



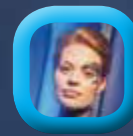
Turkish delight

Court rules recording of client consultations permitted in certain circumstances



The eyes have it

European Parliament adopts resolution on NSA surveillance programme



Resistance is futile

Directors' compliance statements to be re-enacted in new *Companies Bill*

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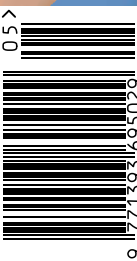
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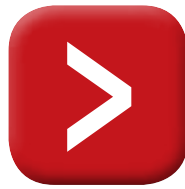
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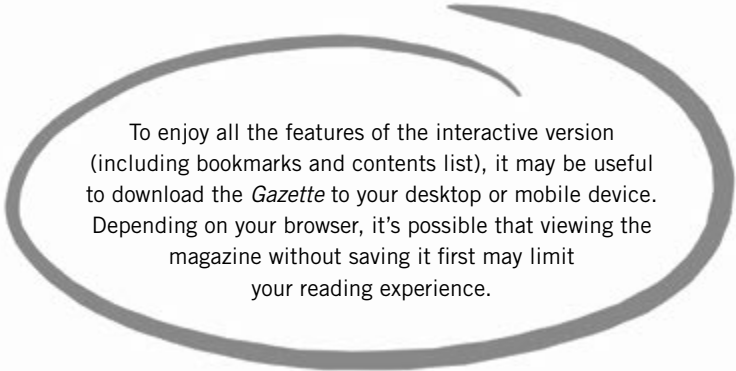


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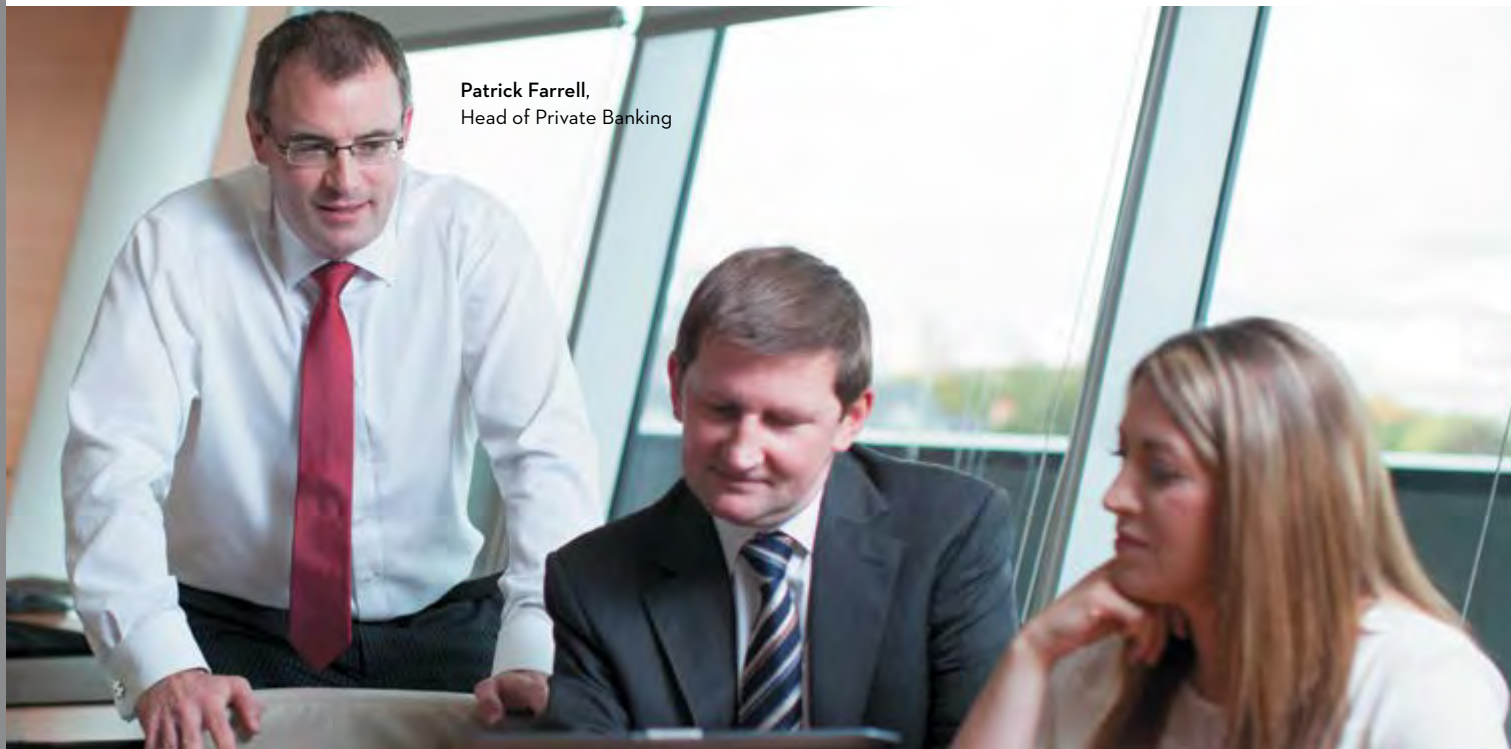
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Patrick Farrell,
Head of Private Banking

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NEW VISION FOR THE LAW SOCIETY

It is hard to believe that it is already mid-point in my term of presidency. At last month's Council meeting, I presented a progress report on the implementation of the recommendations of the Future of the Law Society Task Force. I am pleased to say that all of the major recommendations are progressing on schedule.

At this stage, a communications strategy, a social media campaign, and tone-of-voice guidelines have all been approved by Council and are in the course of being implemented throughout the Society.

A new website is in preparation, as the old website – which contains an enormous amount of excellent content – is in need of a refresh. The new design will be launched later this month and will be more modern, compatible with tablet and mobile devices, and will facilitate promotion of services with a carousel facility on the home page. Also, the pay-per-click pilot project intended to direct purchasers of legal services to the Law Society website will be re-run in the next few months.

A major finding of the task force report, arising from the survey of the profession, was that members required better representation from the Society.

To this end, we engaged a new director of representation and member services, Teri Kelly, who has an MA in political science and experience in communications and media. Teri is now assisted by Kathy McKenna, PR coordinator, and Liam Keegan, who is the web and social media coordinator.

It is intended that the Society will engage more actively in promoting positive news stories, where possible, and also to engage with politicians, media and other interested parties on a regular basis. We have a new Policy and Public Affairs Department, headed by the deputy director general Mary Keane and ably assisted by Cormac O'Culáin, who is our public affairs executive, to present the Society's position in respect of various matters of legal interest.

We have set a target date of July to launch a new, fresher



A communications policy, a social media policy, and tone-of-voice guidelines have all been approved by Council and are in the course of being implemented

brand for the Society and we also have started a project to show the contribution of the solicitors' profession to the economy and

to reveal the true picture of the reduction of legal fees throughout the country on a properly researched basis.

