee as an example, it would be on the look-out for ways to facilitate out-of-work solicitors who are interested in moving into the field of human rights. Each committee will be doing likewise, within its terms of reference.

"This will include lobbying government and state bodies about work and training opportunities – internships in particular. We are talking about making sure that solicitors are included in any national job-market activation initiatives – including graduate-type programmes – that are put in place by government."

By year-end, Career Support expects to roll out a job information programme for solicitors wishing to move abroad, including information on qualifying for other jurisdictions. "We will be focusing on the British market by year-end," says Keith. "In addition, we have been working during recent weeks with legal bodies in Australia and New Zealand in order to facilitate, in whatever way we can, solicitors who are planning to move to those jurisdictions. The aim is to open up opportunities on a worldwide basis."

How has he found working in the Law Society over the past six months? "It's been great. Obviously I have met people who have been under a lot of pressure – career-wise and sometimes financially. I have found my colleagues in the Society – the staff members – to be great, and likewise the members. Everyone has been realistic in terms of what Career Support can do – and very positive and supportive in terms of what we are doing."

Has he encountered any major difficulties in fulfilling the role? "Well, it's been very busy. Unfortunately, there are many people who could use more time if it were available. There are only so many hours in the day, but we do our best to help in whatever way we can." G

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letters

Send your letters to: *Law Society Gazette*, Blackhall Place, Dublin 7, or email: gazette@lawsociety.ie

Friendship through cricket – howzat?

From: Anthony Kerr (on behalf of the Cricket Club of the Lawyers of Ireland), email: Anthony.Kerr@ucd.ie

Whatever may be the pleasures of the Mardyke, Cambridge was undoubtedly the place to be for any cricketing lawyer this past summer. Duncan Grehan's excellent contribution to your August/September 2009 issue could only give a flavour of the second Lawyers' Cricket World Cup (LCWC), whose motto is 'Cricket for friendship'. For a fuller account of what occurred on tour, see Michael Foster's contribution to the Cricket Ireland website at www.cricketeurope4.net.

As both Duncan and Michael point out, the tournament gave the Irish team, drawn from both branches of the profession – North and South – the opportunity, not just to play some competitive cricket, but also to meet like-minded lawyers from other common law jurisdictions. The motto could now read 'Friendship through cricket'.

Such was the success of the tournament, and the Irish squad's contribution thereto, that no fewer than three of the team participants have expressed a serious interest in touring Ireland next year. The Indian lawyers want to come in May and the Trinidadian lawyers (whose team included Prakash Moosai and Vasheist Kokaram JJ of the Supreme Court of Trinidad and Tobago) want to visit during the first week of August.

The English and Welsh solicitors have suggested some time during the Whit vacation. Each of them wish to play three matches. Possible venues that have been identified include College Park, Oakhill, Mount Juliet and even the Mardyke! The Bar of England and Wales have also suggested a triangular tournament with their Scottish counterparts and Ireland, to be held in Liverpool.

I would urge any cricketing lawyer who would like to be involved in any of the matches next year and, indeed, to be considered for inclusion in the Irish squad for Barbados 2011 (the third LCWC) to contact either myself (Anthony.Kerr@ucd.ie) or the other members of the organising committee: Roland Budd and Charles Butler (rgbudd@ireland.com and charlie@cornerstonelaw.ie).

Given the cricketing talent available, we are sure that an Irish squad can go to Barbados, not just to participate, but also to compete. It is clear, however, that Australia's success in this year's tournament was considerably assisted by the outstanding financial support the squad received from their fellow lawyers and clients. If our ambitions are to be realised, it is imperative that substantial sponsorship be obtained. Any suggestions in that respect would be most welcome. G

Nine to

In straitened times, employers may consider cutting their workers' hours – but it's essential that they examine their current obligations to their workforce in relation to the provision of working hours and payments for those hours. Sinead Morgan totes that bale

In the current economic climate, it has become necessary for employers to examine their organisations and to engage in cost-cutting exercises to stay afloat and survive in what has become a hostile commercial environment.

There are obviously many ways to achieve this objective, which range from outsourcing and restructuring to changes in working practices and reducing either the workforce or the hours currently worked by employees. Clearly, any prospective changes within the workplace are going to be viewed suspiciously by employees, in particular, long-term workers who are established within the workplace. Normally, cutting staff will be a last resort for employers, making options such as reducing working hours (on a temporary or permanent basis) and retaining most, if not all, staff an attractive proposition to them.

Employees' hours can be cut in a variety of ways, including a simple reduction of hours either on a temporary or permanent basis, lay-off and short time. In this article, I propose to examine these practices, setting out the employer's obligations to provide working hours to employees and the risks inherent in changing those hours using the options already referred to.

MAIN POINTS

- **Cutting employees' working hours**
- **Employees' rights**
- **Employers' obligations**

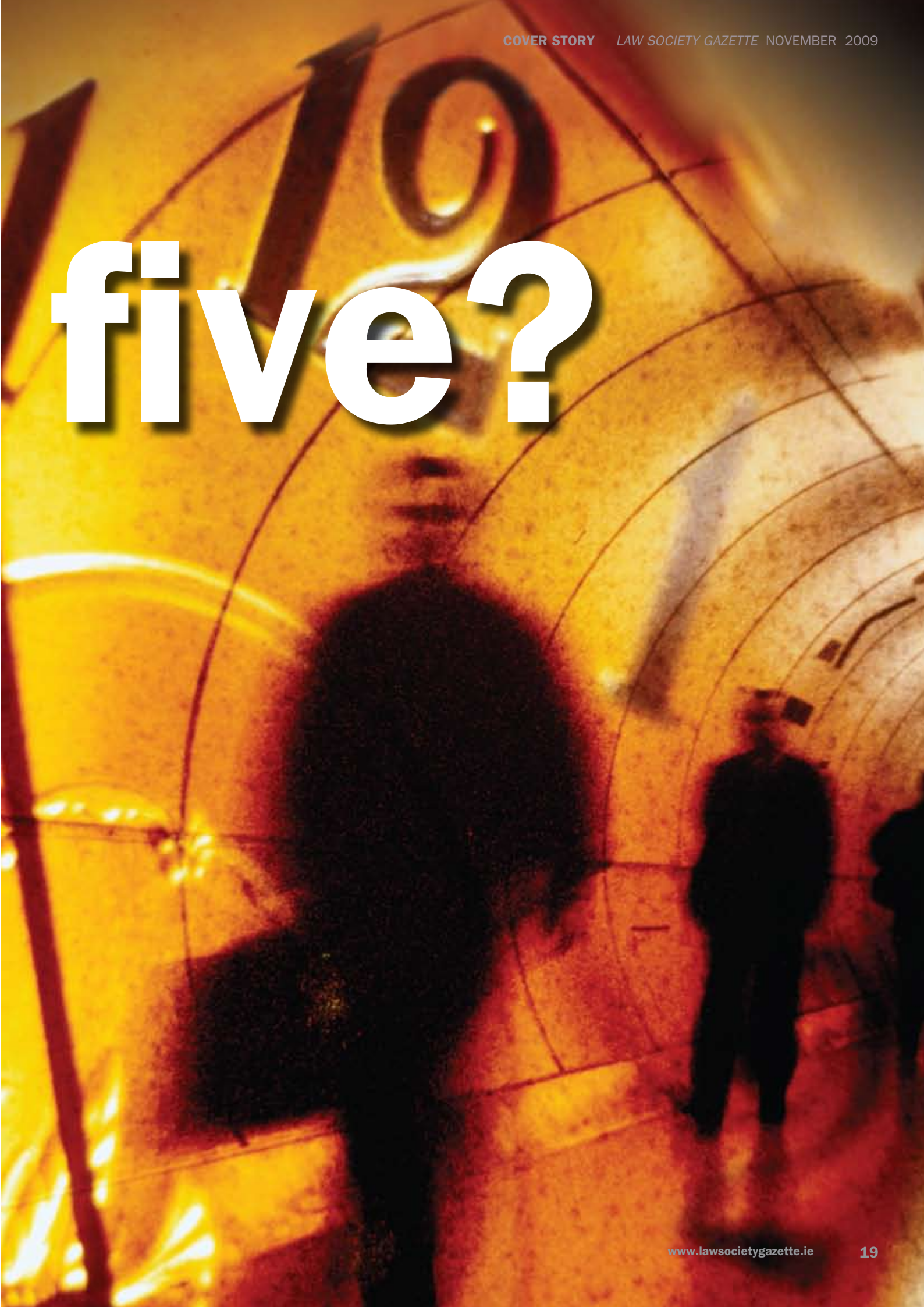
Big boss man

It should be noted that an employer is obliged to have a written agreement or contract with all employees under section 3 of the *Terms of Employment (Information) Act 1994*. Those terms and conditions must set out an employee's hours of work. Generally, contracts for full-time staff will oblige those workers to attend for a set number of hours per week – normally between 37.5 and 40 hours in a standard week – whereas part-time workers will be guaranteed a minimum number of hours per week by the employer. An employer is obliged to provide workers with the minimum number of hours' work set out in the contract.

It should also be noted that an employer has a duty under section 9 of the *Part-Time Workers Act 2001* not to treat part-time workers less favourably than the equivalent full-time workers, unless that decision can be justified on objective grounds other than their status as a part-time worker. This should be borne in mind if the employer decides to reduce the hours of some, but not all, workers.

Any substantial changes to the terms and conditions of the contract, in relation to hours or other matters, must be agreed between both the employer and the employee. An employer should approach employees and seek agreement to reduce their hours; however, there is no obligation on employees to agree to a variation. If changes are agreed between both sides, the employer then has a further duty to notify employees of the changes and the nature and date of those changes as soon as possible under section 5 of the *Terms of Employment (Information) Acts 1994 to 2001*. Such notification must take place no later than one month after the variation.

If an employer reduces an employee's weekly working hours without agreement, he will be breaching the terms and conditions of employment. In such circumstances, an employee would be



five?

automatically entitled to take a breach-of-contract action against the employer through the courts or, if matters become particularly difficult, a prospective constructive dismissal claim before the Employment Appeals Tribunal. The success of a constructive dismissal claim will depend on the view taken by the tribunal as to the reasonableness of the employer's actions in the circumstances. Whether the current economic reality would influence decisions in favour of employers remains to be seen. Alternatively, employees may decide to take industrial action to resolve their issues, which could close the business on an indefinite basis.

Welcome to the working week

If an employer is aware that he will not have work for an employee for a certain amount of time, he will normally lay that worker off temporarily or put them on short time. There is no actual legislation in place giving the employer a statutory right to reduce an employee's hours, so it is advisable that a term is incorporated in the employment contract permitting an employer to do so (*Devonald v Rosser* [1906]). An employer is only entitled to either lay-off employees or put them on short time if he believes that it is a temporary arrangement due to a lack of work, not a permanent situation. If it is recognised that it will be a permanent situation, then an employer will have to consider changing employees' terms and conditions as discussed above. Lay-off occurs when an employer has no work for an employee, whereas short time involves a reduction in an employee's hours, resulting in a worker's pay or hours being reduced to half their normal level. There is no right under common law to lay-off without pay unless you can prove that it was an implied term through custom and practice, or if an employee waives his rights under the *Payment of Wages Act 1991* (*Law v Irish Country Pigs*).

An employer must notify staff of the short time or lay-off arrangements in advance, using a Form RP9. An employer should not lay-off or put employees on short time unless that right has been established by custom and practice, or he is entitled to do so under the contract. In addition, if not all staff are having their hours cut, the employer must ensure that he fairly selects the individuals affected.

If an employee agrees to a lay-off or short-time situation, they should indicate to an employer that this consent is temporary in nature, otherwise they may be seen to have accepted this variation in their terms and conditions of employment. If an employee is laid off or remains on short time for more than four consecutive weeks or for six weeks within a 13-week period, the employee can claim a redundancy payment by serving an RP50 form on the employer. The employer can then serve counter-notice on the employee within four weeks, informing them that they have at least 13 weeks' work available for them. That counter-notice will negate the service of the RP50 by the worker. Having said that, if an employee does not claim redundancy, the lay-off situation could remain indefinitely.

She works hard for the money

Obviously, there are associated risks when trying to agree reduced working hours from both the employer's and employees' perspectives. An employer must consider carefully before forcing new terms on the employees, as they can claim breach of contract, resign and claim constructive dismissal or, alternatively, industrial action could ensue. Furthermore, if employees who failed to accept the changes were selected for redundancy over those who did not, unfair dismissals actions could also arise.

From the employees' perspective, they are the ultimate losers in the situation. If they agree to the changes, their income will fall and, if they continue to work without complaint under the new changes, they will be deemed to have accepted them. If staff fail to agree and instead assert their rights, the organisation may be forced to make redundancies, and some workers will be left with no hours whatsoever.

In dealing with such situations, it is important for an employer to view the situation from the employees' perspectives, particularly if they are endeavouring to agree variations in employees' contracts. Good practice dictates that an employer should always inform employees of the proposed changes and allow them to consider them. In addition, employers have a duty to consult with employees in organisations of over 50 employees, under the *Employees (Provision of Information and Consultation) Act 2006*, at least 30 days before the proposed changes.

The act places a clear duty on employers to inform and consult employees in relation to matters that directly affect them, either relating to their contract terms or changes in the organisation. If the employer believes that the changes will be temporary in nature, the employees should be notified of this fact as, in such circumstances, long-term employees

"The act places a clear duty on employers to inform and consult employees in relation to matters that directly affect them, either relating to their contract terms or changes in the organisation"

in particular will be concerned that the progress they have made over the years will be undermined by any changes in the structure or workings of the organisation.

Just got paid

In addition, when making reductions and changes in an employee's hours, an employer should ensure that he leaves employees eligible to collect social welfare payments for the hours not worked. In order to claim a reduced social welfare payment, an employee must be unemployed for three out of six consecutive days. They must also be available to work for the other two or three days, depending on how many days they were previously working. If, for example, an employee has their hours reduced to three hours per day, five days per week, they would not be entitled to a social welfare payment, as they would not be genuinely available for work. In such a situation, it is unlikely that workers would be agreeable to such changes.

In addition, an employer should be aware that employees that are supporting families may be entitled to claim the family income supplement if they meet the appropriate criteria, namely, that they work at least 19 hours per week and they meet the means test – for example, the threshold income for a couple with one child would total €500. Cutting an employee's hours to less than 19 hours will automatically disentitle them to this payment. One should also be aware that an employee will not be entitled to claim this payment in circumstances where that employee is already collecting job seeker's benefit or allowance.

Don't forget your shovel

It is essential for employers to examine their current obligations to their workforce in relation to the provision of working hours and payment for those hours. This should be done in respect of all categories of employees to ensure, insofar as possible, that employment contracts are honoured and good working relationships are maintained. If it is necessary for substantial changes to be made, strategic decisions must be made on both sides of the employment relationship to try to retain the balance of power. Negotiation is always advisable in such situations; however, if cuts must ultimately be made, it is essential for both sides to be aware of their obligations to ensure that the decisions that are made are fair and justifiable under selected criteria, thus avoiding expensive and lengthy litigation after the fact. G

Sinead Morgan is a solicitor specialising in employment law and commercial litigation. She currently volunteers in the FLAC Employment Clinic in Meath Street and provides a specialist employment advice service in the Citizens' Information Centre in Dun Laoghaire.

LOOK IT UP

Cases:

- *Devonald v Rosser* [1906] 2KB 7
- *Law v Irish Country Pigs (Pig Meats) Limited* [1998] ELR 266

Legislation:

- *Employees (Provision of Information and Consultation) Act 2006*
- *Part-Time Workers Act 2001*, section 9
- *Payment of Wages Act 1991*
- *Terms of Employment (Information) Acts 1994-2001*, sections 3 and 5

ANOTHER

The Law Society has very reluctantly felt obliged to make further changes to the *Professional Indemnity Insurance Regulations*, in order to do what it can to encourage a viable stable market. John Elliot offers this article as a practical guide

MAIN POINTS

- Act immediately
- ARP suspended for the next indemnity period
- Fully complete the proposal forms
- Seek quotes from a number of different sources

As has been explained by the president of the Law Society in his recent letter to members, the Law Society has very reluctantly felt obliged to make further changes to the professional indemnity insurance (PII) regulations, in order to do what it can to encourage a viable stable market.

This article is intended as a practical guide to the profession regarding these further changes. The article does not set out a definitive statement or interpretation of the law. The article is a guide to changes that directly affect solicitors' firms and does not address issues affecting only insurers. The article is based on the assumption that coverage terms offered to your firm do not exceed the mandatory minimum terms and conditions.

Key messages

Act immediately. The assigned risks pool (ARP) is the safety net for firms unable to obtain cover in the market. The ARP will be suspended for the next indemnity period. Therefore, it is absolutely imperative for all firms intending to continue in practice after 30 November 2009 to obtain PII cover with a qualified insurer by this date.

The mandatory renewal date of 1 December 2009 is rapidly approaching, and the Law Society urges all firms that have not already done so to contact brokers and/or insurers to ensure that proper arrangements are made to provide all information that will be required to obtain quotes, and thereafter to seek a number of competitive quotes with a view to securing PII cover on the minimum terms and conditions as soon as possible.

Fully complete the proposal forms. Any misrepresentation or non-disclosure in placing the insurance has the potential to reduce the effective level of cover for your firm or remove cover for your firm altogether and, in certain cases, the cover for claimants that are financial institutions, depending on the operation of the minimum terms and conditions in the circumstances in question.

It is critically important that your firm fully and properly completes all sections, without exception, on proposal forms. In addition, you should attach any additional information you think may be prudent to ensure that there is no misrepresentation or non-disclosure in placing the insurance.

Insurers will be very focused on your firm's claims experience. Your firm's commentary on any claims will be important, so insurers can see the claims in context

SLICE OF THE PII

NEW PII CHANGES TABLE

The following table aims to summarise the further changes in an 'easy-to-follow' format. The footnotes to the table explain certain points in more detail.

PROVISION	BEFORE[1]	AFTER[2]	ACTION[3]
Misrepresentation or non-disclosure in placing the insurance	Cover for claimants cannot be avoided by the insurer, but your firm may have to indemnify the insurer for all claims.	Claims by financial institutions: **claims can be declined** by the insurer if there is any **material** misrepresentation or non-disclosure (other than **innocent** misrepresentation or non-disclosure) in placing the insurance. Claims by non-financial institutions: cover for claimants cannot be avoided by the insurer, but your firm may have to indemnify the insurer for claims.	No new action required. In any event, it goes without saying that proposal forms must be completed correctly in all respects and all relevant information provided to the insurer. The new position will be no worse than existed pre-2008.
Run-off cover mandatory period[4]	Six years in relation to run-off cover triggered by cessation during the current indemnity period.	**Two years** in relation to run-off cover triggered by cessation during the **next indemnity period**.	If you are a sole principal you should consider whether the value and nature of the work carried out by you would justify seeking run-off cover for longer than two years.
Run-off cover premium	Mandatory run-off cover for claimants cannot be avoided by the insurer for non-payment of premium, but you may be required to indemnify the insurer for claims depending on the terms of the policy.	Mandatory run-off cover can be **cancelled** by the insurer for **non-payment** of premium.	It is imperative that all premium payments due for run-off cover are made in full and on time.
Assigned Risks Pool (ARP)	The ARP provides a 'safety net' for firms unable to obtain cover in the market.	The ARP will be **suspended**. The ARP relating to the current and previous indemnity periods will be unaffected.	It is imperative for your firm, if intending to continue in practice after 30 November 2009, to obtain cover from a qualified insurer by 30 November 2009.

FOOTNOTES

1 Summary of current position during 2008/09 indemnity period ending 30 November 2009.
2 Summary of new position for 2009/10 indemnity period commencing 1 December 2009.
3 Action to be considered by your firm.
4 Run-off cover is coverage that includes the minimum terms and conditions for a firm that has ceased to carry on practice where there is no succeeding practice. Run-off cover starts on the renewal date for the indemnity period immediately following the indemnity period in which the firm ceases practice.

CONSOLIDATED PII CHANGES TABLE

The following table aims to summarise the net effect of all the changes in an 'easy-to-follow' format.
The footnotes to the table explain certain points in more detail.

PROVISION	BEFORE[1]	AFTER[2]	ACTION[3]
Amount insured for each and every claim (exclusive of defence costs)	€2,500,000	€1,500,000	Firms are advised by the Law Society to consider whether the new reduced amount insured will be adequate, given the value and nature of the work carried out by the firm and, if appropriate, to seek top-up cover.[4] Due to the 'claims made' basis of insurance cover,[5] it is recommended that any top-up cover should be renewed for at least six years after the most recent relevant transaction. If your firm does not obtain top-up cover, claims in excess of €1,500,000 will be at the firm's own risk. Your firm can limit by contract its liability to clients to the minimum amount insured.[6] Therefore, from 1 December 2009, your firm can limit its liability to €1,500,000.
Claims arising as a result of provision of certain common types of commercial undertakings to financial institutions[7] **Note: for this purpose, commercial undertakings include certain undertakings in residential 'buy-to-let' transactions**	Covered.	Undertakings provided before 1 December 2009 where claim is by financial institution and to the extent that liability arises from wrongful acts or omissions:[8] ***Not*** covered.	No action required. The new position will be no worse than existed pre-2008.
		Undertakings provided on or after 1 December 2009:[9] ***Not*** covered.	If your firm chooses to give uninsured undertakings, that will be at the firm's own risk. The Law Society would expect banks to decline uninsured undertakings. Firms are advised by the Law Society not to give the designated types of undertakings without obtaining additional cover. Cover will not necessarily be available to all firms. Due to the 'claims made' basis of insurance cover, the additional cover should be renewed for at least six years after the undertaking is given. A possible consequence of this change is a return to the 'third solicitor' system. Pre-2008, undertakings were covered where liability did not arise from wrongful acts and omissions.
Claims covered by a particular indemnity period	Claim must be first made against your firm during the indemnity period.	Claim must be first made against your firm ***and notified to the insurer*** during the indemnity period.	All claims made against your firm should be notified as soon as possible. In particular, claims made between 1 December 2009 and 30 November 2010 must be notified by 30 November 2010. Special care will be needed towards the end of the indemnity period in case the deadline is missed. The new position will be no worse than existed pre-2008.
Claims for fraud or dishonesty	Guilty partner or employee: not covered. Innocent partner or employee: covered.	All partners and employees, whether guilty or innocent: ***Not*** covered.	Consider seeking additional cover for innocent partners and employees. The new position will be no worse than existed pre-2008.
Misrepresentation or non-disclosure in placing the insurance	Cover for claimants cannot be avoided by the insurer, but your firm may have to indemnify the insurer for all claims.	Claims by financial institutions: **claims can be declined** by the insurer if there is any **material** misrepresentation or non-disclosure (other than **innocent** misrepresentation or non-disclosure) in placing the insurance. Claims by non-financial institutions: cover for claimants cannot be avoided by the insurer, but your firm may have to indemnify the insurer for claims.	No new action required. In any event, it goes without saying that proposal forms must be completed correctly in all respects and all relevant information provided to the insurer. The new position will be no worse than existed pre-2008.
Run-off cover mandatory period[10]	Six years in relation to run-off cover triggered by cessation during the current indemnity period.	**Two years** in relation to run-off cover triggered by cessation during the **next indemnity period**.	If you are a sole principal, you should consider whether the value and nature of the work carried out by you would justify seeking run-off cover for longer than two years.

CONTD ON NEXT PAGE

CONSOLIDATED PII CHANGES TABLE (contd)

PROVISION	BEFORE[1]	AFTER[2]	ACTION[3]
Run-off cover premium	Mandatory run-off cover for claimants cannot be avoided by the insurer for non-payment of premium, but you may be required to indemnify the insurer for claims depending on the terms of the policy.	Mandatory run-off cover can be **cancelled** by the insurer for **non-payment** of premium.	It is imperative that all premium payments due for run-off cover are made in full and on time.
Failure of your firm's insurer[11]	Time allowed to obtain replace-ment cover: 20 working days.	Time allowed to obtain replacement cover: ***30*** working days.	No action required unless there is a failure by your firm's insurer. Pre-2008, failure of your firm's insurer not specifically regulated.
Assigned Risks Pool (ARP)	The ARP provides a 'safety net' for firms unable to obtain cover in the market.	The ARP will be **suspended**. The ARP relating to the current and previous indemnity periods will be unaffected.	It is imperative for your firm, if intending to continue in practice after 30 November 2009, to obtain cover from a qualified insurer by 30 November 2009.

FOOTNOTES

1 Summary of current position during 2008/09 indemnity period ending 30 November 2009.
2 Summary of new position for 2009/10 indemnity period commencing 1 December 2009.
3 Action to be considered by your firm.
4 It should not be assumed that liability for claims for breach of undertaking will necessarily be limited to the current value of the property over which a financial institution holds security – it is possible that liability will equal or exceed the outstanding amount of the loan in question.
5 'Claims made' basis means that the insurance policy that will meet a claim is the policy that is in place when the claim is made and notified to the insurer, or the policy that is in place when the insurer is notified of circumstances that may give rise to a claim – not necessarily the policy in place when the alleged negligence occurred.
6 Provided by section 44 of the *Civil Law (Miscellaneous Provisions) Act 2008*. See practice note on page 58 of the May 2009 issue of the *Gazette*.
7 The position in relation to commercial undertakings is explained in more detail in an article starting on page 22 of the October 2009 issue of the *Gazette*.
8 Wrongful acts or omissions are any dishonest, fraudulent, criminal or malicious acts or omissions by your firm or any acts or omissions that were done by your firm knowing them to be wrongful.
9 Including where the claim is by a non-financial institution and regardless of whether liability arises from wrongful acts or omissions.
10 Run-off cover is coverage that includes the minimum terms and conditions for a firm that has ceased to carry on practice where there is no succeeding practice. Run-off cover starts on the renewal date for the indemnity period immediately following the indemnity period in which the firm ceases practice.
11 Failure by your firm's insurer would occur if the insurer went into examinership, receivership or liquidation, or another similar event occurred, or if the insurer lost its regulatory authorisation.

– and any action taken to minimise any future claims of the type involved. Your firm should also obtain a printout of paid claims and reserves from the firm's existing insurer and, if there are significant sums for outstanding claims, add a commentary on future prospects. Your firm should canvass internally to identify any claims or circumstances not yet reported, for prompt notification prior to inception of the new policy.

Shop around. PII is likely to be more difficult to obtain than in previous indemnity periods, and that against the background of there being no ARP safety net. Therefore, it is prudent to seek quotes for PII from a number of different sources to maximise the chances of having cover in place by the renewal date. In addition, it is expected that there will be a significant variation in levels of premium quoted by different insurers, and having a number of different quotes will increase the chances of your firm obtaining the best available terms.

Reduction of mandatory run-off cover period

Due to the reduction of the mandatory period of run-off cover, the choices facing a sole principal are now more complex. Ceasing practice on or before 30 November 2009 without a succeeding practice will result in mandatory run-off cover for six years being provided on the terms already provided for in the current policy.

Continuing practice after 30 November 2009 will require normal cover to be renewed on 1 December 2009 and thereafter, at least until 30 November 2010, ceasing practice without a succeeding practice will result in mandatory run-off cover for two years being provided on the terms provided for in the new policy. The best course of action in any individual case will depend on weighing the specific factors applicable to that case, and no general advice can be given. Any sole principal facing these decisions should seek the advice of an insurance broker specialising in solicitors' PII; there is a list of brokers on www.lawsociety.ie.

General advice relating to PII renewal

The attention of all solicitors' firms is drawn to the following practical considerations:

- Cover must be renewed with effect from 1 December each year. This date is not negotiable. New practices should obtain cover from the date

of commencement of practice, to expire on the next occurring 30 November. All existing cover expires on 30 November 2009.
- Confirmation of cover in the designated form must be provided to the Law Society within ten working days after the due date for renewal each year. All firms must confirm cover by 15 December 2009. Normally, the broker provides confirmation of cover, but the obligation is on each firm to ensure that this is done.
- Any firm that is unable to obtain cover in the market should, before expiry of its cover on 30 November 2009, notify the Law Society.
- Any firm for which confirmation of cover is not received within the ten-working-day period will be classified as a 'defaulting firm'. If claims should arise while a firm is a defaulting firm, the claimant will then have recourse against the firm and its principals for recovery of the amount of the claim.
- The Law Society may seek a High Court order compelling any defaulting firm, which does not regularise its position promptly, to cease practice. Obviously, it is in the interests of all firms to avoid becoming a defaulting firm.
- Firms providing legal services relating to the laws of any other jurisdiction should note that the minimum terms and conditions do not cover legal services relating to the laws of other jurisdictions. Such firms should therefore arrange to put additional cover in place if they consider it appropriate.
- Solicitors providing legal services solely outside the jurisdiction will not be required by the Law Society to have professional indemnity insurance cover in place.
- Where a firm ceases practice and there is no succeeding practice, run-off cover from the end of the then current indemnity period must be provided by the last insurer. The current period of mandatory run-off cover is six years. The mandatory period for run-off cover triggered by cessation of practice on or after 1 December 2009 will be two years. (Run-off cover is coverage that includes the minimum terms and conditions for a firm that has ceased to carry on practice, where there is no succeeding practice.) Sole principals are strongly recommended to consider and plan for the cost of run-off cover, should it be triggered.
- An exemption for in-house solicitors providing legal services only to their employer applies.

What firms should do with regard to the renewal of PII cover:
- Firms should endeavour to renew their cover as early as possible for the coming indemnity period in order to ensure that the Law Society is provided with confirmation of cover by 15 December 2009.
- If a firm is deemed to be a defaulting firm, such a firm should use its best endeavours to regularise its position promptly and should seek to ensure that its cover, when renewed, is effective from the date of expiry of its previous cover with a view to mitigating the adverse consequences of defaulting firm status.
- Firms, and in particular all sole principals intending to cease practice, should pay particular attention to the information relating to premium terms for run-off cover contained in quotations or renewal notices. All quotations and renewal notices are required to contain the following notice: **"Notice to proposers for insurance: you should be aware that by accepting a quotation and taking out a policy, this insurer becomes obliged, should your practice cease during this policy year without a successor practice, to provide run-off cover for a two-year period at the premium rates calculated in accordance with the provisions of this policy. Consequently, you should ensure that the run-off premium terms are satisfactory to you before entering into a policy."**

You may wish to note:

1) Firms, rather than individual solicitors, are covered.
2) Firms can agree any level of self-insured excess with their insurer. In the event of a claim, where the firm does not pay the amount of the excess to the client, it is paid by the insurer and then recovered from the firm.
3) There is a uniform renewal date of 1 December.
4) The defence costs of the solicitors for the insurer for dealing with a claim are not limited.
5) Run-off cover must be provided automatically by the last insurer, with the run-off cover premium terms for each year being set out in quotations and renewal notices for the normal cover.
6) Insurers cannot repudiate claims by non-financial institutions on any grounds, including fraudulent misrepresentation or non-disclosure. They must cover such claims but may pursue the firm subsequently.
7) Statutory compensation or restitution to clients, such as may be ordered by the Solicitors Disciplinary Tribunal, is covered.

For further information

Please refer to www.lawsociety.ie for the designated form for confirmation of cover and the full text of the PII regulations.

Any queries relating to the PII regulations should be addressed to the Law Society PII Helpline for Solicitors at 01 879 8790 or piihelpline@lawsociety.ie. G

John Elliot is the Registrar of Solicitors and director of regulation of the Law Society.

Given the current economic climate and regulatory requirements, all firms need to focus on taking control of the office and client ledgers. Make your funds work efficiently for you, say Yvonne McCormack and Damian McCarthy

CASH IS

MAIN POINTS

- Managing and controlling cash flow
- Benefits of acting on financial reports
- Key issues with the office and clients' accounts

Is your firm in control of its office and client accounts? As mentioned in the article 'The price is right' in the August/September issue, the landscape of the professional legal practice has changed dramatically. Now, more than ever, it is crucial that legal practices manage and control their office and client accounts on a regular basis to ensure maximum cash flow and profitability.

At the end of every month, the firm's legal bookkeepers balance the books and records and move on to the next month's postings. But what financial information are they providing you with, and how can you utilise it? Are you simply leaving the information provided in a 'to do' file, which then gets replaced with the subsequent months' reports? While solicitors must adhere to the financial obligations imposed by the *Solicitors' Accounts Regulations*, you are also running a business – and therefore must use the financial information provided to survive, develop and grow.

Typically, any dedicated legal accounting package can provide a myriad of reports. If you use these reports correctly, then issues can be identified and solved. So what are some of the kinds of reports you should be looking for, and what benefits can be derived from utilising the information properly?

OFFICE ACCOUNTS

Listing of credit office ledger balances

Regulation 10(5) of the *Solicitors' Accounts Regulations 2001* prohibits credit balances arising on office ledgers (excepting where these can be properly offset against debit balances arising on a related client's office ledger) and requires that the credit balances are corrected without delay. This report ensures that these credit balances are identified in a timely manner and can be investigated, so that the necessary corrections are made. Credit balances can arise because of simple errors in transferring excess outlays from the client account (or received from clients and lodged directly to office), old outstanding cheques being written back, or because the relevant fee notes have not been posted.

The benefit of using this report ensures that the firm stays compliant with the regulations and that client monies are not used to subsidise the office account, which could result in the firm having a false sense of security when viewing office bank balances. It also can help identify where a fee earner has forgotten to have the fee issued on the accounting system.

Dormant matters

Most accounting systems will allow the user to print out a report of office balances, which can identify clients on whom there has been no monetary activity since a given date.

The benefit of these reports is that the firm can regularly review these balances with a view to ascertaining whether old outlays are now irrecoverable and should be written off to the profit and loss account, thus gaining a tax deduction. Often firms consider that their client will return at some stage and the outlays will ultimately be recovered. However, our experience is that the firm will generally end up writing this old balance off eventually. By being proactive, the firm ensures that only current cases remain live on the accounting system and that only cases on which there is a reasonable prospect of recovery of the outlays are kept open.

KING

Furthermore, this report can also be used to identify clients where, for whatever reason, the case has been allowed to stagnate and may need a new impetus to reignite. Finally, it may also identify cases where it may be possible to actually issue fee notes to recover some or all of those unbilled disbursements.

Unbilled disbursements

A significant level of expenditure can be required each month to pay outlays incurred on behalf of clients. It is important, therefore, that this expenditure is controlled and reviewed on a regular basis. The relevant fee earners should consider whether interim billing of these outlays could be implemented to ease cash flow, ensure that these outlays are fully recovered, and ensure that the clients are aware of the expenditure being made on their behalf. Consider imposing a cut-off point at which certain levels of expenditure have to be either sanctioned by a partner or the client is required to fund the office account.

The benefits of this review ensures that the firm can control, within reason, the outflows of monies on behalf of clients and also to enter into negotiation, at an early stage, with clients who may or may not have anticipated the level of fees and outlays to which they would become liable. In addition, each fee earner becomes more acutely aware of the necessity for keeping a watching brief over their own clients.

Outstanding bills

Typically, an outstanding bills listing will show all outstanding bills, aged as current, outstanding for one month, two months and three months. Depending on how the billing system is used, these bills may or may not also include the outlay that has also been billed. From a practical point of view, if the billed outlay can be included in this type of report, then it gives a more complete picture of the client's indebtedness to the firm.

This report needs to be reviewed on a regular weekly/monthly basis. The fee earners need to be held accountable for both the issuing of fees and, even more importantly, the cash collection of these fees. No point in being a busy fool!

Consideration needs to be given as to how the firm then proceeds to collect outstanding fees and whether the firm is prepared to allow discounts for immediate payments, to charge interest for late payment and, ultimately, whether to issue proceedings against clients who are slow or refusing to discharge their liabilities.

Practically, it should be borne in mind that, once a bill has been outstanding for more than three months, it will more than likely prove difficult to collect the entire fee. By that stage, the firm should consider negotiating a discount for immediate payment. The longer a fee remains unpaid, the more of the firm's cash flow is tied up, and the cost of maintaining this eradicates any profit element that was built into the fee being charged.