Highs and lows

At the beginning of the month, I attended the AGM of the County Louth Solicitors' Bar Association in my hometown of Dundalk, and I ended it at the Law Society's annual conference in Ennis, which were undoubtedly highlights for me. In between, I attended the funeral of a colleague and friend, the late District Judge, Al O'Dea, who was the first judge under whom I practised and who was one of the kindest gentlemen you could wish to meet, which quality was always reflected in his work on the bench. *Ar dheis Dé go raibh a anam.*



John Shaw
John P Shaw
President



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The issue of whether directors should be required to issue compliance statements as part of their company's financial statements is to be revisited in the *Companies Bill 2012*, says Sean Nolan



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www.lawsociety.ie

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You can also check out:

- Current news
- Forthcoming events, including the [sixth International Disability Law Summer School in NUI Galway, on 16 – 20 June](#)
- Employment opportunities
- The latest CPD courses
- ... as well as lots of other useful information

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nationwide

New from around the country



Kevin O'Higgins has been a Council member of the Law Society since 1998

DONEGAL

Friday the 13th, part 2

Moya O'Donnell has asked colleagues to keep Friday 13 June free in their diary. The Law Society's Skillnet team has arranged six hours of general CPD at a cost of €85, to include lunch, at Lough Eske Castle, Donegal town. A line-up of wonderful speakers is being arranged, and further details will be provided in due course. It is expected that the topics to be covered will include conveyancing, litigation, probate, family law and other general topics.

CARLOW

Follow me up to...

Carlow Bar Association held its AGM on 25 February 2014. Current officers were re-elected for 2014: Alan Millard (president), Joe Farrell (honorary secretary), and Barbara Jordan (treasurer).

The sad loss of Carlow county registrar Patricia Casey was remembered, and sympathies were addressed to her family on their loss. Patricia will be greatly missed by all in the Carlow Bar Association.

A CPD event was held on the same evening with Karl Dowling BL, who provided an excellent presentation on probate pitfalls. Another CPD event held on 25 March at the Talbot Hotel, Carlow, focused on the topic of 'e-registration and e-conveyancing, which was presented by the PRAI.

MEATH

Meathing of minds



At the recent Meath Solicitors' Bar Association CPD event were (l to r): Oliver Shanley, John Murchan, Michael Keaveny, Katie Barbour, Liam Barrett (Law Society), Peter McHugh, Carmel O'Shea (both PRA), Ronan O'Reilly and Elaine Byrne

'Royal' gala evening

Elaine Byrne (secretary, Meath Solicitors' Bar Association) informs us that the association will be holding its upcoming gala evening at the Knightsbrook Hotel, Trim, towards the end of May (most like Friday 30 May, but to be confirmed). The drinks reception will take place at 7.30pm, followed by the dinner.

The black-tie evening will mark the recent appointment of Judge Gráinne Malone to Co Meath, the retirement of Judge Patrick McMahon, and the appointment of Judge Mary O'Malley as specialist Circuit Court judge. They hope to welcome county registrar Mairead Ahern, who is covering Louth and

Meath currently. Colleagues from the Royal County and further afield are most welcome to attend.

More information is available from any committee member, including Oliver Shanley (president), Elaine Byrne (secretary), Niamh Tuite (PRO), Declan Brooks, Mark Dillon, Stephen Murphy, Ronan O'Reilly or William O'Reilly.

Tickets available soon. To book your seats, contact committee member Declan Brooks (Oliver Shanley & Co), 62/63 Academy Street, Navan, Co Meath; DX 36 005 Navan; tel: 046 909 3200, email: olivershanley@securemail.ie.

AGM and CPD

The association will hold its AGM on Wednesday 28 May in the Newgrange Hotel, Navan. Sinead Travers and Emma-Jane Williams (Law Society) will address members in advance, from 5pm to 7pm. Topics will include dealing with clients and anti-money-laundering. One general and one regulatory CPD point(s)

will be available for attendees.

Future CPD lectures will cover mediation, medical negligence, legal costs, employment law and the *Assisted Decision Making Bill*. For further details, contact Elaine Byrne (Regan McEntee & Partners), High Street, Trim; tel: 046 943 1202.

DUBLIN

Dublin colleagues pitch in for Coal Fund

Dublin Lord Mayor Oisín Quinn is, as colleagues will know, an eminent senior counsel. He opened his house to a sumptuous dinner as a fundraiser for the Coal Fund, one of the oldest charities in the city. The event was pitched at both sides of the profession, was a resounding success and well supported.

Congratulations and best wishes to DSBA president Keith Walsh and his wife Moira on the safe arrival of their daughter a few weeks ago.

A reminder of the forthcoming Calcutta Run on Saturday 16 May from Blackhall Place. It's a great family day and is held in aid of two worthy charities, the Peter McVerry Trust and GOAL. Why not sign up and register or encourage your work colleagues to do likewise?

SLIGO

New committee for bar association

The recent AGM of the Sligo Bar Association was very well attended, with a wide range of issues discussed and a new committee elected. It comprises Maurice Galvin (president), Benita Meagher (secretary), Noel Kelly (treasurer), John McShane (PRO) and Laura Reid (CPD officer).

Contact details for all committee members are available on the bar association website, www.sligosolicitors.ie.

representation

News from the Society's committees and task forces

HUMAN RIGHTS COMMITTEE

Annual Human Rights Lecture – save the date!

The committee is delighted to announce that **Lady Hale**, the deputy president of the British Supreme Court, will deliver the Law Society's tenth annual Human Rights Lecture on 13 June 2014. Lady Hale became Britain's first woman Lord of Appeal in Ordinary in January 2004 after a varied career as an academic lawyer, law reformer and judge. Lady

Hale is the first woman Supreme Court judge, having been appointed in October 2009. She was appointed deputy president of the Supreme Court in June 2013.

Further details of the lecture, including times, registration and other details, will be announced later in May and will be available at www.lawsociety.ie.



CONVEYANCING COMMITTEE

Report on reform of boundary mapping published

The Conveyancing Committee has been working with other professions over several years examining mapping and boundaries issues. The group (the Inter-Professional Task Force on Property Boundaries) was formed in 2009 and includes representatives from the Law Society, Bar Council, Engineers Ireland, the Irish Institution of Surveyors, Irish Planning Institute and the Royal Institute of Architects of Ireland. As architects, engineers, surveyors, solicitors, spatial planners and barristers, all the members are involved in the title-mapping process, either as providers or users of mapping.

The task force completed a survey of all property professionals engaged in surveying, or the use of mapping for property title registration, in the interest of providing a solid evidence base to their deliberations. This survey was followed by a series of workshops to further elucidate the issues and to form the basis of recommendations for the reform of boundary mapping.

On Friday 4 April 2014, the task force launched its report,



Pictured with Ms Justice Marie Baker were James Dwyer SC representing the Bar Council, Colman Horgan and Gordon White representing Engineers Ireland, Dr Gabriel Brennan representing the Law Society, James Pike and Paul Kelly representing the Royal Institute of the Architects of Ireland, Dr Paddy Prendergast, Brendan Sweeney, Paul Corrigan, Mike Flynn and Muiris de Builéir (who chaired the launch) representing the Irish Institution of Surveyors

which has been endorsed by each of the professional bodies. The Conveyancing Committee approved the report on the basis that the cost of implementing its recommendations be kept to a minimum and, in particular, that those costs should be mitigated for property owners insofar as this is feasible. This report, entitled *Towards*

the Registration of Defined Property Boundaries in Ireland, presents a consolidation of the issues raised by the survey and workshops and makes numerous recommendations for reform of boundary mapping.

In particular, it notes that the issue of mapping precision is at the core of current title

boundary-mapping problems and that new procedures need to be developed that allow the integration of more accurate modern boundary surveys into the existing title registration mapping database.

This report is not an academic exercise: it arises directly from day-to-day problems that property professionals encounter in their dealings with boundary mapping. The report proposes practical solutions to remove ambiguity and misunderstanding in relation to mapping for property registration. It is hoped that this report is accepted as a genuine attempt by expert property professionals to improve the quality of title registration mapping for the benefit of all stakeholders and, most importantly, to improve the service offered to the ultimate customer – Irish landowners.

A copy of the report (or a brochure outlining the main recommendations, if preferred) can be obtained from Dr Gabriel Brennan (who represented the committee on the task force) by emailing g.brennan@lawsociety.ie.

CONSULT A COLLEAGUE 01 284 8484

The **Consult a Colleague helpline** is available to assist every member of the profession with any problem, whether personal or professional

THE SERVICE IS COMPLETELY CONFIDENTIAL AND TOTALLY INDEPENDENT OF THE LAW SOCIETY

Solicitors nominated as judges

The Government has nominated two solicitors, Marian O'Leary and Gráinne O'Neill, for appointment by the President of Ireland to the District Court. The vacancies arise from the retirement of Judge Clare Leonard from the District Court on 14 October 2013 and the elevation to the Circuit Court of Judge Catherine Murphy on 8 December 2013.

Marian O'Leary was born in 1954. She trained as a nurse but subsequently graduated with a LLB, qualifying as a solicitor in September 1995. She specialised in family law, civil litigation, conveyancing and probate. Gráinne O'Neill was born in 1971. She holds a BA (1991) and LLB (1995) from University College Galway. She qualified as a solicitor in 1999. She specialised in criminal law, family law, civil litigation and employment law. She worked with Free Legal Advice Centres from 2000 to 2007.

Cork's newest law firm



Harry McCullagh and Adrian Wall

Established commercial lawyer Adrian Wall has joined forces with Harry McCullagh to form a new Cork-based commercial law firm, [McCullagh Wall](#).

Harry McCullagh founded Harry McCullagh & Co 15 years ago, building a strong practice in that time. That firm was recently awarded the gold standard in the

Q6000 risk-management standard for the third year running.

Adrian Wall says: "We have identified a gap in the market here in Cork and established our firm to offer businesses – large and small – access to a specialised commercial law service. We provide our clients with technical expertise at affordable rates."

The rise and rise of social media

The rise of social media is having a strong impact on the legal profession. The topic has featured as an emerging area of practice.

The Law Society's [Diploma Centre](#) has collated a series of lectures on areas of general law affected by social media. For the first time, it is offering a free course that is focused specifically on the topic of social media and the law.

The course is hosted on [iTunes U](#) and can be downloaded for viewing on any Apple device. The six modules each contain an introductory video by a leading expert, supported by further reading and linked web content. Contact j.lunney@lawsociety.ie for details.

Access to justice summer school to be held in Galway

The sixth International Disability Law Summer School, hosted by NUI Galway's Centre for Disability Law and Policy, will take place from 16-20 June 2014.

Entitled 'Access to justice and

political participation', it will focus on the *UN Convention on the Rights of Persons with Disabilities*.

Over 100 delegates from 38 countries are expected to attend.

Fergus elected state solicitors' president



The State Solicitors' Association has appointed Fergus Mullen (state solicitor for Louth) as its president. Fergus succeeds Frank Nyhan, who was recently appointed state solicitor for Cork city. Vincent Deane (Mayo state solicitor) was elected secretary. The association represents 32 state solicitors nationwide, who primarily provide prosecution services for the DPP, together with a number of other State agencies, the Revenue Commissioners and Government departments.

Make Your Claim

Make Your Claim: A Consumer's Guide to the Injuries Board was officially launched in Clonakilty on 3 April by Jim Daly TD. The guide aims to help accident victims who have to deal with the Injuries Board in personal injuries cases.

The book is written by John McCarthy, a solicitor who specialises in personal injury law. *Make Your Claim* is described as "a complete guide to the Injuries Board system for consumers. It provides a step-by-step explanation of what is involved in making a claim and demystifies what often seems like a daunting process."

The guide answers many of the questions most frequently asked by claimants and helps them to understand how the system works.

Speaking at the book launch, John McCarthy said: "Ten years down the road [after the establishment of the Injuries



Board], I believe that we now find ourselves with a system that is fundamentally unfair to blameless accident victims – and that's one of the main reasons I decided to write this book."

The book costs €14.97 and is available directly from www.makeyourclaim.ie or on www.amazon.co.uk and from selected bookshops.

22% of solicitors practised in just 1% of firms in 2013

The 20 largest firms in the jurisdiction, as measured by the number of practising certificates, grew by 6.8% in 2013, writes *Ken Murphy*. Of the 20 firms, 18 increased their practitioner numbers in the course of the year.

Comparing like with like by focusing on the last day of the practising year, 31 December 2013, the 20 largest firms had just under 2,000 practising certificates between them – a total of 1,983 to be precise. They had added 127 practitioners to their ranks since the same date a year earlier.

Examining the ‘big picture’ of the jurisdiction as a whole, on 31 December 2013 there were in total 8,947 solicitors in Ireland with practising certificates. Accordingly, the 1,983 practitioners in the 20 largest firms constitute 22% of the entire number of practising solicitors in the jurisdiction.

As there are over 2,200 individual firms, 20 firms represent less than 1% of all firms. Although this pattern is fairly typical of the legal profession in jurisdictions all over the developed world, it is still striking that, in Ireland, 22% of solicitors practise in just 1% of firms.

In the profession as a whole, 43% of firms have just one solicitor. No less than 82% fall into the three-or-less solicitor size.

Considerable concentration

Even within the largest 20 firms there is a considerable degree of concentration. In 2013, as in the previous year, there are three firms with practising certificate numbers in excess of 200: Arthur Cox, A&L Goodbody and Matheson. Three firms had between 100 and 200 practitioners – McCann



Declan Black of Mason Hayes & Curran: “turnover up by 8%”

FitzGerald, William Fry, and Mason Hayes & Curran – as in the previous year.

These ‘Big Six’ firms between them last year had 1,247 practitioners. The next 14 largest firms, by contrast, collectively had the considerably smaller total of 736 practitioners.

There was little change last year in the order, based on the number of practitioners, of the largest 20 firms. Arthur Cox remains comfortably the largest firm, with 258 practitioners, although the second largest, A&L Goodbody, increased

their number by 22 and closed the gap between the two firms. The other four firms that added ten or more practitioners to their ranks last year were Arthur Cox, William Fry, Mason Hayes & Curran, and Maples and Calder.

The firm with the biggest expansion measured in percentage terms was McDowell Purcell Solicitors, whose growth from 19 to 26 practitioners represented a 36% increase.