The firm should also be conscious of the VAT system they are operating under. If the firm is liable to account to the Revenue Commissioners for VAT on an invoice basis, then the VAT falls due in the VAT period the fee was raised in, rather than when the fee is paid. This impacts on cash flow and can put the firm under further financial pressure if fees

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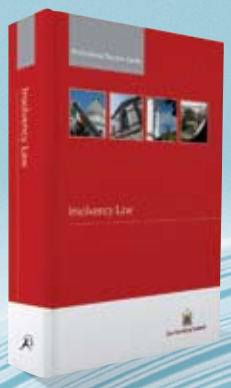

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Don't 'walk the line' when it comes to managing your office and client accounts

are not being collected as soon as possible after being issued. Why fund the Revenue when the client hasn't paid the fee?

CLIENT ACCOUNTS

Listing of debit client ledger balances

Regulations 7(1) and (2) of the *Solicitors' Accounts Regulations 2001* prohibit debit balances arising on client ledgers (excepting where these can be properly offset against client balances arising on a related client's client ledger). This report ensures that these debit balances are identified immediately and can be investigated so that the necessary corrections are made. Debit balances can arise because of errors in transferring excess outlays or fees to the office account, discharging outlays to third parties, or making payments to clients from the client account in excess of funds held.

The benefit of using this report is that the firm stays compliant with the regulations and that other client monies are not inadvertently used to subsidise clients on whose ledger cards the errors have been made.

"Fee earners need to be held accountable for both the issuing of fees and, even more importantly, the cash collection of these fees. No point in being a busy fool!"

Dormant matters

As with the office account, this report can be used to identify client ledgers on which there have been no transactions since a particular date.

This report can help to identify various issues, such as where fees/outlays have not been transferred to the office account or where payments have not been made on behalf of clients (stamp duty, registrations, and so on). In addition, there could be simply a balance of funds left that are due to the client – this may only be a small amount, such as where outlays were estimated and proved to be less than anticipated. We would recommend that, if the firm were to issue refund cheques to clients for these amounts, albeit small, the goodwill that the firm could generate is immeasurable, particularly in today's economic climate.

Remaining listing of clients' balances

This report should be reviewed, preferably with the office ledger balance listing, to help identify those ledgers where funds can be transferred to the office account in satisfaction of outstanding fees and outlays – regulation 5(2) of the *Solicitors' Accounts Regulations* requires that a solicitor should not hold any monies to which the firm is entitled in a client account for longer than three months.

Interest on clients' monies

While interest can be due to clients, it is always worthwhile maintaining a general client deposit account. Most of the main banks will assist with setting up a 'feeder' account, whereby every night an excess of funds held in the client current account are transferred to the deposit account until such time as it is identified that the funds are needed in order to meet withdrawals from the client current account. Provided that the interest earned on any individual clients' funds is less than €100, then the firm can legitimately retain the interest for its own purposes.

By examining the client current bank statements over a prior 12-month period, the firm should have an indication of the level of funds regularly held and of the core balance of client funds and of the potential for earning additional income.

Given the current economic climate, with pressure on cash flow from falling revenues, pressure from finance providers, and the considerations that need to be given to the requirements of the *Solicitors' Accounts Regulations*, it is essential that all firms focus on taking control of the office and client ledgers. Make your funds work efficiently for you. G

Yvonne McCormack is a partner in audit and accounts services and Damian McCarthy is manager of legal services at Hilary Haydon & Company, chartered accountants.

ARTFUL

The *Finance (No 2) Act 2008* introduces significant changes to the civil penalty regime that applies to tax defaulters. Gráinne Duggan explains

The *Finance (No 2) Act 2008* introduces significant changes to the civil penalty regime that applies to tax defaulters. The changes were brought about in response to a concern that the penalty regime as previously operated by Revenue was contrary to the *European Convention on Human Rights* (ECHR).

Penalties provided for under the *Taxes Consolidation Act 1997* are regarded as criminal and not civil in nature under the ECHR. The reason for this is twofold. Firstly, the purpose of penalties under the *Taxes Consolidation Act* is not simply to reimburse the exchequer – this occurs anyway, as any unpaid tax must be paid to the state, together with interest. If the purpose of the penalty was merely a reimbursement, it would be a civil penalty and not a criminal one. Secondly, the sanction imposed is designed to encourage taxpayers to be tax compliant and has the effect of punishing non-compliance. As a tax penalty is deemed to be the imposition of a criminal penalty for the purposes of the ECHR, it attracts all of the safeguards that a criminal penalty attracts, the most important of which is the entitlement to a fair and public hearing.

Old penalty regime

Prior to the enactment of the *Finance Act*, Revenue imposed both fixed and tax-geared penalties. Fixed penalties are generally provided for within the *Taxes Consolidation Act* and tax-geared penalties under the 2002 *Code of Practice for Revenue Auditors*. Tax-geared penalties are determined as a percentage of the tax due. Under the old regime, Revenue imposed penalties on taxpayers without any recourse to the courts.

The *Finance Act* has given this code a legislative footing. However, it is not an exact duplication and the code continues to exist in tandem with the new legislation. Furthermore, a new code is being drafted and, in the interim, there is a supplement to the code in place to span this transitional phase. Confused? You're not alone – the transition from the old regime to the new regime has been particularly complicated.

A new standard of proof

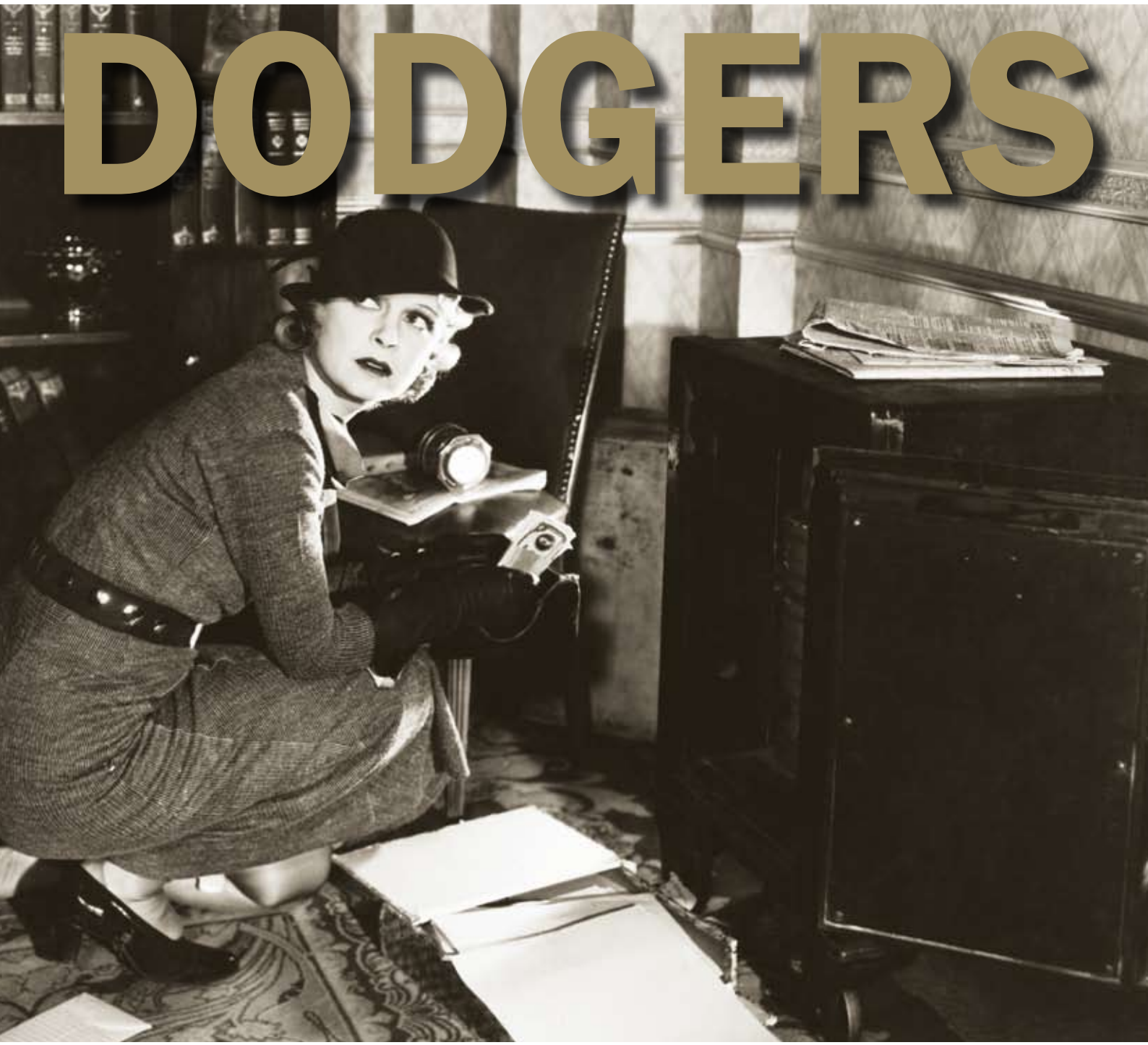
The *Finance Act* largely replaces the existing Revenue *Code of Practice*, by which Revenue imposed tax-geared penalties arising under the *Taxes Consolidation Act*, stamp duty, CAT and VAT legislation – so what exactly has changed?

Significant changes have been made to the standard of proof that applies in assessing whether or not a penalty should be levied on a taxpayer. Previously, Revenue had to establish that a taxpayer's default was made fraudulently or negligently. This standard has been considerably lowered and now Revenue needs only establish that a taxpayer acted deliberately or carelessly. While acting 'deliberately' still implies that some level of intent on the part of a taxpayer is required, acting 'carelessly' is a much broader concept and thereby

MAIN POINTS

- The civil penalty regime and tax defaulters
- A new standard of proof
- The level of penalties
- Returns in relation to settlements and trustees

DODGERS



greatly reduces the burden of proof required for Revenue to impose a penalty.

Previously, many of the sections within the *Taxes Consolidation Act* that attract a fixed-penalty required the taxpayer to have acted 'knowingly' in committing the act that attracted the penalty. This concept of acting 'knowingly' has been removed by the *Finance Act*, further eroding the burden of proof required for Revenue to impose a penalty.

A Revenue opinion on penalty

The most significant change introduced by the *Finance Act* is the introduction of section 1077B to the *Taxes Consolidation Act*. This section provides that, where an officer of the Revenue Commissioners is of the opinion that a taxpayer is liable to a penalty under the *Taxes Consolidation Act*, he or she must notify the taxpayer that such a penalty arises. The taxpayer then has 30 days within which to agree with the opinion of the Revenue officer and pay the penalty. If a taxpayer does not agree with the penalty and fails to pay it, the Revenue officer may then apply to have the penalty assessed by a relevant court.

A relevant court does not, as is usually the case in revenue matters, include the appeal commissioners, and instead requires a taxpayer to move straight to the District, Circuit or High Court. (Which court will depend on the size of the penalty and

LOOK IT UP

Legislation:

- *European Convention on Human Rights*, article 6
- *Finance (No 2) Act 2008*, part 6
- *Taxes Consolidation Act 1997*

Cases:

- *Paykar Yev Haghtanak v Armenia* [2007] ECHR 21638/03
- *McLoughlin v Tuite* [1989] IR 82

Literature:

- Revenue e-brief 15/2008
- www.revenue.ie
- www.taxireland.ie

the corresponding jurisdiction of each court.) The justification for this leap from an opinion of a Revenue officer to a hearing in open court is to ensure compliance with the requirement of article 6 of the ECHR: namely, that a criminal penalty can only be imposed after a fair and public hearing.

For a taxpayer, this is a significant change in the way Revenue cases are appealed and, more importantly, a loss of the additional safeguard that the appeal-commissioner level currently provides. Should a taxpayer wish to appeal the *legality of a tax* assessed by Revenue, he or she can appeal to the appeal commissioners and then to the Circuit Court – both of which are heard *in camera*. The route now available to appeal the *imposition of a penalty* does not attract the *in camera* veil and proceedings will be heard in open court. This, of course, amounts to a sanction much greater than any monetary penalty, as a taxpayer may be very reluctant to put his or her tax affairs in the public domain at such an early stage. The potential for such speedy recourse to the courts also means the involvement of legal advisors at a much earlier stage than may have previously been the case.

Deceased taxpayers

It follows that, if a tax penalty is deemed to be a criminal penalty under the ECHR and a criminal penalty may only be levied on a taxpayer after a fair and public hearing, a tax penalty cannot be raised on a deceased person. Nevertheless, up until recently, it was Revenue's practice to levy penalties on the estate of deceased taxpayers. Again, in light of concerns about the possible infringement of the ECHR,

THE LEVEL OF PENALTIES

The level of tax-geared penalty varies depending on the extent to which a taxpayer cooperates with Revenue, whether a taxpayer voluntarily discloses the default to Revenue (an unprompted qualifying disclosure), or whether the default is only disclosed after a prompt by Revenue (a prompted qualifying disclosure). An example of a prompt by Revenue would be the threat of a Revenue audit.

Prior to the enactment of the *Finance Act*, the penalties applied under the Revenue *Code of Practice* were as follows:

Category of default	Tax-geared penalty	Net penalty after mitigation where there is:		
		Cooperation only	Cooperation and *prompted* qualifying disclosure	Cooperation and *unprompted* qualifying disclosure
Deliberate default	100% of underpaid tax	75%	50%	10%
Gross carelessness	40% of underpaid tax	30%	20%	5%
Insufficient care	20% of underpaid tax	15%	10%	3%

While the new penalties will continue to apply as a percentage of the underpaid tax, the categories of default have changed. Furthermore, the level of penalty will also now be affected by whether it is a taxpayer's first, second or third qualifying disclosure. However, disclosures will now have a 'lifespan' and, where a further disclosure is made five years after the last disclosure, it will be treated as a new first disclosure. The following table illustrates the level of penalty that applies on a first qualifying disclosure:

Category of default	Tax-geared penalty	Net penalty after mitigation where there is:		
		Cooperation only	Cooperation and *prompted* qualifying disclosure	Cooperation and *unprompted* qualifying disclosure
Deliberate behaviour	100%	75%	50%	10%
Careless behaviour with significant consequences*	40%	30%	20%	5%
Other careless behaviour	20%	15%	10%	3%

**The term 'significant consequences' means that the difference between the underpaid tax or duty is greater than 15% of the correct tax or duty payable for the relevant period.*

There has also been a wholesale increase in the level of fixed penalties that apply.

Revenue changed its practice in 2008 (via e-brief 15/2008).

The *Finance Act* has given this change a statutory footing in section 1077D of the *Taxes Consolidation Act*. Now, for a penalty to be imposed on the estate of a deceased taxpayer, the deceased must have agreed in writing prior to his or her death that he or she was liable to the penalty, or a court must have determined, before a person's death, that a penalty was due and owing. If these conditions are met, proceedings to recover the penalty may be brought against the personal representatives of the deceased.

Returns in relation to settlements and trustees

Legal professionals should note that the *Finance Act* introduced new obligations on persons concerned in the making of a settlement where the settlor is resident in the state, but the trustees are resident outside of the state. Such a person must now deliver certain information to Revenue within four months of the making of the settlement. This information must include:

- The name and address of the settlor,
- The names and addresses of persons who are trustees of the settlement, and
- The date on which the settlement was made or created.

The responsibility for making the return lies with the person carrying on a profession in the case of a sole practitioner, the precedent partner in the case of the partnership, and with a secretary in the case of a company. Failing to make a return may result in a penalty of €3,000 and, in the case of a body of persons, a further penalty of €1,000 is applied to the secretary of such a body of persons. G

Gráinne Duggan is a barrister specialising in tax and commercial law.

OTHER PEOPLE'S MONEY

Third-party litigation funding allows someone unconnected with the litigant to provide funds to pursue a lawsuit – in return for a share of damages and reimbursement of costs if the claim is successful. The practice is well established elsewhere, but not in Ireland. Aileen Murtagh gets out her cheque book

Third-party litigation funding is the provision of funds to a litigant by a third party who has no connection with the litigation, in return for a share of damages and reimbursement of costs if the claim is successful. This practice is established and booming in other jurisdictions, including England and Australia. Arguably, Irish law ought to formally recognise its benefits for litigants, the legal industry and the economy generally.

Third-party litigation funding can take many forms. In recent years, private litigation funding markets have developed rapidly, particularly in England, with the emergence of professional litigation funders. These professional funders invest money so that litigation can be pursued and they, as funders, can profit from sharing in the winnings if the claim succeeds.

Examples of third-party litigation funding include the provision of loans from funders, or the provision of before- or after-the-event litigation insurance. In some jurisdictions, lawyers can fund litigation through contingency fee arrangements or conditional fee arrangements. Interestingly, hedge funds are also increasingly investing in litigation funding as a stable alternative to volatile stock markets.

In some instances, the plaintiff may assign its claim to a third-party funder for a fee, with the funder benefiting from any damages awarded, provided the assignee can show that he has a genuine commercial interest in the enforcement of the claim. This approach was approved by the House of Lords in *Trendtex Trading Corporation v Credit Suisse* almost 30 years ago.

The types of cases that have attracted litigation funding in other jurisdictions include shareholder or financial disputes (for example, breach of directors' duties,

MAIN POINTS

- Third-party litigation funding
- Facilitating access to justice
- Opening the floodgates to unmeritorious claims?
- Potential conflicts of interest and ethical issues
- Maintenance and champerty

directors' negligence or breach of trust), breach of contract, professional negligence, copyright and patent litigation, and cartel offences.

Possible application in Ireland

In Ireland, third-party litigation funding would afford individuals or classes of individuals the opportunity to take legal action in circumstances where they might normally be cautious about committing to the costs of litigation (an increasingly common issue as the recession bites). An obvious example where this funding could be valuable would be in cases that might be taken by the many shareholders and investors affected by the fallout from the banking crisis.

The European Commission encourages individuals to pursue damages for breaches of competition law, as demonstrated in its white paper on compensating consumer and business victims for breaches of competition rules. Furthermore, Directive 2003/35/EC (based on the *Aarhus Convention*, which concerns public participation and access to justice in respect of certain environmental issues) requires member states to ensure that the public has access to a review procedure to challenge certain decisions relating to the environment – and this procedure must not be prohibitively expensive. Third-party litigation funding could facilitate this.