Largest firms

As previously, 18 of the 20 largest firms are Dublin-based, with the Cork firm Ronan Daly Jermyn and Holmes O’Malley Sexton of Limerick the only exceptions to Dublin’s dominance.

There are other possible measures of the size of law firms besides practitioner numbers, of course. Some firms refer to their ‘total staff numbers’ or ‘number of fee earners’. However, these may be somewhat less precise and consistent measures than the objective measure of number of practising certificates. Although the Law Society issues all practising certificates and has its own records, the Society took the precaution this year of confirming the relevant number with each individual firm before publishing these statistics to avoid any oversights or double counting.

Another traditional measure of the size of a law firm is its turnover. However, only one of these firms publishes a figure for its annual turnover each year, and that is Mason Hayes & Curran. On 28 April 2014, that firm’s new managing partner Declan Black announced in *The Irish Times* that the firm’s turnover had increased by 8% in 2013 to €48 million.

FOCAL POINT

practising certificate numbers in largest firms

2013 PC NUMBERS	FIRM NAME NUMBERS	31/12/ 2012	31/12/ 2013	DIFF +/-
1	Arthur Cox	246	258	12
2	A&L Goodbody	224	246	22
3	Matheson	232	238	6
4	McCann FitzGerald	187	184	-3
5	William Fry	161	174	13
6	Mason Hayes & Curran	133	147	14
7	ByrneWallace	85	93	8
8	Maples and Calder	71	81	10
9	Dillon Eustace	67	74	7
10	Eversheds	72	72	0
11	Beauchamps	62	68	6
11	Ronan Daly Jermyn	65	68	3
13	Eugene F Collins	54	55	1
14	LK Shields Solicitors	48	50	2
15	Hayes Solicitors	31	36	5
16	DAC Beachcroft Dublin	28	32	4
17	Holmes O’Malley Sexton	28	29	1
18	Whitney Moore	23	28	5
19	McDowell Purcell Solicitors	19	26	7
20	Philip Lee	20	24	4

These figures represent the total number of solicitors in each firm with a practising certificate, advised to the Law Society up to and including 31/12/2013 and the corresponding date in 2012. The total firm figure represents a firm’s primary and sub offices on the Law Society database.



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We want you as a new recruit



Oi, you! Have you considered running for Council?

Recently qualified members are the future of the profession, yet only three of the current Council members have qualified since 2007. This cohort needs a voice at Council – so why not lead the way and put your name forward?

By joining the Council, you can play an important role in shaping the future of the solicitors' profession and the Law Society. It's also excellent for networking and making connections.

The Council governs the Law Society and is comprised of 35 elected and 13 nominated members. Its main functions are education and admission, regulation and discipline, and

protection of clients. At least six Council meetings are held annually, and eight meetings are scheduled to take place during 2014. Elections take place annually, on the Friday prior to the AGM – usually in October/November – and successfully elected candidates serve for a two-year period.

The closing date for candidates' applications for the 2014 election will be decided at the Council meeting on 11 July 2014. Candidates must be nominated by two members, and one member cannot nominate more than two candidates.

For further information, go to www.lawsociety.ie/Pages/About-Us/The-Council/.

It's a brave new world

The Law Society has launched its new social media strategy and will be embracing Twitter, Facebook, LinkedIn and Google+, and will use these channels to share news, events and useful information with members of the legal profession.

The aim is to provide a high standard of social media support to members, trainees and job-seekers.

The Society is resolutely nailing its colours to the social media mast by promising members and trainees that it will respond to social media queries within four working hours.

Members and trainees are encouraged to follow these channels:

- **Twitter:** Law Society – @lawsocireland; Education Centre – @LawSocEdu; legal vacancies – @lawsocietyjobs,
- **Facebook:** Law Society of Ireland; Law School – Law Society of Ireland,
- **Google+:** Law Society of Ireland,
- **LinkedIn:** Law Society of Ireland (organisation); Law Society of Ireland – members only (closed group); Law Society of Ireland (general information); Professional Training – Law Society of Ireland; Law School – Law Society of Ireland; Diploma Centre at the Law Society of Ireland.

THERE'S AN APP FOR THAT



Log me in Scotty!

APP: LOGMEIN IGNITION PRICE: €29.99

Ever been out and about with your iPad and found yourself saying, "I could really do with seeing a copy of the letter I wrote to that firm and that file in my case-management system, but it's on my PC back at the office and I didn't print off a copy or Dropbox it or save a copy to my iPad"? Well, in these instances, *LogMeIn Ignition* is the app for you, writes *Dorothy Walsh*.

I recently had a situation in the High Court where I left my entire file in a locked courtroom over lunchtime, only to be asked by counsel for a copy of a particular pleading. Due to the fact that we save all documents to our case-management system at the office, I knew the only location at which I could obtain a copy of the pleading was on my work PC. Considering that the office is empty during lunchtime, there wasn't the opportunity to contact Colette and ask her to email me a copy of the relevant document. This would have presented a problem indeed, but for the fact that I had been using an amazing app called *LogMeIn Ignition* (cost: €29.99), so I knew that all was not lost in that circumstance.

LogMeIn Ignition is an app that provides a remote connection via the internet to any PC that your LogMeIn account is linked to. It basically allows you to access your entire PC's contents as if you were sitting in front of that PC. The

iPad essentially becomes your PC. In this particular case, I was able to log in remotely to my office PC using the app on my iPad, access my case-management system, open the case I needed, locate the particular pleading that counsel required, and literally open it up on screen.

LogMeIn Ignition is one of the more expensive apps to buy, but it is a genius, must-have app. I find it incredible that I can have access to my emails, documents, precedents, case law, references, clients' contact details, case-management system and everything else on my work PC – from absolutely anywhere in the world – so long as I have an internet connection.

It allows me to work within our case-management system instead of producing correspondence on the iPad in, say, *Pages*, and then having to email the work done to the office to be saved onto the PC afterwards. I can literally work on the office PC as if I were sitting right there in the office.

It is definitely one of those apps that I couldn't operate without, and definitely one that I can very easily recommend in the 'if you never download another app, download this one' category of apps! It's the app that promises the most, and delivers, because it gives us what we really want out of our iPads – the contents of our office PC on the go.



Legal services bill back in Dáil in June

The Government plans that the report stage of the *Legal Services Regulation Bill* will be taken by the Dáil in the final week of June. The bill, which was first published as long ago as October 2011, completed its committee stage on 12 February 2014.

Since February, a number of meetings have taken place between officials from both the Department of Justice and the Law Society, at which considerable progress has been made on technical issues. To the extent that policy questions remain unresolved after that, Minister Alan Shatter has agreed to meet with representatives of the Society to discuss them.

At a meeting in his office on other matters on 28 April 2014, Minister Shatter informed Law Society President John P Shaw, senior vice-president Kevin O'Higgins, and director general Ken Murphy that the Government's plan was to have the report stage of the bill taken and completed by the Dáil in the



Law Society's 'very helpful and constructive submission'

final week of June. In addition, he hoped that at least the initial stage in the Seanad might commence before the Seanad rose for its summer break in mid-July.

The bill will return to the Seanad in the autumn and, thereafter, if necessary, back to the Dáil. The Government still hopes that the bill will complete all

stages of the legislative process in autumn 2014. The establishment of the Legal Services Regulatory Authority and formal commencement of the legislation will be at later dates that cannot be known as yet.

Speaking in the Dáil on 12 February 2014, Minister Shatter spoke very warmly in relation to the Law Society's supplementary submission, which he had received a few days earlier, describing it as "a very helpful and constructive submission". He added that "we are looking into it carefully" and "I went through it personally, as did my officials".

The director general said that "the Society very much appreciates the opportunity it has now been given to engage constructively on this very important piece of legislation with far-reaching implications for the profession. We want to ensure it works well when enacted and we are doing whatever we can to ensure it will".

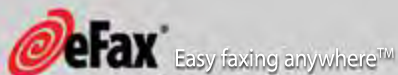
Arthur Cox wins law firm of the year

Arthur Cox has won the 'Ireland Law Firm of the Year 2014 Award' at the annual *International Financial Law Review Europe Awards*, held in London in April. The awards recognise the most innovative firms of the past 12 months.

The awards also recognise deals that break new ground and set market precedents.

The firm was shortlisted in three 'deals of the year' categories for its work on Green REIT, the IBRC promissory note exchange and liquidation plan, and for its structured finance and securitisation advice to AA WBS.

In addition, the firm has retained the *Who's Who Legal* 'Ireland Law Firm of the Year' for 2014.



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A WARM WICKLOW WELCOME

WICKLOW BAR ASSOCIATION



ALL PICS: SARAH MCMAHON PHOTOGRAPHY

Those attending included (*front, l to r*): Barry O'Sullivan, John P Shaw (president, Law Society), Ken Murphy (director general), Paddy McNeice (president, Wicklow Bar Association), Maria Byrne and David Lavelle. (*Middle, l to r*): Eilish Bradshaw, Jonathan White, David Tarrant, Gus Cullen, Patrick Jones, Jennifer Duttan, Maureen Bullock, Pauline O'Toole, Aine Hogan, Brian Robinson and Karl Carney. (*Back, l to r*): Rory McGarry, Ciara O'Sullivan, Kiera O'Reilly, Emma Lynch, Catriona Murray, Fiona Roche, Austin Heffernan, Sinead Counihan, Dermot Hickey, June Green, Lorraine Gillick, Karl Hutchinson, Richard Joyce, Damien Conroy, Cathal Louth, Andrew Tarrant, Brendan Moloney, Donal O'Sullivan and Fergus Kinsella



June Green and Catriona Murray

The Wicklow Bar Association held its AGM in the Glenview Hotel on 10 April 2014, which was chaired by president Paddy McNeice.

Afterwards, president McNeice invited Law Society President John P Shaw and director general Ken Murphy to meet with the association's members, when they discussed the upcoming *Legal Services Regulation Bill*, the recent revelations about the recording of telephone conversations in garda stations, professional indemnity insurance, and the Law Society's proposal for the judicial appointments process. A lively and interesting debate ensued.



Barry Kenny (secretary, WBA), Ken Murphy (director general), John Shaw (president, Law Society), and Paddy McNeice (president, WBA)

THAT WAS THE YEAR THAT WAS

This group of solicitors who qualified in 1963 celebrated their golden anniversary of their entry to the Roll of Solicitors last year. They are (*front, l to r*): Sean Bourke, William (Peter) Kirwan, Helen Kirwan, Francis J Lanigan (Law Society president, 1962-63), Margaret O'Callaghan and Carmel O'Halloran; (*back, l to r*): Patrick J Connellan, Peter McMahon, William O'Riordan, Daire Walsh, Garrett Lombard, Brian Gardiner and Thomas C Smyth; (*missing*: Sylvester V Riordan).

The photo is interesting for a number of reasons. William (aka Peter) and Helen Kirwan are understood to have been the first brother and sister to have been admitted to the Roll. Peter worked with Gerard J Quinn & Co and subsequently established his own practice, Peter Kirwan & Co, in Upper Pembroke Street, Dublin 2. Helen served with the firm belonging to her late father, Timothy J Kirwan, in Wicklow Street. Helen's close friend Carmel O'Halloran (front, right) married Mayo man George Jenkins and practised in that county subsequently in Liam McHale & Co, both in Ballina and Castlebar. TC Smyth (back, right) subsequently went on to become a High Court judge and is now retired.

Speaking at the 'presentation of admission parchments' in the Solicitors' Building in the Four Courts, then Law Society President Francis J Lanigan offered the following advice to the newly qualified solicitors: "To the layman, the law is complex, its procedure difficult and the problems that it raises are hard to solve. We as lawyers recognise this to be so, but in a complex modern society it would appear inevitable. This puts a responsibility on our profession, greater than it has ever been in the past, and one which I am sure you will shoulder in a manner in-keeping with the great traditions of Irish



Inset: The first qualifying brother and sister to be admitted to the Roll of Solicitors, Peter and Helen Kirwan

lawyers. Today is the day of the specialist and, although most of you will be in general practice, I think the solicitor of the future must consider specialisation in some particular branch of the law. This has happened in England to a large extent, and the need

for specialisation will inevitably extend to this country, if it has not done so already in the larger centres of population."

Our thanks to Helen Kirwan for sending us the photos and to TC Smyth for providing the caption.

FOCAL POINT

highlights of 1963

It was a historic year. Some of the highlights included:

- The **European Court of Justice's** ruling in *Van Gend en Loos v Nederlandse Administratie der Belastingen* established the principle of **direct effect**, one of the basic tenets of European Union law.
- The **Beatles** recorded their debut album *Please Please Me* in a single day at the **Abbey Road Studios** in London, releasing it on 22 March. They played a concert in Dublin's Adelphi Cinema on 7 November.
- **Female suffrage** was enacted in Iran.
- At the **35th Academy Awards** ceremony, *Lawrence of Arabia* won 'Best Picture'. The film *Cleopatra* was released later in the year.
- **Teilifís Éireann** closed down immediately after its 9 o'clock news bulletin on 3 June as a mark of respect following the death of **Pope John XXIII**. **Pope Paul VI** succeeded him as the 262nd pope.
- **Domhnall Ua Buachalla**, the last governor-general of the **Irish Free State**, died.
- The **Great Train Robbery** took place in Buckinghamshire, England, on 8 August.
- **Martin Luther King Jr** delivered his 'I Have A Dream' speech on the steps of the Lincoln Memorial to an audience of at least 250,000.
- **Christine Keeler** was arrested for perjury for her part in the **Profumo Affair**. On 6 December she was sentenced to nine months in prison.
- The **Centre for International Intellectual Property Studies** was founded.
- Mafia boss **Bernardo Provenzano** was indicted for murder (he was captured 43 years later, on 11 April 2006).
- President of the United States **John F Kennedy** was assassinated in a motorcade in Dallas, Texas, by **Lee Harvey Oswald**. He was succeeded by President **Lyndon B Johnson**.