Competing viewpoints

The potential exposure to litigation costs undoubtedly impedes access to justice, even in meritorious cases. Third-party funding addresses that imbalance, facilitating access to justice and levelling the playing field between plaintiff and defendant. It allows a solicitor to vindicate his client's rights in

circumstances where the costs barrier might initially have appeared insurmountable – for example, in an insolvency context.

The primary argument against third-party litigation funding is that it will open the floodgates to unmeritorious claims, causing misuse or overuse of court resources. Furthermore, it is argued that the funder may subordinate the plaintiff's interests and interfere in the litigation to protect/enhance his investment, creating potential conflicts of interest and ethical issues for solicitors who are paid by the funder.

Undoubtedly, third-party litigation funding is a contentious issue, not least because some of the policy and ethical issues it raises have not yet been conclusively resolved by the courts or regulators. While the law in common law jurisdictions is, to some extent, in a state of flux, the practice has thrived for years in civil law jurisdictions such as Germany, Switzerland and Austria, where the doctrines of maintenance and champerty have never applied.

Maintenance and champerty

Many of the arguments against third-party litigation funding are grounded in the archaic doctrines of maintenance and champerty. A person is guilty of 'maintenance' if he supports litigation in which he has no legitimate concern without just cause or excuse. 'Champerty' is a subset of maintenance, whereby maintenance is provided in return for a share of the spoils of litigation, and is traditionally considered an abuse of process.

Indeed, it is telling that the jurisdictions in which third-party litigation funding has flourished are those in which the crimes and torts of maintenance and champerty have been abolished, or never existed. (It should be noted that, in most jurisdictions, a funding arrangement can still be invalidated if it is contrary to public policy and, hence, an abuse of process.) Ireland, on the other hand, retained the crimes and torts of maintenance and champerty on the *Statute Book* in the *Statute Law Revision Act 2007*.

Developments elsewhere

Australia was the first jurisdiction to undergo something of a revolution in relation to third-party litigation funding. *Cash and Carry Pty Limited v Fostif Pty Limited* is the landmark case. In *Fostif*, the competing arguments outlined above in respect of third-party litigation funding were considered in detail by the Australian High Court. It held by a five to two majority that a third-party funding arrangement did not constitute an abuse of process, nor was it contrary to public policy.

Fostif concerned a representative action with a single claimant, but with provision for others to 'opt-in' once they were identified and had consented to join the proceedings. The case was taken by retailers to recover tobacco licence fees, which had been found to be unconstitutional. Each individual claim was small (approximately $1,000) and did not warrant bringing separate claims.

LOOK IT UP

Cases:

- *Arkin v Borchard Lines Ltd & Ors* [2005] EWCA Civ 655
- *Cash and Carry Pty Limited v Fostif Pty Limited* [2006] HCA 41
- *O'Keefe v Scales* [1998] ILRM 393
- *Trendtex Trading Corporation v Credit Suisse* [1982] (House of Lords, England)

Literature:

- Civil Justice Council, *Improved Access to Justice – Funding Options and Proportionate Costs*
- Law Reform Commission, *Report on Multi-party Litigation*

A firm of accountants, Firmstones, initiated the proceedings by contacting retailers and offering to fund the litigation, protect them from adverse costs, and take one-third of any award, plus recovered costs. Firmstones instructed solicitors, but the solicitors had virtually no access to the retailer 'clients', while Firmstones retained a high degree of control over the proceedings.

The Australian High Court found that the proceedings had not been validly commenced (as the conditions pertaining to representative actions had not been achieved). However, more importantly, it held that there was no abuse of process and no public policy reason to bar the funding arrangement. The court clearly rejected any perceived role for either itself or the defendant in protecting the interests of the plaintiff as against those of the funder – save insofar as the arrangements could lead to an abuse of process: "To meet these fears by adopting a rule in either form would take too broad an axe to the problems that may be seen to lie behind the fears."

This case represented a significant shift in judicial thinking, which has been followed in other jurisdictions.

Established practice

For example, third-party litigation funding has been an established practice for a number of years in England and Wales. It was examined closely by the Court of Appeal in *Arkin v Borchard Lines Ltd*, which held that third-party funding will not, in itself, breach the rules against maintenance or champerty. However, the court expressly preserved its discretion to declare third-party funding arrangements contrary to public policy.

The court in *Arkin* helpfully clarified a number of issues in relation to third-party funding, particularly in relation to the extent of the third-party funder's liability in costs, holding that "a professional funder, who finances part of a claimant's costs of litigation, should be potentially liable for the costs of the opposing party to the extent of the funding provided".

Third-party funding has since been favourably reviewed by the English Civil Justice Council, which recently completed a comprehensive review entitled *Improved Access to Justice – Funding Options and Proportionate Costs*. It recommended to the Lord Chancellor that "properly regulated, third-party litigation funding should be recognised as an acceptable option for mainstream litigation. Rules of court should also be developed to ensure effective controls over the conduct of litigation where third parties provide the funding."

"Unfortunately, economic factors are depriving many of the constitutional right of access to the courts, even where there is a meritorious claim. Third-party funding is one way to ensure that individuals are not precluded from vindicating their rights due to excessive costs"

Can we follow international trends?

The most obvious barrier to third-party funding in Ireland is the prohibition on maintenance and champerty. In *O'Keefe v Scales*, the Supreme Court was keen to avoid holding that a champertous agreement meant that proceedings should be automatically stayed or struck out, and required that there be evidence of abuse of process. This would accord with the developments in other jurisdictions, as outlined above, where maintenance and champerty and arguments of abuse of process have been set aside in favour of new public policies facilitating access to justice.

However, that decision was not fully declarative of the position, and legislative clarification is required. The removal of maintenance and champerty from the *Statute Book* would be a significant step towards facilitating third-party funding in Ireland, thus increasing every individual's access to justice.

Make your voice heard

On a closer examination of the arguments against third-party litigation funding, it becomes clear that many of the alleged ethical and policy concerns cited against it are more apparent than real. However, in line with the developments in other jurisdictions, these concerns could be addressed through the formulation of appropriate rules of court and/or regulation of third-party funding.

There is no question but that the Irish market is ripe for the introduction of third-party funding. There is a constitutional right of access to the courts to litigate reasonably stateable cases. Unfortunately, economic factors are depriving many of this right, even where there is a meritorious claim. Third-party funding is one way to ensure that individuals are not precluded from vindicating their rights due to excessive costs. While the courts may have a degree of leeway to allow funded litigants pursue their case where it is clear that there is no abuse of process, ultimately, a legislative change is required to ensure certainty for potential plaintiffs and their solicitors. G

Aileen Murtagh is an associate solicitor in the litigation department of Dublin law firm Philip Lee, focusing on competition law issues.

The media is

The usual excuses that people don't like 'doing' marketing and PR – and that they don't have the time – just don't stack up in a recession. Emily Maher and Donal Cronin encourage practitioners to get 'down and dirty' with the media to boost their business

Gone are the easy days of 'surrender' business – clients who walked through the door, handed over chunks of work, and didn't really question the cost. Now, clients are questioning every service – whether they need it and whether it can be done more cost effectively. In this environment, firms are now rediscovering the value of marketing and public relations as cost-effective ways of sourcing new business and maintaining existing clients.

The likelihood is that, in recent years, many people and organisations may have forgotten the simple and effective techniques that were commonplace five or ten years ago. A company director recently recounted to us how surprised and tickled he was, following a small piece about his company in one of the daily newspapers, to receive, that same morning, a humorously written email from a leading accountancy firm, effectively saying: "I think you could do with some help – and I think I could give you that help."

The email was followed up by a phone call and, as a result, the director has now done some business with the firm in question. Highly effective marketing – the right message to the right audience, delivered at the right time.

Drawbacks

It's not rocket science – but there are some drawbacks with both marketing and PR. Namely, people don't like doing them and they believe they don't have the time, particularly when so many firms are now trying to work harder with fewer resources. For many, any form of self-publicity is seen as 'selling', and it's regarded as a dirty concept. When we work with organisations to put simple public relations approaches in place, senior people will frequently say: "But if we send out a brochure or a letter or a press release, they'll think we're in dire straits and reduced to touting for business."

Yes, some may think that. On the other hand, if you don't do some form of marketing or PR, people may not be aware of you or your firm's offering. There is nothing shameful about marketing your business or engaging in PR. It's only a problem when it is indiscriminate – like junk mail. Being discriminating about your marketing and PR will make it effective and reputation enhancing. The first step is to answer three sets of questions – once that's done, the rest is just logistics.

Three questions

Who is our audience? Is it in a specific sector or spread across a number of sectors? Within that target audience, who makes the buying decisions? Are there other sectors we should be expanding into? Once you can answer those simple questions, then you can ask yourself a second set.

How do we best reach them? Should we send them a brochure or a letter reminding them of our services and how we can add value in this market? Should we send it in the post or by email? Should we organise a breakfast seminar, or speak at a relevant industry conference? Should we send out a press release and get some media coverage for the seminar we are hosting? Answering those questions leads to the final set of questions.

What is our message? What are we saying to them that might resonate right now? Is there an issue that we know is a problem for their sector at the moment? Is there something specific we know we can do for them in this climate that no one else could do as well as we can?

The rest is logistics. This, however, is where businesses hit the second of the drawbacks mentioned earlier. People figure they don't have the time. The answer to that is very simple. You have to make the time – you can't afford not to. Growing the business, developing networks and relationships – these have always been a key part of the role of management. Now, they're even more important, and senior partners simply need to expand the range of activities they engage in.

Guidelines for mailings

Should you decide to send a well-written letter to potential clients, either by email or by post, some simple guidelines should be followed:

- Send the letter to specific, named individuals in

MAIN POINTS

- 'Selling' your service
- Discriminate targeting
- Getting to your audience
- Using PR to build relationships

the message

the organisation. Make sure that you get their name and title right – it sounds obvious, but it's extraordinary how often this is poorly done.

- Start with them, not with you. Identify one or two of the issues you know from experience and insight they must be facing at the moment. Show them how you may be able to help and the value such a course of action might add.
- Less is more. Send a short letter or a short email, since you will be following up with a phone call – and send them in small numbers. Ten letters, all followed up, will yield better results than 100 letters without follow-up.
- On the follow-up phone call – which most people will accept – make a brief case for what you outlined in the letter. If the company has a particular need at that moment, you may end up arranging a meeting. If they don't, you haven't lost

anything, but you have gained some valuable notice from an important audience.

Again, the key issue is time. If you have committed to this approach, make the time to follow up, recognising that this is not some tedious add-on to your work but that it is, instead, a central part of your role.

If you decide that you would like to get some publicity for your firm or your service or the conference you have decided to host, there are some simple – but often overlooked – rules. Public relations is not a matter of sending out a press release telling the world you exist, and then sitting back and waiting for the phone to ring with offers of coverage from *Morning Ireland* or *The Irish Times*.

Press releases must contain news. So what are you doing that is new or different? What trend have you noticed in the market? Do you have any data or statistics on this trend? Could you conduct a survey among some of your clients? The likelihood is that, in your area of expertise, you have valuable insights that could be of interest to the media – but to you, they appear straightforward and mundane. If you figure you have an interesting story, then you should follow some simple guidelines:

- Know who may be interested in the story. Is it a business story? Does it have an environmental angle? Once you have targeted your media outlets, send the story to specific, named people.
- Observe how similar stories are written every day, and write a press release that follows the same template.
- Pick up the phone or send an email to your local and national newspapers and tell them the good news. Journalists are always very interested in success stories and commentary from informed sources.

Remember that journalists are under more pressure than ever before, as job losses and straitened budgets lead to pressure to produce content with fewer resources. The growth of online breaking news means that journalists need stories on a more frequent basis than ever before. This represents an opportunity. You can help the media to find that content by delivering story ideas, research and experts. If you have a positive story or something interesting to say, let the media know. Pick up the phone.

Building relationships

One of the most important PR activities any business can undertake is to build relationships with important stakeholders. You might start by joining the local Chamber of Commerce or similar association and attending networking and briefing events. Industry association events can also be a good way to network with your peers.

It's now possible to network free of charge without leaving your desk. Online social networking sites, such as LinkedIn, Facebook and Twitter, give you the chance to connect with colleagues, clients and contacts and to share expertise and pose questions. This type of networking can lead to new business opportunities through referrals – one of the best and most efficient ways of developing your practice. Don't be afraid to ask for referrals. The changed economic climate means that people will appreciate your need to generate new leads.

You can use testimonials to great effect in marketing your practice. As with referrals, those who ask shall receive. Where appropriate, satisfied clients may be happy to provide a few sentences outlining their positive experience. And once you get a testimonial, make sure other clients can see it – display it in a prominent position in your office or include a dedicated page on your website.

Your wealth of knowledge about your practice means you can comment independently for the purposes of print and broadcast media through writing articles or participating in panel discussions. You can attend conferences and events as a speaker and contribute to round-table discussions.

> ***"Being discriminating about your marketing and PR will make it effective and reputation enhancing"***

Try also to add value to your website. Consider writing a blog to share news on your area of practice and comment on relevant issues in the news. You could also think about developing a regular e-zine to send to clients and stakeholders and to include on your website.

Measuring the value

In measuring media activity, an established metric is to use a value-based measurement that assesses the advertising-value equivalent of all media coverage. It can also be worthwhile to assess media coverage under a number of important headings:

- The volume of media coverage,
- The relative importance of the outlets – that is, national media, print and broadcast, regional media, local media – and the values assigned to, for example, the front page of a national newspaper, the value of an op-ed piece, the value of a regional feature, or the value of exposure on local radio show,
- The clarity of the message in each piece – how prominent is the central message?

It may be difficult to put a precise value on your marketing and PR activity. But if some simple steps can lead to one new client or one valuable referral without causing people endless additional work, then you can't really afford not to do it. G

Emily Maher is PR senior account manager and Donal Cronin is director of Carr Communications.

PIC: LENSMEN

Society honours President of the High Court

A number of days before his final sitting as President of the High Court, Mr Justice Richard Johnson was the Law Society's guest at a dinner held in his honour. Many of his chosen guests included old friends from his student days and solicitors who had briefed him in his early years of practice as a junior counsel on the South Western Circuit. Many a story was told – tall and otherwise – from those days during the course of a thoroughly enjoyable evening. Pictured *(front, l to r)*: Moya Quinlan (Past-President of the Law Society), Mr Justice Richard Johnson (President of the High Court), John D Shaw (President of the Law Society), Michael Collins SC (Chairman of the Bar Council) and Gordon A Holmes (Chairman of the Garda Síochána Complaints Board). *(Back, l to r)*: Robert Pierse, Ken Murphy (director general), Gerard Doherty (senior vice-president), James MacGuill (immediate past-president), William A Young and Dermot G O'Donovan

STEP conferees

At the conferral of Diplomas in Trust and Estate Planning in Cork recently were *(l to r)*: Katherine Kane (Law Society, Cork), James O'Sullivan (chairman, Education Committee), Carmel O'Brien, John Lupton, Molly Moloney, Maria Boyce, Mary Condell (STEP chairperson) and Caroline Foley (Diploma administrator, Cork)

Tom McGrath & Associates has announced the amalgamation of the firm of AF Smyth and Company into its practice and the arrival of its principal, leading insolvency expert Andrew F Smyth, to its Dublin offices. *(L to r)*: Tom McGrath, David O'Donnell and Andrew Smyth

At the launch of the Law Reform Commission's consultation paper *Personal Debt Management and Debt Enforcement* on 22 September by Attorney General Paul Gallagher were *(l to r)*: Joseph Spooner (legal researcher), the president of the Law Reform Commission Mrs Justice Catherine McGuinness and Paul Gallagher

Louth/Drogheda bar associations

President of the Law Society John D Shaw and director general Ken Murphy were guests of the County Louth Solicitors' Bar Association and the Drogheda Bar Association at a joint meeting held on 13 October 2009 at Dundalk Courthouse. They are seen here with *(front, l to r)*: John Woods, Catherine Allison, Ken Murphy (director general), John D Shaw (president), Donal Branigan (president, Drogheda Bar Association) and Donal O'Hagan (president, County Louth Solicitors' Bar Association)

PIC: GALVIN PHOTOGRAPHY

Kildare Bar Association

The Kildare Bar Association held a meeting on 14 October, which was attended by President of the Law Society John D Shaw and director general Ken Murphy. Professional indemnity insurance and other topics relevant to the profession were discussed in some detail, with a CPD course on recent legal developments in drink-driving also included. Seen here with members of the Kildare Bar Association in Kilashee House Hotel were *(front, l to r)*: Eoin O'Connor (Kildare/West Wicklow Collaborative Partnership), Ken Murphy (director general), John D Shaw (Law Society president), Frank Taaffe (Kildare Bar Association president), and David R Osborne (secretary, Kildare Bar Association)

ON THE MOVE

New managing partner for A&L Goodbody

Julian Yarr *(right)* has been appointed as the next managing partner of A&L Goodbody. Julian will take up the position in May 2010, replacing Paul Carroll *(left)* who has led the firm for three consecutive terms since 2001

LK Shields appoints new partners

Jill Callanan and Jennifer Clarke have become partners in the firm's litigation and dispute resolution department, while Jennifer O'Neill has become a partner in the firm's employment, pensions and employee benefits unit. With the previous addition of Paul McCutcheon as partner in the firm's commercial property department, the firm's number of partners now stands at 23. LK Shields celebrates its 21st anniversary this year

student spotlight

Builders close to €200k mark

For the past three years, 'Blackhall Builders', a group of solicitors and trainee solicitors, have traded computers, books, and mobiles for trowels, builders' boots and gloves to build houses with the people of Zambia, *writes Jane Moffatt*.

The project is part of the 'Habitat for Humanity – Orphans and Vulnerable Children' programme.

The 2009 team, comprising 13 trainee solicitors and two team leaders, Emer O'Callaghan and Jane Moffatt (Law Society of Ireland), travelled to Zambia on 17 July to build houses with the local affiliate of Habitat for Humanity. The team worked with local tradesmen to build two new homes during their two-week visit.