OVER 50 FIRMS SIGN UP FOR CALCUTTA RUN 2014

The Calcutta Run committee has set itself the daunting task of raising €200,000 this year for GOAL and the Peter McVerry Trust. The starting gun will be raised at Blackhall Place on Saturday 17 May 2014 at 11am, so make sure you're part of this fun occasion.

At the launch in March, Law Society President John P Shaw encouraged the committee in its efforts and asked that all solicitors, barristers and their families and friends give serious consideration to taking part in this year's event.

This year, the focus is falling on the so-called 'supporter firm' initiative, where the objective is to get at least 100 firms signed up. Over 50 firms have signed up to date.

The supporter firms have received specially tailored information packs that will help them to incorporate the



(From l to r): Pat Doyle (CEO of the Peter McVerry Trust), Carmel Drumgoole (GOAL), Law Society President John P Shaw, Helen Leahy (Bank of Ireland), Barry Andrews (CEO of GOAL) and Allen Paul (DX)

Calcutta Run as a corporate social responsibility initiative within their firm.

This year's run will feature many new elements, including:

- For the first time ever, a 5k course,
- An easier 10k route (the hills have been levelled!),

- An eight-week training programme devised by double European cross-country champion Fionnuala Britton,
- A bigger and better 'after event', and
- A new DX challenge to encourage competition among firms.

The president encouraged those firms who signed up as supporters to be active in engaging their solicitors, support staff, clients, suppliers and the wider public in their efforts to raise funds.

Even at this stage it's not too late to sign up for the Calcutta Run by visiting www.calcuttarun.com.

on the move



William Fry has appointed aircraft financing expert **David Maughan** as a partner in its banking and finance department. David will head up the firm's aviation and asset finance practice. He will advise on financing transactions for many different classes of assets. He was awarded 'Asset Finance Lawyer of the Year in Ireland' for 2014 by Corporate INTL.

PHILIP LEE SOLICITORS MAKES THREE APPOINTMENTS



Philip Lee Solicitors has appointed **Ann Henry** as partner in litigation and dispute resolution. She specialises in resolving disputes concerning intellectual property rights, commercial contracts and administrative law issues in a range of sectors, including agri-food, energy, technology and pharmaceuticals.



Rachel Minch has been appointed as partner in its environment and climate group. She is an experienced litigator and has handled numerous judicial reviews and enforcement cases. She is chairperson of the Irish Environmental Law Association and sits on the panel of the planning and regulation working group of Property Industry Ireland.



Kerri Crossen has been appointed as partner in its construction, projects and PPP group. She has gained significant expertise in advising both the public and private sectors on large PPP and construction projects, including in the education and transport sectors. She also advises on EU and national procurement law.

IRLI PARTNERSHIPS BENEFIT 400 SOUTH AFRICAN LAWYERS

Since 2002, Irish Rule of Law International's (IRLI) has partnered with the Law Society of South Africa (LSSA) to provide a commercial law training programme, reaching over 400 South African lawyers. The programme has been especially significant for lawyers from historically disadvantaged communities in South Africa.

Key to the programme are the placements that are offered to participants, which enable them to gain experience in commercial law practices. While most of these placements are with large South African law firms, a number are offered by Irish firms. In September and October 2013, three participants undertook placements in the commercial and corporate departments of Irish firms: McDowell Purcell, Matheson, and Whitney Moore.

Ms Ezmerelda Johnson-Amon, Mr Mandu Nkomo and Mr Vishen Singh worked closely with Irish colleagues in these firms and gained valuable experience and shared their knowledge, including the impact of the newly overhauled *Companies Act* in



South Africa, which is similar in many ways to Ireland's *Companies Consolidation and Reform Bill*.

Upon their return to South Africa, the participants are required to deliver an introductory business law seminar to firms in their area, with a focus on small and

medium-sized companies, as well as those looking to set up formal businesses. These seminars give participants the opportunity to see, first hand, the value of commercial law advice to the community, and potentially to attract new clients.

IRLI is currently seeking

support from Irish firms that would be interested in offering a placement as part of the 2014 programme. For more information, contact IRLI's coordinator Emma Dwyer at edwyer@irishruleoflaw.ie, or tel: 01 817 5331. More details can be found at: <http://irishruleoflaw.ie>.



The Lord Chief Justice of Northern Ireland, Sir Declan Morgan, presided at a special ceremony in the Royal Courts of Justice in Belfast on 2 April 2014, when the current president and three past-presidents of the Law Society of Ireland were admitted to the Roll of Solicitors of Northern Ireland. Pictured (l to r) are John Costello (president in 2011), Donald Binchy (2012), Alan Hunter (CEO of the Law Society of Northern Ireland), Lord Chief Justice Sir Declan Morgan, Richard Palmer (President of the Law Society of Northern Ireland), James McCourt (2013), John P Shaw (president in 2014) and Ken Murphy (director general)

Law Society president welcomed home to Dundalk

COUNTY LOUTH SOLICITORS' BAR ASSOCIATION



PIC: KEN FINNEGAN, NEWSPICS, WWW.NEWSPICS.IE

The AGM of the County Louth Solicitors' Bar Association took place at the Courthouse, Dundalk, on 9 April 2014. Law Society President John P Shaw, who comes from the town, along with director general Ken Murphy, were welcomed to the meeting by bar association president Conor MacGuill. At the event were (front, l to r): Sinead Creighton, John McGahon (treasurer, CLSBA), Ken Murphy, John P Shaw, Conor MacGuill, Nicola Kelly (honorary secretary, CLSBA), Catherine Allison and Bernadette Heaney. (Middle row, l to r): Barry O'Hagan, Francis Bellew, Fergus Mullen, Paul Eaton, Ciara Maguire, Donal P O'Hagan, Sara McDonnell, James Murphy, Peter Lavery, Paul McArdle, John Kieran, Sharon McArdle, Derek Williams, Peter McGuinness and Catherine MacGinley. (Back row, l to r): Paul Tiernan, Stephen Reel, Sheila Maguire, Elaine Connolly, Seamus Roe, Olivia McArdle, Simon McArdle, Dermot Lavery, James MacGuill, Larry Steen, Niall Lavery, Niall O'Hagan, Gary Matthews, John Woods and Eoin Pentony



Pictured at the first of a series of seminars on advanced negotiation were Freda Grealy (head of the Diploma Centre) and Ranse Howell (head of the Negotiation and Leadership Academy, CEDR)



PIC: CIAN REDMOND PHOTOGRAPHY

Ranse Howell leading the audience to the 'credible zone' in negotiation at the Diploma Centre's seminar 'Spotlight on Advanced Negotiation'. The next free networking seminar, 'Spotlight on Communicating for Success', takes place on 9 June

viewpoint

TIME TO CRACK DORMANT DEPOSIT SAFES IN IRISH BANKS?

Why isn't the State laying claim to unclaimed property in dormant deposit safes in Irish banks?

Jim Connolly hefts his crowbar



Jim Connolly is an author, pensions law specialist and pensioner trustee. He is also a recognised expert, commentator and lobbyist on bank safekeeping practices

Safekeeping seems to be becoming quite a trendy subject today, with various firms in Dublin offering very swish (and genuinely secure) James Bond-type facilities. Such advanced systems are far removed from the way safekeeping worked in the late 17th and early 18th centuries, when the Bank of Ireland and the provincial banks started operating.

In those days, if you wanted to deposit something for safekeeping, your bank manager would literally do just that and keep it in the bank's own safe – no deposit boxes, no double sets of keys, no formal bailment contract and, most importantly, no sophisticated record system to match up who owns which item. Privacy was maintained only to the extent that the property was always concealed in parcels, envelopes, trunks and lockboxes. Ironically, the property was not insured, as the bank would never be aware of the nature of the property they were holding.

Today, thousands upon thousands of these items lie abandoned in bank vaults throughout the country, whose combined values lie somewhere between tens of millions and priceless. And this presents some obvious questions:

- What's in there?
- Why aren't they covered by the *Dormant Accounts (Amendment) Act 2012*?
- Who owns them now?
- Why didn't the bank declare them when notified of a client's death?
- What is the State's claim to the property – and why don't they claim it?

So many questions, and less than 1,000 of my 1,200 words left for answers!

What's in there?

In 2005, I was invited into the vaults in Bank of Ireland, College Green, where I was shown an item that, if my memory serves me right, was deposited with the bank in 1903 by a spinster. The item, a large travel trunk, was duly placed in

the bank's vault, pending the customer's return. She never came back.

Fast forward to 1995, and our trunk makes a reasonably dramatic return when it is forced open on request of the American Secret Service. As part of the preparation for President Clinton's address to the nation from the bank's forecourt in College Green, the Secret Service adopted their usual protocols of welding shut manholes, removing litter bins and sweeping buildings – including the bank's own vaults – for devices.

The 92-year-old deposit was found to contain war memorabilia, ceremonial swords and regalia, Napoleon Bonaparte-type hats and a loaded pistol – the item that most offended the sniffer dog.

As interesting as this story might be, a far more intriguing and controversial insight into the types of dormant property being held is set out in the transcripts of a Select Committee on Finance and the Public Service meeting held on 26 June 2001 to consider the (then) *Dormant Accounts Bill 2000*. The *interaction* between Ben Briscoe and Charlie McCreavy went as follows: *Mr McCreavy*: "They [safety deposit boxes] are not included in the bill for the obvious and good reason that they are not cash instruments and people put various items in safety deposit boxes."

Mr Briscoe: "Jewellery and the proceeds from bank robberies."

Mr McCreavy: "That has happened."

Undoubtedly, many of the deposits opened over the centuries were attributed to false identities, and it is understandable why such property

was not reunited with personal representatives on death, but this does not explain why banks failed to reunite the many thousands of genuine deposits with their estates.

Meanwhile, the quantity of abandoned property languishing in bank vaults continued to mount until banks gradually began to withdraw safekeeping facilities in the 1990s.

Today, there are literally tens of thousands of envelopes, boxes, safes, chests, parcels and trunks deteriorating in safes throughout the country. Consider the history, the wealth, the confessions, the title deeds, the art, the antiques, the literature, the answers that potentially exist – all of which raises the question: why do banks simply ignore them? Are they worried that an unearthed last testament will bequeath an estate to someone who will take

an action against the bank because they were frustrated of their inheritance? Are they worried about breaching a deceased client's confidentiality? Are they simply incapable of reuniting the property because they don't have adequate records and don't want to be exposed for having incorrectly advised countless personal representatives? Or are they under the flawed impression that they themselves have a claim on this property?

In reality, there are two eventualities regarding the property – either banks do have adequate records to identify a true owner, or they don't. And if the property can be split accordingly, we (citizens and possible beneficiaries) should

Thousands upon thousands of these items lie abandoned in bank vaults throughout the country, whose combined values lie somewhere between tens of millions and priceless

“It would appear that the bank can only assert a claim to property that falls outside the reach of the State, which essentially would seem to be limited to the stuff that the State doesn’t want”

PIG: THINKSTOCK

demand that banks be compelled to reunite the property that they can reunite.

The remaining property is up for grabs, and there really are only two parties that can claim title to the valuables – the bank and the State.

Ultimate intestate successor

Section 73 of the *Succession Act 1965* provides for the State to become ultimate intestate successor, and it was Kenny J who set out the prerequisites for the exercise of the State’s rights in the pre-*Succession Act* case of *In Re Doherty*.

The *Doherty* case dealt with the State’s right to unclaimed shares of a client of a stockbroker who had not been heard of for over 40 years. Before Kenny J would allow the claim to succeed, he needed to be satisfied of three elements: that the original owner was deceased, that they had died intestate, and that

there was no known next of kin.

In the context of the lost property in question, such a legal strategy would seem robust.

State’s claim to lost property

The concept of treasure trove became recognised as forming part of Irish law, courtesy of the 1987 Supreme Court case of *Webb v Ireland*; however, because of the narrowness of the property captured by the instrument, we need to look to the *National Monuments (Amendment) Act 1994* for a more realistic alternative.

The purpose of the act was to grant the State ownership of any ‘archaeological object’. According to the act, an archaeological object is defined in the widest possible way and includes “any chattel whether in a manufactured or partly manufactured or an unmanufactured state which by reason of the archaeological interest attaching

thereto or of its association with any Irish historical event or person has a value substantially greater than its intrinsic (including artistic) value, and the said expression includes ancient human, animal or plant remains”.

By virtue of this, the State would appear to have an unchallengeable right to much of the property being held. Before such a claim can succeed, however, the banks still need to open the property first.

Bank’s claim to lost property

The service of keeping valuables in safe custody was originally provided on a gratuitous basis. The bank therefore became a bailee under a relationship of bailment with the customer (or bailor) in respect of those valuables. It is clear in such situations that no transfer of ownership in the goods occurs, but merely a transfer of possession for a temporary period. So, we can say

with certainty that the banks do not have any contractual rights to this property.

Therefore, it would appear that the bank can only assert a claim to property that falls outside the reach of the State, which essentially would seem to be limited to the stuff that the State doesn’t want.

So what are we waiting for?

Minister Noonan, Minister Deenihan – assert your right to this property and place a compulsion on banks to deliver all of the property they deem to be lost and available to the State as ultimate successor and as national monuments!

To the legal fraternity – do you need to revisit estates of deceased clients to establish if they possibly held assets in safekeeping?

And to the banks – do the honourable, socially responsible thing and give us back the property that belongs to us. You’ve had it long enough.



viewpoint

DAMAGE LIMITATION

As the jurisdictions of the courts change, **Stuart Gilhooly** argues that Circuit Court judges will be looking back to the future when assessing damages for personal injury



Stuart Gilhooly is a partner in the Dublin law firm HJ Ward

By all appearances, the Minister for Justice, Equality and Defence does not seem to be a man ravaged by self-doubt. When he makes a decision, it tends to stay made. So when the mighty forces of the legal profession and the insurance industry combined in an unlikely and downright unholy alliance to inform him in incontrovertible terms that his proposal to increase the jurisdictions of the courts was a rank bad idea, it was always likely to fall on deaf ears. While lawyers, unsurprisingly, are concerned that an under-resourced Circuit Court will fall foul of delays in the next few years, the insurers are worried about damages inflation.