Building in the villages of Nkwazi, Ndola District and Tiyende Pamodzi, and in Chazanga in Lusaka, we learned to embrace living and building the African way, with limited resources and a hands-on approach. We carried bricks, drew water from the well or river, dug and filled foundations, mixed sand and gravel by hand to make mortar, and laid bricks – watched by many little eyes and helping hands. We were rewarded with kindness and gratitude by the new home owners. All communities welcomed us into their midst.

The Blackhall Builders Team 2009, including Ross Jackson, Sarah Nagle, Emer O'Callaghan, Louise Connolly, Brendan O'Sullivan, Breffni Curran, Grainne Webb, Jane Moffatt (Law Society), Richard McNamara, Nicola Walsh, Maura McNamara, Zoe Richardson, Katie Mannion and Ruth Linnane

In addition to building houses in Zambia, we visited schools, orphanages and health clinics supported by the OVC Habitat for Humanity Global Village project. Team members made donations of sports equipment, kit and school supplies. All these 'little' things have an impact far beyond our comprehension.

The Builders feel privileged to have been part of this extraordinary trip and learned much about Africa and its people, including embracing the natural rhythms of life – rising at dawn and finishing work at sunset. Africans live by the concept of 'ubuntu' – that essence of community that binds us as human beings. The many Zambians we met showed us this generosity of spirit in abundance.

€196,000 raised

Over the past three years, the three teams have jointly raised a considerable €196,000 (2007, €67,000; 2008, €72,000; and 2009, €57,000). The donations we received mean far more than just the seven houses built by the teams, including valuable support for the continuing building projects and the schools, orphanages and healthcare centres supported by Habitat for Humanity.

The teams wish to thank all those members of the profession who have so generously supported this trainee initiative, and their families, friends and colleagues who have supported them in so many ways.

Míle buíochas! G

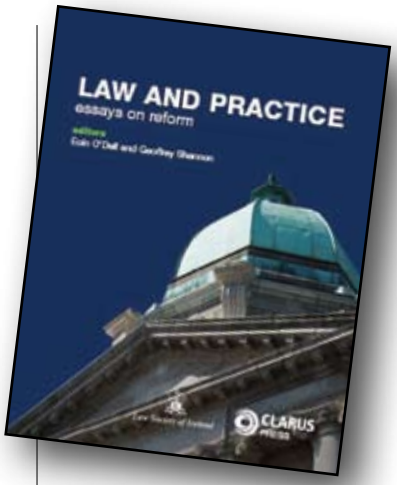
books

Law and Practice: Essays on Reform

Eoin O'Dell and Geoffrey Shannon (eds). Clarus Press and Law Society of Ireland (2008), Griffith Campus, South Circular Road, Dublin 8. ISBN: 978-1-905536-12-2. Price €85 (paperback).

This is an excellent collection of 35 essays written between 1999 and 2006, all of them award winners in the Law Society's Student Law Reform Essay Prize. The commitment to law reform by the Law Society is indicated by the prize, which allows the voice of law students to be heard loud and clear in this important task.

As the editors point out in their preface, the 35 essays deal with the full range of the subject matter of law. In terms of the most popular areas chosen by the writers, almost half of the 35 essays deal in one way or another with procedural law, of which seven deal with different aspects of court procedure and alternative dispute resolution, five others deal with criminal procedure, two deal with the law of evidence, and one concerns the guardian *ad litem* procedure in family law. Another eight essays could be put under the general heading of commercial and contract law, with three being devoted to reform of the *Sale of Goods Act 1893*. Other substantive areas of law dealt with include criminal law, employment law, environmental law, equality law, family law, land law and technology law. This overall picture underlines that the attention of these writers was not confined to a narrow compass and that, indeed, their focus was on the reality that reform is needed in many areas



of law and practice. All of the essays are well worthy of the decision by the editors to include them in the collection.

The essays indicate the importance of having fresh eyes cast on the state of the law that we find in the early 21st century. Ultimately, reform is a matter for the government and the Oireachtas, but the combination of all these perspectives can be a powerful mode of achieving a suitable end result. This is the great value of the essays in this invaluable collection, many written by people who have already begun to make a mark in the worlds of practice and academic life in Ireland. This is a must-read book for those interested in the law and its reform, and that must be all of us. G

Raymond Byrne is director of research at the Law Reform Commission.

Corporate Governance and Regulation

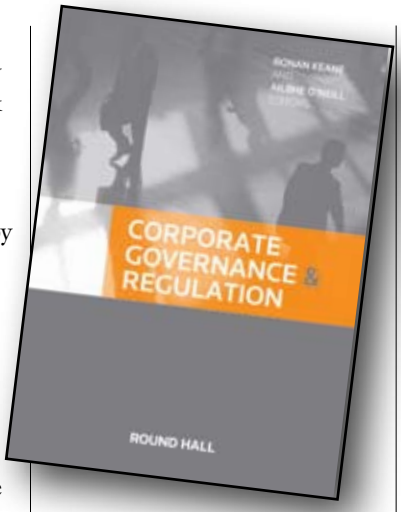
Ronan Keane and Ailbhe O'Neill (eds). Round Hall (2009), www.roundhall.ie. ISBN: 978-1-858005-19-5. Price: €165.

Corporate Governance and Regulation has been published at a time when "the worldwide malaise suffered by financial institutions has prompted fresh anxieties as to the adequacy of regulatory structures", as former Chief Justice Ronan Keane puts it in his introduction to this timely compendium of essays.

Many of us will remember books of learned essays as the stuff of undergraduate life – long hours in the library transcribing worthy quotations into essays. However, unlike many compendiums of essays that grace the academic side of the law, this is very much current, practical and relevant.

Dr Tom Courtney, solicitor and chair of the Company Law Review Group, opens the book with a detailed examination of directors' compliance statements, introduced with prescience – if precipitately – by the *Companies (Auditing and Accounting) Act 2003*. In view of the market crash and the accompanying public disquiet at corporate governance in particular companies, it is a fair certainty that we will have compliance statements of some kind in the near future. This essay is a must-read for those with an interest in the area.

Next up is Dr Ailbhe O'Neill, with a comparative study of the director disqualification regimes



in Ireland, Britain, Australia and New Zealand. The recent case of *Director of Corporate Enforcement v McGowan* is analysed, which focused on the protective, rather than punitive, purpose of disqualification.

Prof Blanaid Clarke's essay concerns the role of the board of a target company during a takeover bid. The law in this area is derived from our own statute, a European directive and its Irish transposition, the Irish Takeover Panel rules as well as the general law. Prof Clarke brings these sources and the various corporate governance codes together in a most lucid manner.

Prof Irene Lynch-Fannon explores the tricky area of what constitutes legitimate risk taking, which tends to be judged by the public after the event. Frolics enthusiastically

CLEAR, ACCURATE INFORMATION.

DEBT RECOVERY HANDBOOK

BY COLMAN CURRAN, MASON HAYES + CURRAN

Debt Recovery Handbook is a comprehensive guide covering the normal elements of the debt collection process but within a simple, easy-to-use format that clearly sets out the procedural requirements for each step.

The book offers suggestions on the most appropriate and cost-effective enforcement options depending on the individual circumstances of the case and, most usefully, the guide includes some working precedents for each jurisdiction. This book takes an extremely practical and hands-on approach to debt recovery that cannot be found in other textbooks dealing with the subject.

PRICE: € 115.00 November 2009

IRISH PROBATE PRECEDENTS SERVICE

BY DR ALBERT KEATING

Irish Probate Precedents Service is a new service that provides you with a single comprehensive library of documents and forms, to guide you logically through the selection of appropriate documents. This allows you too quickly compile a complete application. It takes you step-by-step through the preparation of the individual precedent so that you can easily see exactly who can apply and what documents you need. Contents include: General Grants, *De Bonis Non Grants*, Beneficial Grants, Renunciations, Court Grants, Pre-1967 Grants, Caveats and Citations & Appendices.

PRICE FROM: €495.00 November 2009 Also Available on CD-ROM

IRISH WILLS PRECEDENTS SERVICE

BY DR ALBERT KEATING

Irish Wills Precedents Service 3reduces time spent dictating and drafting, searching for and reworking existing documents. Its logical structure makes is very easy to find the right documents and avoid making mistakes.

Contents include: Characteristics and Composition of a Will, Instruction Sheet,Revocation Clauses, Testimonium and Attestation Clauses ,The Appointment and Powers of Executors, Trustees and Guardians,Funeral Directives,Testamentary Gift,Testamentary Trusts & Codicils.

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ROUND HALL

THOMSON REUTERS

encouraged by the populace during a boom will always be deplored as recklessness from the secure and morally-elevated perspective of hindsight. In this context, Prof Lynch-Fannon looks at judicial efforts to set objective norms to be expected of directors.

Dr Ciarán O'Kelly deals with accountability for financial information and auditor liability, an issue being addressed now at EU level, on account of the instinct to pursue the insured rather than the blameworthy – that is, the directors.

Trainee solicitor Orla Ormsby gives a magisterial overview of pension trustee obligations and liabilities, which is important reading for the embattled trustees of our depleted pension plans.

Dr Stephen Kinsella looks at governance from his perspective as an economist, basing his arguments on the idea of 'financial fragility', that the crash has been caused (as opposed to just triggered) by inherent weaknesses in the economic and governance structure.

The *Fyffes v DCC* insider-dealing case and the current law is the subject of the comprehensive essay by Stephen Dowling and Conor Feeney. In this case, the High Court judged that DCC had traded in shares without information that, on a 'reasonable investor' test, could be considered price sensitive. This 'reasonable investor' test was, however, rejected by the Supreme Court, reversing the High Court decision. However, the 'reasonable investor' test has since been specifically introduced under the current insider-dealing law, with the intriguing scenario that, had the DCC trade occurred with the current law in force, the Fyffes claim might not have succeeded. The authors speculate that the Supreme Court decision may have considerably less impact than the High Court decision it overturned.

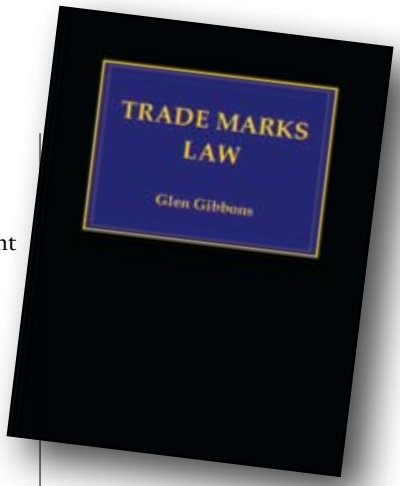
Brian Conroy's essay on the proposed *Companies Consolidation and Reform Act* concludes the work and helpfully highlights some key amendments to the law, as well as the overall structure of the proposed new law.

In summary, this is a refreshing, up-to-date and informative collection that is of immediate relevance to current times, with leading practitioners giving of their best in their core expertise. G

Paul Egan is a partner and chairman of the corporate department at Mason Hayes & Curran.

Trade Marks Law

Glen Gibbons. Oaktree Press (2009), www.oaktreepress.com. ISBN: 978-1-904887-30-0. Price: €164



The book starts with a short history of trademarks, which puts them in a historical context. The author then discusses the *Community Trade Mark Regulation*. Indeed, perhaps in future editions of this book, the publishers might consider attaching the regulation as an appendix.

The book contains a very comprehensive index, which highlights just how many trademark cases have reached our courts over the last number of years. As Mr Justice Frank Clarke points out in the foreword, however, a disproportionate amount of the decided cases in the area are decisions given at the stage of an application for interlocutory injunction. Hence the merits of cases rarely get considered in detail.

Mr Gibbons does not confine himself to decisions of the Irish High Court, though, but also quotes extensively from ECJ case law, CFI and OHIM Board of Appeal decisions. He also quotes, from time to time, from the detailed and well-thought-out decisions of the late Tim Cleary of the Irish Patents Office.

His inclusion of consolidated versions of the *Trade Marks Act 1996* and the *Trade Mark Rules 1996* as appendices is also extremely helpful to the practitioner.

The author's discussion of TRIPs is also to be welcomed, as it is an area often ignored by publications. The book also contains a very comprehensive discussion of passing off. Reference is made to some of the economic torts – for example, malicious falsehood and unlawful interference with economic relations. These are somewhat uncharted waters when it comes to Irish case law, particularly as regards the interaction of those torts with IP and trademarks. Perhaps these potential claims could be teased out more in future editions, with regard to how and in what circumstances they might be used in conjunction with actions for trademark infringement and passing off. There is also a comprehensive chapter dealing with trademark registrations, and it is good to see non-traditional trademarks like smells, shapes, colour and sound being dealt with. The chapter on infringement also deals with internet infringement and comparative advertising, currently hot topics for practitioners.

It is also encouraging to see practical issues like survey evidence being addressed.

Overall, this is an excellent book, and it should prove extremely helpful to practitioners wishing to find easy references to Irish case law on this topic. It provides a very comprehensive picture of just how vibrant this area of law has become. Some suggestions for future editions – the *ex parte* order has become an essential weapon in the fight against counterfeiters. While Mr Gibbons does address it, future editions could perhaps focus in greater detail on the procedure involved in getting such orders and their implementation. Ireland, unlike Britain, does not have detailed rules in this area. Nevertheless, the practice has developed among practitioners, and indeed the judiciary, of essentially informally adopting some of Britain's required safeguards – for example, the use of an independent solicitor when enforcing these orders.

Increasingly, practitioners in the area of trademarks have to focus on taxation issues and valuations of trademarks. It is understandable that a law book might want to draw the line at addressing some of these issues. Nevertheless, some level of commentary on them could prove useful to the practitioner.

Mr Gibbon's book is to be welcomed by both students and practitioners. He writes logically and with clarity, and his book is certainly a must for those interested in or practising in the area of trademarks. G

Patricia McGovern is a solicitor at DFMG Solicitors, Dublin 4.

council report

Law Society Council meeting, 25 September 2009

Motion: section 44 order

'That this Council approves the Solicitors Acts 1954 to 2008 (Section 44) Order 2009.'

Proposed: James O'Sullivan

Seconded: Michelle Ní Longáin

Michelle Ní Longáin explained that the proposed order related to the reciprocal recognition of qualifications for the profession of attorney in the states of New York and California. The order confirmed that an attorney qualified in New York or California could be admitted as an Irish solicitor on the corresponding conditions under which Irish solicitors could be admitted to practice in New York or California. In addition, the order required such applicants to attend at a law firm in New York or California for a period of six months prior to their admission as a solicitor in Ireland. The Department of Justice, Equality and Law Reform had indicated their approval for the content of the order, as required in the *Solicitors Acts*. The Council approved the motion.

Motion: CPD regulations

'That this Council approves the Solicitors (Continuing Professional Development) Regulations 2009.'

Proposed: James O'Sullivan

Seconded: Michelle Ní Longáin

Michelle Ní Longáin explained that the Society had already introduced regulations increasing the annual CPD requirement for all solicitors from ten hours per annum to 15 hours per annum. The proposed regulations ameliorated this position so that there was a stepped approach to the matter, with three separate cycles for the years 2010, 2011 and 2012, with the minimum CPD hours requirement being, respectively, 11 hours, 12 hours and 13 hours. The regulations also provided for some modifications of the hours in respect of newly-admitted solicitors, senior practitioners, solicitors on maternity leave and other solicitors suffering from illness or engaged only in a part-year practice. The Council approved the motion.

Motion: grants out of the Compensation fund

'That this Council approves an amendment of the Council regulations to permit the delegation by the Regulation of Practice Committee to the Registrar of Solicitors of the functions of approving (i) the making of grants out of the compensation fund to clients in cases where the grant does not exceed €5,000, and (ii) the refund to clients of clients' money under the control of the Society, where the amount of the refund does not exceed €5,000.'

Proposed: Michael Quinlan

Seconded: John P Shaw

Michael Quinlan explained that the proposal was essentially a housekeeping matter and would enable the Registrar of Solicitors to deal with grants out of the compensation fund and refunds of clients' money of amounts up to €5,000, without reference to the Regulation of Practice Committee. This would ensure a more effective use of the time of the committee.

Professional indemnity insurance

The Council discussed the situation in relation to professional indemnity insurance (PII), which remained extraordinarily fluid. Niall Farrell, chairman of the PII Task Force, reported on recent meetings and discussions with qualified insurers. The task force was meeting every two to three days to monitor developments and to receive feedback from its London-based insurance advisor. Mr Farrell noted that he had attended recent meetings of the Southern Law Association, the Midland Bar Association and was due to attend a meeting of the DSBA on the following Monday. He noted that members appeared to be aware that the current difficulties had arisen from the exceptional number of claims being made against PII policies.

The Council agreed that the availability of PII was one of the most crucial matters facing the profession for many years. It was agreed to hold one, or more, special Council meetings to address specific matters, if required.

Career Support Service

The president reported that the Career Support Service continued to provide assistance and information to solicitors who were out of work. Currently, there were 340 people on the careers' register, each of whom received a fortnightly update, with ideas and information on potential employment opportunities. The most recent e-zine had invited practitioners to use the Society's CV review and feedback service and in excess of 50 solicitors had contacted the Society to avail of the service within a few hours. The next major event for the Career Support Service was a conference on new and emerging business opportunities for solicitors, which would be held at the Society on Monday 30 November 2009. It was intended that experts in sustainable development, EU law, governance, compliance and social accountability would provide overviews on how these areas were developing internationally. They would also outline how Irish legal firms and lawyers could capitalise on the associated emerging work and business opportunities.

Committee matters

On the recommendation of the Coordination Committee, the Council approved a proposal that the Law Reform Committee be dissolved and that each of the Society's advisory committees would take responsibility for law reform proposals in relation to their specific area of law or practice. The Council also approved a proposal to amalgamate the Practice Management and Client Care Task Forces and to subsume the functions of the Benburb Street Task Force into the Coordination Committee. The Council acknowledged the excellent work done by the Law Reform Committee since its establishment, including the publication of a number of excellent reports, which were very highly regarded.

Financing scheme

Gerard Doherty reported that the Society had reached agreement with a financial institution to offer a financing scheme to members for their preliminary tax, pension contribution, practising certificate and PII financing requirements. An e-bulletin would issue to the members in the coming days.

Collegiality day

James Cahill reported that one of the objectives of the Guidance and Ethics Committee for 2009 had been to initiate and encourage colleagues to participate in a 'collegiality day'. The committee had now identified 12 November 2009 as a suitable date, and would encourage practitioners throughout the country to meet and share ideas and provide support to each other. G

practice notes

NEW CRIMINAL COURTS COMPLEX – COURTROOM ALLOCATIONS

The Courts Service has published a list of the courtroom allocations that will operate in the new Criminal Courts Complex when business commences there on 7 December 2009.

GROUND FLOOR

On this floor there are five courtrooms, numbered 1 to 5. These are non-jury courtrooms.

Court 1: Business that is currently conducted in court 8, Circuit Court, will be transferred to this court.

Courts 2 to 5: These will be District Courts. The business that is currently conducted in DMD District Courts 44, 45 and 46 will be reorganised and redistributed across these four courts. Saturday and night courts will be held in court 2.

SECOND FLOOR

On this floor, there are five courtrooms, numbered 6 to 10.

Court 6: Business that is currently conducted in the High Court, court number 1, will be transferred to this court.

Court 7: Business that is currently conducted in Circuit Court number 24 will be transferred to this court.

Courts 8 to 10: These will be used for High Court, Circuit Court or District Court sittings as the need arises.

FOURTH FLOOR

On this floor, there are six courts, numbered 11 to 16.

Court 11: The Special Criminal Court will sit in this court. This is a non-jury courtroom.

Courts 12 to 15: These will be used for High Court, Circuit Court or District Court sittings as the need arises.

Court 16: The District Court Appeals Court will sit in this courtroom.

SIXTH FLOOR

There are six courts on this floor, numbered 17 to 22.

Courts 18 and 19: District Courts (most of the business that is currently conducted in Richmond Courts 50 and 52).

Courts 17, 20 and 21: These will be used for High Court, Circuit Court or District Court sittings as the need arises.

Court 22: The Court of Criminal Appeal will sit in this courtroom.

Cases involving CCTV viewing or video-conferencing: There is video (CCTV) viewing available in 11 of the 22 courtrooms. When a case is being listed for hearing, it should be brought to the court's attention where such facilities are required in order to ensure that that case is assigned to a court with such facilities.

There is video-conferencing available in six courtrooms, and the same rule applies.

NEW SPECIAL CONDITION OF SALE

The *Land and Conveyancing Law Reform Act 2009*, section 52(1) ('the section') provides as follows: "Subject to subsection (2), the entire beneficial interest passes to the purchaser on the making, after the commencement of this Chapter, of an enforceable contract for the sale or other disposition of land."

The section will come into operation on 1 December 2009. On and after that date, where the sale of land is chargeable to VAT either as a supply of goods or the supply of a service, the section will have the effect of advancing the tax point for VAT purposes to the time the contract for sale is executed. This has been confirmed in discussions with Revenue. Normally, it will suit neither the vendor to collect VAT nor the purchaser to pay VAT at the time a contract for the sale of land is executed.

To ensure that, in a taxable sale of land executed on and after 1 December 2009, the current VAT treatment of the sale will continue to apply, the Law Society's *Conditions of Sale* will require to be amended.

The following special condition is appropriate to ensure that, in a transaction for the sale of land entered into on or after 1 December 2009, VAT will not be chargeable at the time of entry into the contract, but rather will be chargeable at the time the purchase price is paid, ownership or possession is handed over, or a VAT invoice is issued for the sale, whichever first occurs.

"If VAT is chargeable on the sale of the Subject Property as the supply of a good or a service, Section 52(1) of the Land and Conveyancing Law Reform Act 2009 shall not apply to the Sale."

If a solicitor is acting for a party who has an option to buy land or is given an option to buy land, where that option is exercisable on or after 1 December 2009, and on exercise of that option, the sale is likely to be subject to VAT, he or she should consider the impact of the section.

This note does not deal with any implications of the section for an agreement for the sale of land other than VAT.

Taxation Committee

DEFERRAL OF NON-PERSONAL FILING OF COURT DOCUMENTS IN SUPREME AND HIGH COURT OFFICES

Members are advised that the Courts Service has informed the Society that the commencement of non-personal delivery of court documents in the offices of the Supreme and High Court has been deferred from 5 October 2009. The Courts Service will advise in due course as to when non-personal delivery will commence. In the meantime, practitioners should continue to present court documents in the offices of the Supreme and High Court as presently permitted by the *Rules of the Superior Courts*.

Litigation Committee

VAT ON PROPERTY – NEW PRE-CONTRACT ENQUIRIES

Earlier this year, the Society's Taxation and Conveyancing Committees produced a working draft of new pre-contract enquiries in relation to VAT on property. The draft document is available on both the Conveyancing and Taxation Committees' webpages in the members' area of the Society's website, www.lawsociety.ie.

Subsequently, the committees launched an email address (vat@lawsociety.ie), through which members were invited to submit feedback on the suitability of the new pre-contract enquiries when applied in practice. It has been decided to extend the period for submission of comments via the email address from 30 September 2009 to 31 December 2009. Members are urged to submit any observations or suggestions they may have, so that these can be considered when the committees review the current pre-contract enquiries early in the new year.

Members are reminded that the new pre-contract enquiries are relevant only in relation to the transfer of an existing interest in land and are not to be used in the case of a grant of a new lease. G

Taxation and Conveyancing Committees

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of J Finbarr O'Gorman, a solicitor practising as Finbarr O'Gorman, Solicitors, at Mayfield, Hollyfort Road, Gorey, Co Wexford, and in the matter of the *Solicitors Acts 1954-2008* [7672/DT43/09]
Law Society of Ireland (applicant)
J Finbarr O'Gorman (respondent solicitor)

On 21 July 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to comply entirely with his undertaking dated 6 August 2004 to a named company and his undertaking to a named solicitor's firm on behalf of their clients given on 12 October 2004,
b) Failed to respond to the Society's correspondence of 11 August 2008, 15 September 2008 and 26 September 2008.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €750 to the compensation fund,
c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement. G

legislation update

12 September – 12 October 2009

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' areas) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. All recent bills and acts (full text in PDF) are on www.oireachtas.ie, and recent statutory instruments are on a link to electronic statutory instruments from www.irishstatutebook.ie.

SELECTED STATUTORY INSTRUMENTS

Circuit Court Rules (Service in Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters) 2009

Number: SI 375/2009

Contents note: Inserts new order 14B in the *Circuit Court Rules 2001* (SI 510/2001) to prescribe Circuit Court procedures in respect of Reg 1393/2007 repealing Reg 1348/2000 (*Service Regulation*) on the method of service in member states of judicial and extrajudicial documents in civil or commercial matters.

Commencement date: 14/10/2009

District Court (Service in Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters) Rules 2009

Number: SI 367/2009

Contents note: Amends orders 11 and 62 of the *District Court Rules 1997* (SI 93/1997) pursuant to Council Reg 1393/2007 repealing Council Reg 1348/2000 (*Service Regulation*) on the method of service in member states of judicial and extrajudicial documents in civil or commercial matters.

Commencement date: 8/10/2009

European Communities (Payment Services) Regulations 2009

Number: SI 383/2009

Contents note: Transposes Dir 2007/64 establishing a harmonised legal framework for the provision of payment services in the European Union/European Economic Area.

Commencement date: The day after the making of these regulations as notified in *Iris Oifigiúil* for part 1 and part 2 (except for chapter 1) of the act; 1/11/2009 for all other sections

Finance (No 2) Act 2008 (Commencement of Section 35) Order 2009

Number: SI 392/2009

Contents note: Appoints 24/9/2009 as the commencement date for s35 of the act in respect of expenditure incurred after that day and in any accounting period commencing on or after 1/1/2009. Section 35 of this act amends s766A of the *Taxes Consolidation Act 1997*, as amended, which relates to tax credit expenditure on buildings or structures used for research and development.

Freedom of Information Act 1997 (Section 17(6)) Regulations 2009

Number: SI 385/2009

Contents note: Prescribe certain classes of individuals who may apply under section 17 of the act for amendment of records containing certain incorrect, incomplete or misleading information, having regard to relevant circumstances and to guidelines published by the Minister for Finance.

Commencement date: 23/9/2009

Freedom of Information Act 1997 (Section 18(5A)) Regulations 2009

Number: SI 386/2009

Contents note: Prescribe certain classes of individuals who may apply under section 18 of the act for information regarding acts of public bodies, having regard to relevant circumstances and to guidelines published by the Minister for Finance.

Commencement date: 23/9/2009

Health (Miscellaneous Provisions) Act 2009 (Commencement) (No 2) Order 2009

Number: SI 401/2009

Contents note: Appoints 1/10/2009 as the commencement date for part 3 of the act, which provides for the dissolution of the Women's Health Council and for the transfer of the council's employees, liabilities, property, and so on, to the Minister for Health.

Land and Conveyancing Law Reform Act 2009 (Commencement Order) 2009

Number: SI 356/2009

Contents note: Appoints 1/12/2009 as the commencement date for all sections of the act, other than section 132 relating to review of rent for lease of land to be used wholly or partly for the purpose of carrying on a business.

Nursing Homes Support Scheme Act 2009 (Commencement) (Care Representatives and Regulations) Order 2009

Number: SI 381/2009

Contents note: Appoints 5/10/2009 for sections 3, 21, 22 and 36 of the act, to enable the appointment of care representatives where an applicant to the scheme lacks the mental capacity to apply for ancillary state support and to consent to the creation of a charge on the relevant property.

Freedom of Information Act 1997 (Section 28(6)) Regulations 2009

Number: SI 387/2009

Contents note: Prescribe certain classes of individuals whose records will be made available to parents and guardians, and the classes of requester to whom the records of deceased persons will be made available, having regard to relevant circumstances and to guidelines published by the Minister for Finance.

Commencement date: 23/9/2009

Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2009

Number: SI 384/2009

Contents note: Provide for revised professional indemnity insurance regulations for solicitors that effect a number of changes, including a reduction in the mandatory cover to €1.5 million from 1/12/2009 and a reduction in coverage for liability in connection with undertakings in commercial property transactions, including 'buy to let' residential property transactions. For further details, see p22 of this issue.

Commencement date: 1/12/2009 G

Prepared by the Law Society Library

firstlaw update

News from Ireland's online legal awareness service
Compiled by Bart Daly for FirstLaw

CRIMINAL

Extradition

European arrest warrant – *correspondence – whether offence described on warrant corresponding to offence in state – statutory interpretation – words and phrases – 'fled' – whether respondent person who fled from issuing state – whether breach of constitutional right to fair trial – whether order for surrender of respondent should be made* – European Arrest Warrant Act 2003 *(no 45), sections 5 and 10.*

Section 10 of the *European Arrest Warrant Act 2003* provides, among other things, that "where a judicial authority in an issuing state duly issues a European arrest warrant in respect of a person … on whom a sentence of imprisonment or detention has been imposed and who fled from the issuing state before he or she commenced serving that sentence … that person shall, subject to and in accordance with the provisions of this act and the *Framework Decision*, be arrested and surrendered to the issuing state."

The respondent had been convicted of an offence – described as "being the holder of a savings account in the [bank], he swindled money … in such a way that, having no cover on the account, he cashed 13 cheques … acting to the detriment of the … bank" – in Poland and was given a suspended sentence there. The suspension of the sentence was lifted in 2004 for breach of conditions. A European arrest warrant was issued in 2007 for his return to serve the sentence. He resisted the application for his surrender, on the basis that, among other things:

a) He was not a person to whom section 10 of the 2003 act applied, on the basis that he had not fled from the issuing state, since he had left that jurisdiction in order to obtain employment before he had been made aware that the conditions of the suspension had been breached,
b) He had never been informed of the hearing of the application that resulted in the lifting of the suspension of sentence, and his constitutional right to a fair hearing had been breached thereby, and
c) Correspondence had not been made out.

The applicant sought to argue, among other things, that the facts set out in the warrant corresponded to the offence of making a gain or causing a loss by deception, contrary to section 6 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*.

Peart J refused the application for an order of surrender of the respondent, holding that:

1) There was a presumption that the respondent had been aware of the conditions of the suspended sentence and that he was in breach of them,
2) When the sentence was suspended on certain conditions, the respondent's constitutional and convention rights to a fair trial had been afforded to him at that time, and the hearing of the application for the lifting of the suspension of the sentence was merely procedural,
3) To correspond with an offence under section 6 of the 2001 act, the offence described on the warrant had to contain a number of ingredients, namely, acting dishonestly, an intention of making a gain for himself or another, and deception that induced another person to do or not to do something. As the offence under Polish law was significantly different to the offence created by section 6 of the 2001 act, correspondence had not been made out.

***Minister for Justice, Equality and Law Reform (applicant) v Laks (respondent)*, High Court, 14/1/2009** [FL16239]

Sentence

Whether a sentence of five years' imprisonment for possession of drugs for sale or supply was excessive having regard to the circumstances of the accused.

The applicant appealed against the severity of a sentence of five years imposed on him following a guilty plea to a charge of possession of drugs for sale or supply. The value of the drugs involved was €12,250. The applicant, who was 21 years old and suffered with alcohol and drug addictions, had a previous conviction for assault causing harm, in relation to which he was sentenced to community service. The applicant evaded the gardaí when they initially sought to arrest him in relation to this offence and subsequently fled the jurisdiction while on bail. The applicant did make admissions regarding the commission of the offence. However, he was trading in drugs for his own account and not to feed his addiction.

The Court of Criminal Appeal (Finnegan, McKechnie, MacMenamin JJ) allowed the appeal, holding that the starting point for consideration of the appropriate sentence was to look at the maximum sentence and, in this case, to consider that the value of the drugs came very close to amounting to a more serious offence, which carried a minimum sentence of ten years' imprisonment. The sentence imposed by the trial judge was inappropriate, having regard to the fact that it did not hold out any sufficient light at the end of the tunnel for the applicant, who was of a young age and was young in crime. There ought to be some hope held out to him and, consequently, the last year of his sentence would be suspended for a period of five years.

***People (DPP) (respondent) v Simon Pierce (applicant)*, Court of Criminal Appeal, 4/2/2008** [FL16269]

IMMIGRATION AND ASYLUM

Judicial review

Deportation order following rejection of asylum and subsidiary protection applications – treatment of country of origin information – human rights – rationality – whether substantial grounds for contending that decision unfair or in breach of human rights – UN Convention on the Rights of the Child – European Communities (Eligibility for Protection) Regulations 2006 – European Convention on Human Rights Act 2003, *section 3* – certiorari *sought in respect of decision of Refugee Appeals Tribunal* – Illegal (Immigrants) Trafficking Act 2000, *section 5*.

The applicants sought leave

to quash, by way of judicial review, the decisions of the first respondent to refuse their appeals against the recommendation of the Refugee Applications Commissioner that they be refused asylum and the decisions of the second respondent to refuse their applications for subsidiary protection and to deport them. The application was made 13 months outside the time limit set for instituting judicial review in respect of the decisions of the first respondent. They contended, among other things, that the second respondent had applied the incorrect approach when assessing country-of-origin information and had breached the provisions of section 3 of the *European Convention on Human Rights Act 2003* and the *UN Convention on the Rights of the Child* in refusing the applications for subsidiary protection and deporting them.

Mr Justice Hedigan refused the applicants leave to seek judicial review, holding that:

1) Where there was inordinate delay in instituting judicial review applications seeking *certiorari* of a decision of the Refugee Appeals Tribunal, the reasons proffered in explanation of the delay had to be exceptional for the court to be satisfied that there was good and sufficient reason for extending the 14-day time limit set out in section 5 of the *Illegal (Immigrants) Trafficking Act 2000*.
2) It was established, as a matter of international refugee law and as a facet of national sovereignty, that there was a general presumption that states were capable of protecting their citizens. It was therefore incumbent on an applicant for refugee status to provide clear and convincing evidence to rebut that presumption. In the absence of evidence that protection may not be reasonably forthcoming, there could not be said to be a failure of state protection where a government had not been given an opportunity to respond to a form of harm. It was thus open to the second respondent to draw from the country-of-origin information before him that state protection may reasonably have been forthcoming had it been sought by the applicants.
3) It was not incumbent upon analysing officers in each and every case to assess the proportionality of a deportation or to engage in a balancing exercise as to the competing rights involved.
4) It was sufficient for the second respondent to have acknowledged that the proposed deportation could engage the applicants' rights under article 8 of the *European Convention on Human Rights* and constitute an interference therewith.

It was doubted whether the requirement to expressly take into account the best interests of a child when assessing the proportionality of a proposed deportation under article 8 of the *European Convention on Human Rights* applied at times in all circumstances.

***I(S) (applicant) v Refugee Appeals Tribunal (respondent)*, High Court, 16/1/2009** [FL16273]

MENTAL HEALTH

Powers of detention

Patient initially unlawfully detained and committed – duty of clinicians thereafter – whether subsequent orders for detention tainted by illegality of initial committal – duty of clinician to release patient once unlawful committal established – duty of care to person suffering from incapacity – balancing of duty of care with duty to release – whether order for release of applicant should be made – Bunreacht na hÉireann, *article 40.4* – Mental Health Act 2001, *sections 13, 24, 15 and 18.*

The applicant had been initially unlawfully detained and delivered to the hospital by the gardaí when the respondent made an admission order pursuant to section 14 of the *Mental Health Act 2001* on the basis that she was suffering from a mental disorder. Subsequently, a renewal order was made by the respondent pursuant to section 15 of the 2001 act. She sought a declaration that she was unlawfully detained contrary to article 40.4 of *Bunreacht na hÉireann*, on the basis that the initial unlawful detention by the gardaí had tainted the subsequent detention by the respondent.

McMahon J refused the applicant the relief sought, holding that the general rule was that, when a person was in custody or detained by another person and it transpired that the original custody was unlawful, the person detained must be released forthwith. But where the person detained was under an incapacity or was vulnerable in some other way, the duty to immediately release the person had to be modified in the circumstances.

To release a person suffering from an incapacity or a vulnerable person from unlawful detention without first considering the personal circumstances, including the time and the location of the release, was a breach of duty to such a person that could attract liability under the neighbour principle at common law if foreseeable damage ensued. That duty had to be balanced with the duty to release the wrongfully detained person immediately and could result in a detention for a further short period to ensure a safe and reasonable release.

Without any knowledge by the respondent of any irregularity in the history of how the applicant came to be presented to the hospital, the initial illegal detention by the gardaí did not affect the subsequent process put in motion by the respondent, which resulted in the applicant being committed as the continuance and survival of the admission order was to be assessed, not by the possibility of some historical frailty causally unconnected with the respondent's determination, but on its own terms and in its own context, that being the *Mental Health Act 2001*. On the facts, therefore, the detention of the applicant was lawful.

***C(C) (plaintiff) v Clinical Director of St Patrick's Hospital (defendant)*, High Court, 20/1/2009** [FL16264]

TAXATION

Income tax

Reliefs – restrictions – statutory interpretation – principles governing interpretation of taxation statutes – words and phrases – 'limited partner' – taxpayer's status – whether expression 'general partner' in statute expressly and in clear and unambiguous terms encompasses person who is partner under partnership established in foreign jurisdiction whose liability is limited and who has no implied authority to bind firm but who is entitled to participate in management of partnership business – whether taxpayer limited partner – Limited Partnership Act 1907, *sections 3, 4, 5, 6* – Investment Limited Partnerships Act 1994, *section 43* – Taxes Consolidation Act 1997, *section 1013.*

Section 1013(2) of the *Taxes Consolidation Act 1997* provides that: "(a) Where, in the case of an individual who is a limited partner in relation to a trade, an amount may apart from this section be given or allowed under any of the specified provisions – (i) in respect of a loss sustained by the individual in the trade … in a relevant year of assessment, or (ii) as an

allowance to be made to the individual for the relevant year of assessment either in taxing the trade or by means of discharge or repayment of tax to which he or she is entitled by reason of his or her participation in the trade, such an amount may be given or allowed … where the individual is a limited partner in relation to a trade by virtue of paragraph (d) of the definition of 'limited partner' … only against income consisting of profits or gains arising from the trade, and only to the extent that the amount given or allowed or, as the case may be, the aggregate amount in relation to that trade does not exceed the amount of his or her contribution to the trade at the relevant time."

Section 43 of the *Investment Limited Partnerships Act 1994* provides that "in any proceedings involving a limited partnership established under, or by its terms governed by, the law of another state, the liability of the partners, its organisation and internal affairs shall be determined according to the law of that state."

The appeal commissioner determined that the taxpayer was a general, and not a limited, partner. The inspector of taxes appealed that determination by way of case stated to the High Court asserting that, to qualify as a limited partnership, the partnership must not display any of the indicia of a general partnership. The taxpayer argued that his tax status as a limited partner was governed by the law of the foreign jurisdiction where it was based, and not Irish law, by virtue of section 43 of the act of 1994, and that he did not come within the ambit of section 1013 of the 1997 act.

Laffoy J answered the question posed to the effect that the taxpayer did not fall within paragraph (d) of the definition of limited partner in section 1013(1) of the 1997 act, as amended, holding that the determination of whether the taxpayer was a limited partner by reference to paragraph (d) of the definition in section 1013(1) of the 1997 act, so as to be subject to the restrictions on the availability of relief imposed by section 1013, was a two-stage process.

The first stage was to determine the characteristics, rights and obligations of the taxpayer *qua* partner under the partnership by reference to the law of the foreign jurisdiction. That approach was mandated by common law and by section 43 of the 1994 act.

The second stage was to determine whether, applying Irish law, the characteristics, rights and obligations of the taxpayer *qua* partner matched the characteristics, rights and obligations of a general partner within the meaning of paragraph (d), in the context of section 1013 as a whole, to the extent that one could conclude that the expression 'general partner' in paragraph (d) clearly and unambiguously captured the taxpayer.

The definition of 'limited partner' in section 1013(1) of the 1997 act did not incorporate the definitions of general partner and limited partner contained in the 1907 act or the corresponding definitions contained in the 1994 act by reference, because those definitions were statute specific.

***Quigley (Inspector of Taxes) (appellant) v Harris (respondent)*, High Court, 28/11/2008** [FL16304] G

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

Information exchange at a 'one-off' meeting may be anticompetitive

Earlier this year, the European Court of Justice (ECJ) issued its judgment in Case C-8/08, *T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV, Vodafone Libertel NV v Raad van Bestur van de Nederlandse Mededingingsautoriteit (NMa)*, 4 June 2009. This case provides that information exchanged at a single meeting between competitors may constitute a 'concerted practice' within the meaning of EC competition rules.

Legal background

Article 81 of the *EC Treaty* generally prohibits agreements between companies, decisions by associations of undertakings, and concerted practices that restrict competition in the EU. The ECJ has consistently defined a 'concerted practice' as a form of coordination between undertakings that, without reaching the stage where formal agreement has actually been reached, knowingly substitutes practical cooperation between them for the risks of competition. The importance of this concept is not so much its distinction from an agreement, but rather from parallel behaviour of companies that does not give rise to competition concern.

In assessing whether a concerted practice infringes competition rules, close regard must be paid to its intended objectives and also to its economic and legal context. Concerted action involves some cooperation between undertakings that changes their commercial behaviour. Concerted practices may be anticompetitive by reason of their object or their effects. Therefore, it is not necessary to consider the effects of a concerted practice where its anticompetitive object is established. *T-Mobile* focuses on whether the exchange of confidential information between mobile telephone service providers based in the Netherlands gives rise to an object breach of article 81.

The meeting

Representatives of T-Mobile, KPN, Orange, Vodafone and Telfort met on 13 June 2001. Each of these Dutch-based operators has its own individual mobile telephone network. (Given that a licence for a sixth such network had not been issued, access to the retail market for mobile telephony services was only possible through the conclusion of an agreement with one of these five operators.) At this meeting, the companies discussed the reduction of remuneration for dealers/retailers selling post-paid mobile telephone subscriptions. (Post-paid subscriptions are where the number of minutes used is charged to a customer on a regular basis. Usually, there is a fixed subscription price that includes a number of 'free' minutes. A network operator typically pays a dealer a fee for each concluded subscription.)

Between 15 August and 3 September 2001, each of the five operators reduced their standard dealer remunerations.

Procedure

In December 2002, the NMa (Dutch competition authority) found that these mobile telephone service providers had entered into an anticompetitive agreement or concerted practice and fined the group a total of €88 million for infringing Dutch competition law. The five operators challenged this finding. In September 2004, the NMa partly upheld and partly rejected this appeal. It found that no anticompetitive agreement had been reached, but upheld its initial finding that the discussions regarding dealer remuneration constituted a concerted practice within the meaning of Dutch competition rules. The NMa also held that this information exchange infringed article 81. The fines imposed were thus reduced.

The five companies then appealed the second decision of the authority to the Rotterdam District Court, which, in July 2006, annulled this decision, ordering the NMa to adopt a new decision. The NMa, T-Mobile, KPN and Orange then appealed this judgment to the Dutch Administrative Court for Trade and Industry, which, in December 2007, referred three issues to the ECJ for preliminary ruling under article 234 of the *EC Treaty*. The first question related to the criteria that must be applied when determining whether a concerted practice is an object breach of article 81. The second issue examined whether a national court, in considering whether there is a concerted practice, must follow the presumption of a causal link between the cooperation and the market conduct of the participating companies. The final question dealt with whether this causal connection exists even if the concerted action results from a single meeting. (Recognising the importance of this case to the enforcement of EC competition rules, the European Commission submitted its observations to the ECJ.)

Object breach

In order to determine whether a concerted practice constitutes an object breach of article 81, it is sufficient that this cooperation has the capability of having a negative impact on competition. The ECJ stated that the concept of a concerted practice seeks to prevent competitors from aligning their future market behaviour. This does not mean that companies may not unilaterally react to the current or future business strategies of their competitors. However, any direct or indirect contact between rival undertakings regarding their respective commercial plans is unlawful. Accordingly, an exchange of information between competitors is likely to infringe competition rules if it reduces or removes uncertainty regarding the operation of the relevant industry. This is particularly true of a market such as that for the provision of mobile telephony services in the Netherlands, where there is only a handful of competitors. In addition, it is irrelevant whether one com-

pany breaks cover and informs its competitors of its intended conduct on a unilateral basis or whether all participating rivals inform each other regarding their respective plans. In both situations, uncertainty regarding the future operation of the market is reduced, with a likely adverse impact on competition.

Under article 81, a concerted practice may have an anticompetitive object where it fixes purchase or selling prices but also any other trading conditions. Moreover, the commission that a mobile telephony services provider pays its dealers is obviously an important factor in deciding consumer prices. The ECJ thus rejected the mobile telephone operators' argument that the exchange of information regarding dealer commissions was not unlawful since it did not have a direct effect on retail prices. Not all parallel conduct results from a concerted practice with an anticompetitive object. Clearly, general market conditions may well result in competitors making similar changes to their respective business plans. However, the exact timing, extent and details of these modifications are likely to vary from company to company. An information exchange with the potential of removing uncertainties regarding the planned market behaviour of the relevant companies has the object of avoiding certain competitive risks. The court thus dismissed Vodafone's argument that the reduction in dealer commissions did not result from the information exchanged at the 13 June meeting, but rather from the individual reaction of the five mobile telephone service providers to ongoing market developments.

Presumption of a causal link

The ECJ has consistently held that companies sharing information with their competitors are presumed to take this exchange into account, provided they remain active on the relevant market. It is up to the relevant undertakings to prove otherwise. This presumption is based on common sense. If mobile telephone service providers discuss cutbacks in the commission paid to dealers in respect of a particular parameter of competition, such as the sale of post-paid subscriptions, and subsequently these companies reduce this remuneration, it is logical to assume there is a link between the concerted practice and the market conduct. The ECJ stated that it is for national law to determine the standard of proof required, subject to the principles of equivalence and effectiveness and the general principles of EC law, including fundamental rights such as the presumption of innocence.

Is a single meeting sufficient?

The ECJ then focused on whether the concerted practice must continue over a lengthy period or may result from an isolated event. T-Mobile, KPN and Vodafone argued that the causal link between the concerted practice and the market conduct only exists where companies exchange information at regular intervals. On the other hand, the European Commission argued that a single meeting is sufficient for concerted action regarding one parameter of competition, such as dealer remuneration, to be established.

The court held that the number, form and frequency of any meetings depend on the subject matter of the concerted practice and the prevailing market conditions. Clearly, the organisation of a secret cartel may require many meetings or discussions over a long period. However, in other less complex situations, a single meeting may be all that is required to substitute practical cooperation for the normal risks of competition. Accordingly, the ECJ found that, where the participating companies remain active on the relevant market, there is a presumption of a causal link between the exchange of information and future conduct, even if this concerted practice is the result of a single meeting.

Next steps

The ECJ's judgment is a response to the reference for a preliminary ruling from the Dutch Administrative Court for Trade and Industry. It is now up to this court to apply this judgment to the facts of the case and issue a decision regarding the appeals brought by the three mobile telephony service providers and the NMa.

In *T-Mobile*, the ECJ stated that the criteria for considering whether certain behaviour is anticompetitive are applicable notwithstanding whether the case entails an agreement, a decision of an association of undertakings, or a concerted practice. Accordingly, this judgment may apply to all types of arrangements between undertakings. In general, the issue of whether the exchange of information between competitors infringes article 81 and, by analogy, section 4 of the *Competition Act 2002*, depends on whether that information would be regarded as a 'business secret'. The exchange of general or historic information is unlikely to raise competition concerns. However, the exchange between competitors of information normally kept confidential may infringe competition rules.

According to the court in *T-Mobile*, it is irrelevant whether this exchange has an anticompetitive impact; it is sufficient that it has the potential to have such an impact. The actual negative effects on competition are only relevant in terms of the setting of any fine and/or the assessment of third-party damages claims. The ECJ's judgment emphasises the fact that companies must be wary of any discussions with their competitors, since a single instance of information exchange between rivals regarding any parameter of competition may constitute a breach of article 81, irrespective of its actual competitive effect. G

Cormac Little is a partner with the Competition and Regulation Department of William Fry, Solicitors.

Recent developments in European law

EMPLOYMENT

Case C-388/07, *Incorporated Trustees of the National Council on Ageing (Age Concern England v Secretary of State for Business, Enterprise and Regulatory Reform*, 5 March 2009. Directive 2000/78 prohibits discrimination on grounds of age in employment. It does allow certain differences of treatment based on age if they are objectively and reasonably justified by legitimate aims, such as those related to employment policy, the labour market or vocational training. The means of achieving that aim must be appropriate and necessary. The British regulations transposing the directive provide that employees who have reached their employer's normal retirement age or, if the employer does not have a normal retirement age, reach 65 may be dismissed for reason of retirement without this treatment being regarded as discriminatory. The regulations set out a number of criteria designed to ascertain whether the reason for the dismissal is retirement and requires a set procedure to be followed. For employees under 65, the regulations do not contain any particular provisions and merely lay down the principle that any discrimination on grounds of age is unlawful, unless the employer can show that it is "a proportionate means of achieving a legitimate aim". Age Concern England challenged the legislation on the ground that it does not properly transpose the directive. It argued that the possibility of dismissing an employee aged 65 or over by reason of retirement is contrary to the directive. The English High Court asked the ECJ whether the directive requires member states to specify the kinds of differences of treatment that may be justified. It also asked whether it precludes legislation that merely provides, in a general manner, that a difference of treatment on grounds of age is not discrimination if it is a proportionate means of achieving a legitimate aim. The court said that transposition of a directive does not always require that its provisions be incorporated in express specific legislation. In this case, the directive does not require member states to draw up a specific list of the differences in treatment that may be justified by a legitimate aim. In the absence of such precision, it is important that other elements taken from the general context of the measure concerned enable the underlying aim of that measure to be identified for the purposes of review by the courts of its legitimacy and whether the means put in place to achieve that aim are appropriate and necessary. The aims that may be considered 'legitimate' by the directive are social policy objectives, such as those related to employment policy, the labour market or vocational training. By their public interest nature, those legitimate aims are distinguishable from purely individual reasons particular to the employer's situation, such as cost reduction or improving competitiveness. It is for the national court to ascertain whether the British legislation reflects such a legitimate aim and whether the means chosen were appropriate and necessary to achieve it.

FREE MOVEMENT OF PERSONS

Case C-311/06, *Consiglio degli Ingegneri v Ministero della Giustizia, Marco Cavallera*, 29 January 2009. Both Spain and Italy require engineers to possess a university diploma and to register with the relevant professional body. Italy also requires engineers to pass a state examination in order to be entitled to practise as an engineer. Mr Cavallera, an Italian national, is a mechanical engineering graduate of the University of Turin. In 2001, he applied for and obtained approval in Spain of his Italian qualification, allowing him to accede to the engineers' profession. He enrolled in a register of engineers in Catalonia. He had not worked professionally outside Italy and had not followed any course of study or taken any examinations under the Spanish education system. He had not taken the Italian state engineering exam. In 2002, the Italian Ministry of Justice recognised the validity of his Spanish certificate for the purposes of his enrolment in the register of engineers in Italy. The Italian National Council of Engineers challenged that decision. It argued that recognising his Spanish certificate would have the effect of dispensing him from the state examination required under Italian law. The Italian Council of State asked the ECJ whether Mr Cavallera may rely on Directive 89/48 for the purpose of gaining access to the profession of engineer in Italy. The court held that a 'diploma', as defined in the directive, does not include a certificate issued by a member state that does not attest any education or training covered by the education system of that state and is not based either on the examination taken of professional experience acquired in that member state. To hold otherwise would be contrary to the principle, enshrined in the directive, that member states reserve the option of fixing the minimum level of qualification necessary to guarantee the quality of services provided within their territory.

LITIGATION

Case C-185/07, *Allianz SpA (formerly Riunuione Adriatica di Sicurtà SpA) and Generali Assicurazioni Generali SpA v West Tankers Inc*, 10 February 2009. The 1958 *New York Convention on Arbitration* provides that a court, when seised of an action in respect of which the parties have made provision for arbitration, will, at the request of one of the parties, refer the parties to arbitration, unless it finds that the arbitration clause is null and void, inoperative, or incapable of being performed. Regulation 44/2001 (the *Brussels I Regulation*) excludes arbitration from its scope. Article 5(3) provides that proceedings relating to tort may be brought before the courts of the place where the harmful event occurred or may occur. In August 2000, the *Front Conner*, a ship owned by West Tankers and chartered by Erg Petroli SpA, collided in Syracuse with a jetty owned by Erg and caused damage. The charter party was governed by English law and contained a provision providing for arbitration in London. Erg claimed compensation from its insurers, Allianz and Generali, up to the limit of its insurance cover. It commenced arbitration proceedings in London against West Tankers for the excess. West Tankers denied liability for the damage caused by the collision. Allianz and Generali compensated Erg for the loss it had suffered. They then brought proceedings against West Tankers before an Italian court to recover the sums they had paid to Erg. West Tankers protested jurisdiction on the basis of the arbitration agreement. It also brought proceedings in England, seeking to have the dispute settled by arbitration, as required by the charter party. West Tankers sought to have the two insurers restrained from pursuing any proceedings other than arbitration and from continuing the proceedings commenced before the Italian court. The House of Lords asked the ECJ whether the regulation prohibits the courts of a member state from making an

order to restrain a person from commencing or continuing legal proceedings in another member state on the ground that such proceedings are in breach of an arbitration agreement, even though arbitration is excluded from the scope of that regulation. The ECJ held that the English proceedings, the purpose of which is to prohibit a person from continuing proceedings before a court in another member state, do not come within the scope of the regulation. Such proceedings may have consequences that undermine the effectiveness of the regulation, in particular, where they prevent a court of another member state from exercising the jurisdiction conferred on it by the regulation. Civil proceedings brought before the Italian court concerning a claim for damages do come within the scope of the regulation. Likewise, the preliminary issue of whether the arbitration agreement is valid and applicable comes within the regulation's scope. The regulation does not authorise the jurisdiction of a court of a member state to be reviewed by a court in another member state. It is exclusively for the Italian court before which Allianz and Generali brought proceedings to rule on its own jurisdiction. Thus, the order sought by West Tankers in England for legal proceedings in Italy to be discontinued would obstruct a court of another member state in the exercise of the powers conferred on it by the regulation. Such an injunction could undermine the trust that the member states accord to one another's legal systems and judicial institutions and on which the system of jurisdiction under the regulation is based. If the Italian court was prevented from examining the validity or the applicability of the arbitration agreement, the insurers would be deprived of a form of judicial protection to which they are entitled. Applicants who consider that the arbitration clause is void, inoperative or incapable to being performed would thus be barred from access to the court before which they brought proceedings under the regulation. For all these reasons, the court found it incompatible with the regulation for a court of a member state to make an order to restrain a person from commencing or continuing proceedings before the courts of another member state on the ground that such proceedings would be contrary to an arbitration agreement. This finding is also supported by the *New York Convention*. It provides that it is the court, when seised of an action in a matter in respect of which the parties have made provision for arbitration, that will, at the request of one of the parties, refer them to arbitration, unless it finds that the arbitration clause is null and void, inoperative, or incapable to being performed.

REFUGEE LAW

Case C-465/07, *Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie*, 17 February 2009. Directive 2004/83/EC sets out common criteria for all member states for the identification of persons genuinely in need of international protection, and it also seeks to ensure that a minimum level of benefits is available for these persons in all member states. On 13 December 2006, Mr and Mrs Elgafaji sought temporary residence permits in the Netherlands. They submitted evidence seeking to prove the risk to which they would be exposed if they were expelled to their state of origin – Iraq. By order of 20 December, the Dutch minister refused to grant temporary residence permits to Mr and Mrs Elgafaji. He found that they had not established a real risk of serious and individual threat to which they claimed to be exposed in Iraq. They appealed this decision to the courts. The referring court wished to know whether the directive must be interpreted as meaning that the existence of a serious and individual threat to the life or person of the applicant for subsidiary protection is subject to the condition that the applicant adduces evidence that he is specifically targeted by reason of factors particular to his circumstances. The ECJ held that the existence of a serious and individual threat to the life or person of an applicant is not subject to the condition that the applicant adduces evidence that he is specifically targeted by reason of factors particular to his personal circumstances. The existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant state or to the relevant region, would, solely on account of his presence on the territory of that state or region, face a real risk of being subject to serious and individual threat. G

LOST LAND CERTIFICATES

Registration of Deeds and Title Acts 1964 and 2006

An application has been received from the registered owners mentioned in the schedule hereto for an order dispensing with the land certificate issued in respect of the lands specified in the schedule, which original land certificate is stated to have been lost or inadvertently destroyed. The land certificate will be dispensed with unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

Property Registration Authority, Chancery Street, Dublin 7 (published 6 November 2009)

Regd owner: Michael Caffrey and Mary Caffrey, Polleragh, Mountnugent, Co Cavan; folio: 619; lands: Polleragh; **Co Cavan**

Regd owner: William Keary; folio: 69339F; lands: plot of ground situate in the townland of Quarterstown Upper and barony of Fermoy in the county of Cork; **Co Cork**

Regd owner: Cornelius Kiely (deceased); folio: 20524; lands: property situate in the townland of Spring Grove and barony of Duhallow and in the county of Cork; **Co Cork**

Regd owner: John Finbarr Lehane; folio: 22983F; lands: property situate in the townland of Glen South and barony of Duhallow and in the county of Cork; **Co Cork**

Regd owner: Brian Rutledge; folio: 28850L; lands: the property situate to the west side of Leeson Street in the parish of St Peter and district of Rathmines; **Co Dublin**

Regd owner: Martin McDonald; folio: 17308; lands: Killeen and barony of Ballyadams; **Co Laois**

Regd owner: Michael Reidy; folio: 14480; lands: townland of Ballynisky and Coolcappagh and barony of Connello Lower; **Co Limerick**

Regd owner: Martin Hughes, 14 The Drive, Riverbank, Drogheda, Co Louth; folio: 24042F; lands: River Boyne; **Co Louth**

Regd owner: Aidan Gough; Slane, Co Meath; folio: 5747F; lands: Rossnaree; **Co Meath**

Regd owner: Patrick Leonard and Irene Leonard, Glasdrummond, Newbliss, Co Monaghan; folio: 6152F; lands: Glasdrummond; **Co Monaghan**

Regd owner: Patrick J Broderick; folio: 36383; lands: townland of Clongower and barony of Eliogarty; **Co Tipperary**

Regd owner: Edward Waters; folio: 29362; lands: townland of Grange and barony of Ormond Lower; **Co Tipperary**

Regd owner: Patrick Whelan; folio: 22913; lands: Coolroe and barony of Shelburne; **Co Wexford**

IMPORTANT NOTICE:
Abolition of land certificates and certificates of charge

Section 73(1) of the *Registration of Title Act 2006* provides that the Property Registration Authority (PRA) shall cease to issue land certificates and certificates of charge under the *Registration of Title Act 1964*. The section commenced on 1 January 2007.

The subsection also provides that section 105 of the *Registration of Title Act 1964* (requirement to produce land certificates or certificates of charge) will only apply to certificates issued before commencement, and then only for a three-year period after the commencement of the section.

Section 73(2) of the 2006 act provides that land certificates and certificates of charge issued before commencement of section 73 that are not already cancelled will cease to have force or effect three years after the commencement of the section, that is on 31 December 2009. Until that date, land certificates must be furnished with all applications by the registered owner. Certificates of charge, where issued, must be produced on all releases of charge except where such release is by discharge.

From 1 January 2010, both land and charge certificates will cease to have any force and effect and should not be lodged with applications. In the interim, if an application is lodged without the land certificate, where one issued, it will be rejected. If the land certificate is not forthcoming, the application should be held over and relodged after 31 December 2009.

Registration of lien created through deposit or possession of land certificate or certificate of charge

Section 73(3)(b) of the 2006 act provides that a holder of a lien may apply to the authority for registration of the lien in such manner as the authority may determine.

The section applies to a person holding a lien. This may include a solicitor's letter of undertaking to lodge a land certificate or certificate of charge.

The application shall be on notice by the applicant to the registered owner and must be accompanied by the original certificate (see section 73(3)(c)).

The last date for lodgement of applications is 31 December 2009. Applications lodged after that date will not be accepted. Applicants must therefore ensure that the prescribed notices are served in good time, as the application may only be lodged after the expiration of 26 days from such service.

Where the certificate is claimed to be lost or destroyed, the applicant for a lien must first apply for its production to be dispensed with, pursuant to rule 170(2) *Land Registration Rules 1972*.

This procedure can be lengthy, as the authority must satisfy itself that the certificate has been lost or destroyed and has not been pledged as security (other than in respect of the application before it). Proofs would include affidavits from the applicant and registered owner and notices would be directed in the *Law Society Gazette* and a local or national newspaper.

WILLS

Bradshaw, Alice Eileen (deceased), late of 20 St Colm's Terrace, o/w 20 St Columb's Terrace, Bundoran, Co Donegal. Would any person having any knowledge of a will made by the above-named deceased, who died on 7 February 2008, please contact Aileen Duffy, solicitor, Bayview Terrace, Bundoran, Co Donegal; tel: 07198 41272/41228/29044, fax: 07198 42067, email: info@aileenduffysol.com

Burns, Brian (deceased). Pursuant to the *Trustee Act 1925*, any persons having a claim against or an interest in the estate of the aforementioned deceased, late of 25 Baroda Court, Newbridge, Co Kildare, Republic of Ireland, who died on 2 February 2008, are required to send particulars

PROFESSIONAL NOTICES

thereof in writing to the undersigned solicitors on or before two months from the date of this publication, after which date the estate will be distributed having regard only to claims and interest of which they had notice. Sayer Moore & Co, Solicitors, 190 Horn Lane, Acton, London W3 6PL

Codd, Laurence (Larry) (deceased), late of 29 Castle Manor Court, Ferns, Enniscorthy, Co Wexford, and also Ros Aoibheann Nursing Home, Bunclody, Co Wexford, who died on 27 September 2009. Would any person with knowledge of a will made by the above-named deceased please contact Rachel Rodgers, Hayes Solicitors, Lavery House, Earlsfort Terrace, Dublin 2; tel: 01 662 4747, fax: 01 661 2163, email: rrodgers@hayes-solicitors.ie

Fleming, Catherine (deceased), late of 340 Carnlough Road, Cabra West, Dublin 7, who died on 24 July 2009. Would any person having knowledge of a will made by the above-named deceased please contact Gleeson McGrath Baldwin, Solicitors, 29 Anglesea Street, Dublin 2; tel: 01 474 4300, fax: 01 474 4343

Foley, Michael (deceased), late of Oldtown, Abbeyleix, Co Laois. Would any person having knowledge of a will executed by the above-named deceased, who died on 19 February 2007, please contact Aylmer Solicitors, 1 Tullow Street, Carlow; tel: 059 918 2263, fax: 059 918 2262

Nolan, Joseph (deceased), late of Riverdale Nursing Home, Ballon, Co Carlow, and formerly of no 11 St Joseph's Road, Drumcondra, Dublin and formerly of no 60A Richmond Road, Dublin 3, who died on 13 August 2009. Would any person having knowledge of a will made by the above-named deceased please contact Dorothy Whelan, solicitor, John S O'Sullivan, Solicitors, 14 Castle Street, Carlow; tel: 059 913 0833, email: dwhelan@jos.ie

O'Dolan, John (deceased), late of 14 Blakes Hill, Gentian Hill, Galway, who died on 27 February 2009. Would any solicitor holding or having knowledge of a will made by the above-named deceased please contact Lewis C Doyle, Solicitors, Augustine Court, St Augustine Street, Galway; DX 4526 Galway M Street

Ó Laoire, Jean (deceased), late of 2 Claremont Villas, Adelaide Road, Glenageary, Co Dublin, who died on 1 October 2009. Would any person having knowledge of a will made by the above-named deceased please contact Rochford Gibbons, Solicitors, 16/17 Upper Ormond Quay, Dublin 7; tel: 01 872 1499, email: info@johnrochford.ie

Uhlemann, Manfred (deceased), late of 153 Raheen Gardens in the city of Limerick, who died on 6 September 2009. Would any person having knowledge of a will made by the above-named deceased please contact Caroline Browne, solicitor, Holmes O'Malley Sexton, Solicitors, Bishopsgate, Henry Street, Limerick; tel: 061 313 222, email: caroline.browne@homs.ie

Whittaker, Frederick (deceased), late of 149 Dolphin Road, Drimnagh, Dublin 12. Would any person having knowledge of a will made by the above-named deceased, who died on 7 August 2009, please contact Drumgoole, Solicitors, 102 Upper Drumcondra Road, Dublin 9; DX 101 003 Drumcondra; tel: 01 837 4464, email: info@drumgooles.ie

MISCELLANEOUS

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TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Mary Noonan

Take notice that any person having an interest in the freehold estate or any intervening or intermediate estate in the messuage, lands and premises known as no 193 Clontarf Road (formerly no 8 St John's Terrace), in the parish of Clontarf and city of Dublin, demised by an indenture of lease bearing date 6 July 1928, made between Patrick Clarke of no 10 St John's Terrace, Vernon Avenue, Clontarf, aforesaid of the one part, and Catherine Atkins of no 9 Rutland Place, Clontarf, aforesaid of the other part, for a term of 100 years from 1 June 1925 (hereinafter referred to as 'the property'), should give notice of their intentions to the undersigned solicitors.

Further take notice that Mary Noonan, the said applicant, intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the property, and any parties asserting that they hold an interest in the property superior to that of the said applicant are called upon to furnish evidence of title to the property to the undersigned solicitors within 21 days of the date of this notice.

In default of any such notice being received, Mary Noonan, the said applicant, intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said county registrar for such directions as may be deemed meet on the grounds that the person or persons beneficially entitled to all and any superior interests in the property, up to and including the fee simple

estate if appropriate, are unknown or unascertained.
Date: 6 November 2009
Signed: Egan O'Reilly (solicitors for the applicant), 19 Upper Mount Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by West Hotel Trading Company Limited
Take notice that any persons having any interest in the fee simple estate or any intermediate interests in all that and those the hereditaments and premises known as 1-12 (inclusive) Swan Yard, off Harry Street in the city of Dublin, and demised by an indenture of lease dated 16 April 1849 between Jacob West of the one part and Hugh Ferguson of the other part for a term of 900 years from 1 July 1848, and therein described as all that and those that part of the Swan Yard with the stables, numbers one, two, three, four, five, six, seven, eight, nine, ten, 11 and 12, built and erected thereon as formerly in the possession of Michael Brennan and now in the possession of said Hugh Ferguson, situate, lying and being in Harry Street in the county of the city of Dublin, meared and bounded on the north by concerns formerly in the possession of Stephen Parker and Mr Samuel White, in the west by Mr Belle's and Mr Mason's concern, on the south and south west by Mr Valentine Smith and other concerns in Harry Street, and on the east by the rear of houses in Grafton Street, in the parish of Saint Ann and city of Dublin, subject to a yearly rent of £13 sterling.

Take notice that West Hotel Trading Company Limited, being the person entitled to the lessee's interest in the lease, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple estate and all intermediate interest in the said property, and any party asserting that they hold the fee simple or any intermediate interests in the said property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said West Hotel Trading Company Limited intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in this said property are unknown and unascertained.
Date: 6 November 2009
Signed: Vincent & Beatty (solicitors for the applicant), 67/68 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by West Hotel Trading Company Limited
Take notice that any persons having any interest in the fee simple estate or any intermediate interests in all that and those the hereditaments and premises being portion of 5 and 6 Harry Street in the parish of Saint Anne and city of Dublin and demised by an indenture of lease dated 1 January 1903 between Richard Birt Freeman of the one part and Maria Teresa Mooney of the other part, for a term of 845 years from 1 January 1903, and therein described as all that plot of ground being part of the Swan Yard situate at Harry Street in the parish of Saint Anne and city of Dublin, which is more particularly described on the map attached to the said lease, subject to a yearly rent of £8.

Take notice that West Hotel Trading Company Limited, being the person entitled to the lessee's interests in the lease, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple estate and all intermediate interest in the said property, and any party asserting that they hold the fee simple or any intermediate interests in the said property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said West Hotel Trading Company Limited intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said registrar for such di-

PROFESSIONAL NOTICES

rections as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in this said property are unknown and unascertained.
Date: 6 November 2009
Signed: Vincent & Beatty (solicitors for the applicant), 67/68 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Ciara O'Callaghan, Joan Reeve and Esther Healy ('the applicants')
Take notice that any person having an interest in the freehold estate of the following property: no 11 Eaton Square in the parish of Monkstown, barony of Rathdown and county Dublin ('the property'), more particularly described in an indenture of lease dated 16 June 1939 made between the National Bank Limited of the first part, Francis Harvey Nicholas Proud of the second part, Alexander Rochfort Jackson of the third part and Miss Anne Courtenay Woollcombe of the fourth part, held for a term of 200 years from 1 January 1939, subject to the yearly rent of £12.10s and subject to the covenants on the part of the lessee and the conditions therein contained.

Take notice that the applicants intend to submit an application to the county registrar for the county/city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title of the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the 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/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the property aforesaid are unknown or unascertained.
Date: 6 November 2009
Signed: Adams Corporate (solicitors for the applicants), 9 Exchange Place, International Financial Services Centre, Custom House Dock, Dublin 1

Notice of intention to acquire fee simple: in the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Angeline Murphy, tenant
Any person having any interest in the fee simple estate or any intermediate interest in all that and those the lands and premises at Lemgare, parish of Clontibret, barony of Cremorne and county of Monaghan, formerly the Lemgare National School, and described in and delineated on a map on the lease thereof, dated 17 April 1944 for a term of 99 years from the Very Reverend Bernard McGarvey of the first part to Reverend Eugene O'Callaghan, the said Very Reverend Bernard McGarvey and Reverend Terence McHugh of the second part, and the Minister for Education of the third part.

Take notice that Angeline Murphy, being the person entitled to the tenant's interest in the said lands, intends to apply to the county registrar for the county of Monaghan for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Angeline Murphy intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.
Date: 6 November 2009
Signed: Coyle Kennedy MacCormack (solicitors for the applicant), Thomas St, Castleblayney, Co Monaghan

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NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE LAW SOCIETY GAZETTE

Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO recruitment advertisements will be published that include references to years of post-qualification experience (PQE)**.

The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

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Our client is currently working on a range of quality deals for a varied client base of local, national and international clients. They are currently recruiting for a corporate lawyer to take on a current caseload of deals to include mergers and acquisitions, shareholder agreements and provision of general corporate advice. There will be plenty of client contact, and excellent support and development from other team members. You will already have experience of running your own deals and will be eager to take on increasing levels of responsibility. **Ref: S2027**

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Easily identified as a leading light in the field of investment funds, our client is actively looking to secure the services of a top tier partner/team with exceptional experience within the investment funds market. Ideally the candidate will have retail, mutual, UCITs, ETF's or hedge fund experience. The successful applicant will be tasked with developing the Irish market, working closely with their colleagues to capitalise on their blue chip client base. You will have gained experience from a leading firm. Equity is on offer. **Ref: S2028**

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You will have background gained from a leading law firm locally or internationally. The team is focused on regulated/unregulated funds. The role will involve working alongside associates and partners for the division and the firm's clients. Candidates should also have excellent academics. Strong technical expertise combined with an ability to deliver clear, precise and practical advice is a must. In addition an interest in business development is important. Excellent terms on offer to attract the right individual. **Ref: S2029**

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Our client is a leading firm and is now seeking to recruit a structured finance senior associate specialising in banking and capital markets, in particular in the areas of structured and leveraged finance, securitisation and repackaging, syndicated lending and derivatives. Specifically you will be a structured finance lawyer with commercial lending experience. The work will be first class; the atmosphere is friendly, progressive and team driven. You will be well rewarded and your career path will be mapped out for you. **Ref: S2030**

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