As things stand, the Circuit Court requires an injection of life. The Injuries Board has mopped up a large amount of lower value cases that no longer require proceedings, so there was no doubt that an increase of some description was required. The problem is that, by moving the general jurisdiction to €75,000 and the personal injuries element to €60,000, it has bitten off more than its limited resources can chew. The minister argues that the District

Court will take some pressure off its bigger brother but – even if this were true, which seems unlikely – it would merely shift the delays to the smaller jurisdiction.

Be that as it may, the arguments have been made, predictably and summarily rejected, and reopening the debate as to the merits of the decision achieves little. The minister claims he will provide extra resources if required, so we will hold him at his word.

Quantum of solace

The issue, however, of damages looms large and deserves greater attention. The insurance lobby has correctly argued that, in the past, when jurisdictions have increased, so too have awards. Does it follow, therefore, that this will happen again?

Not necessarily. It must be remembered that it is 23 years since the last change, and time, the law and the economy have

intervened since then. We now have a much larger database of case law and, of course, we have section 22 of the *Civil Liability and Courts Act 2004*. This, in a nutshell, states that all judges providing awards in personal injury cases must have regard to the provisions of the Injuries Board's *Book of Quantum*. While it has been argued many times that the book is out of date, current jurisprudence seems to suggest that the overall downturn in the economy has set off any diminution of values in pure inflationary terms.

Whether this is right or wrong is a debate that requires more analysis than this slip of an article can provide, so let's just park that and assume it's

correct. On that basis, the High Court will be obliged to continue to have regard to its provisions, although it may take into account other matters. So it is not strictly bound by the book, but equally cannot ignore it.

The other courts are, of course, bound by the Book of Quantum in the same way. Up to now, and certainly since the introduction of the Injuries Board, these courts may have felt that their role in assessing damages had been diminished by the

numbers of cases taken in those courts. This is about to change, and so will the manner in which they, and particularly the Circuit Court, go about making awards.

As a practitioner who has been running personal injury cases in the both the Circuit Court and High Court for over 20 years now, I have been struck by the differences in approach. There is no doubt that, in general, the lower court takes a more relaxed,

“The extended reach now afforded to the Circuit Court judiciary will ensure that much larger matters will come their way, and they will feel obliged, no doubt, to consider the future element of an injury”





‘The minister argues that the District Court will take some pressure off its bigger brother but – even if this were true, which seems unlikely – it would merely shift the delays to the smaller jurisdiction’

hands-off and, for want of a better word, global outlook on a plaintiff's entitlement. In this time period, encompassing my entire career, I have never seen a Circuit Court judge make an award of damages for pain and suffering into the future. It may well have happened, of course, just not on my watch. I'm satisfied that as a general rule, however, that it doesn't occur.

Casino royale

The obvious question is: why? The High Court, as matter of course, divides general damages for pain and suffering into two – past and future – unless the future pain prognosis is considered negligible

or there are other compelling reasons to make a global award. In most cases, though, a division of damages is commonplace.

Presumably, the reason it hasn't occurred in the past in the Circuit Court was the extremely limited nature of the jurisdiction. Certainly, in recent years, most matters coming before it have tended to be of a more minor nature, and future pain and suffering simply were not on the agenda. However, the extended reach now afforded to the Circuit Court judiciary will ensure that much larger matters will come their way, and they will feel obliged, no doubt, to consider the future element of an injury. It is likely that at least half of the

matters that were hitherto heard by the High Court will be now in the lower jurisdiction.

As they will be essentially the same matters heard by High Court judges only a matter of months ago, there seems no logical reason why they should be treated any differently and why the Circuit Court shouldn't divide damages in precisely the same manner, should evidence of any future pain and suffering be before the court.

Although this appears, on the face of it, to be an argument that awards in the Circuit Court should increase, on closer examination,

it is in fact not. I'm merely suggesting that the new influx of matters that will now inevitably be heard there will

be simply treated in the same way as they would have been had the jurisdiction remained the same.

I've no doubt that when the first such cases appear before the Circuit Court, advocates opening such cases will be urging awards for future pain and suffering where the medical evidence demands it, and the result will be a more consistent application of the law on personal injury damages. What's not to like?

viewpoint

WOULD AN EU PROSECUTOR
TERMINATE FUNDS FRAUD?

The ineffective prosecution of fraud on EU funds by EU member states has led to the call for the establishment of a European public prosecutor's office. **Francis Cassidy** investigates



Francis Cassidy is a solicitor in the office of the Director of Public Prosecutions. Any opinions expressed are personal and not intended to represent the views of the DPP

For some time, the European Commission has been concerned about what it says is the ineffective way in which member states prosecute fraud on EU funds, otherwise known as 'PIF crimes'. The suggested solution is the harmonisation of offences designed to address such fraud and the establishment of a **European public prosecutor's office (EPPO)**.

Even within EU terms, the latter is a significant step – as, to be effective, the EPPO must have supranational powers that would overreach the authority of national prosecutors, exercising a Europe-wide jurisdiction. Some member states perceive this as undermining national sovereignty to an unacceptable extent.

Corpus Juris

In the mid '90s, an expert group was commissioned to examine the topic. Its conclusion, known as the *Corpus Juris*, formed the basis of a commission green paper published in 2001. While defining the parameters of the practical operation of such an office – including the creation of a single European legal space, thus avoiding the necessity for mutual legal assistance requests – the paper did not go so far as to advocate the establishment of an EU criminal court.

Lisbon Treaty

The concept, while languishing for a while due to significant political opposition, moved centre stage following the adoption of article 86 of the *Treaty on the Functioning of the European Union (TFEU)*, which provides: "In order to combat crimes affecting the financial interests of the union, the council may establish a European public prosecutor's office from Eurojust, which shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of offences against the union's financial interest. It should exercise the functions of prosecutor in the competent courts of member states."

Provision was also made, if the council could not reach unanimity, that a group of at least nine member states could refer a draft proposal to the European Union and proceed on the basis of enhanced cooperation between themselves.

The concept raises a number of matters that merit consideration, including:

- The standard rules of proportionality and subsidiarity generally limit EU jurisdiction to 'function' (that is, fraud on EU funds) and 'necessity' (that is, limited to circumstances where existing EU agencies and national authorities have failed). The latter is still a vexed question, with many member states suggesting that giving enhanced powers to the existing EU agencies should be tried as a first step.
- The function and competence of prosecutors vary widely from member state to member state, some having a purely prosecutorial function, with others retaining significant involvement in the investigation stage. Is it appropriate or possible that the jurisdiction of an EPPO should vary in each member state?
- What might be its structure? Should it be established within the existing structure of Eurojust, with responsibility vested in national members of the College of Eurojust or, alternatively, as an independent autonomous body, either centralised or decentralised, with offices in each member state?
- To whom would the new body be

accountable and who would determine disputes on competence/territorial jurisdiction?

- How does one address cases that may contain both domestic offences and an element of EU fraud?
- How is the *ne bis in idem* principle to be addressed, particularly considering the wide range of legal definitions of offences among the member states for factually similar cases?
- Where does this leave existing mutual cooperation instruments?

Model rules

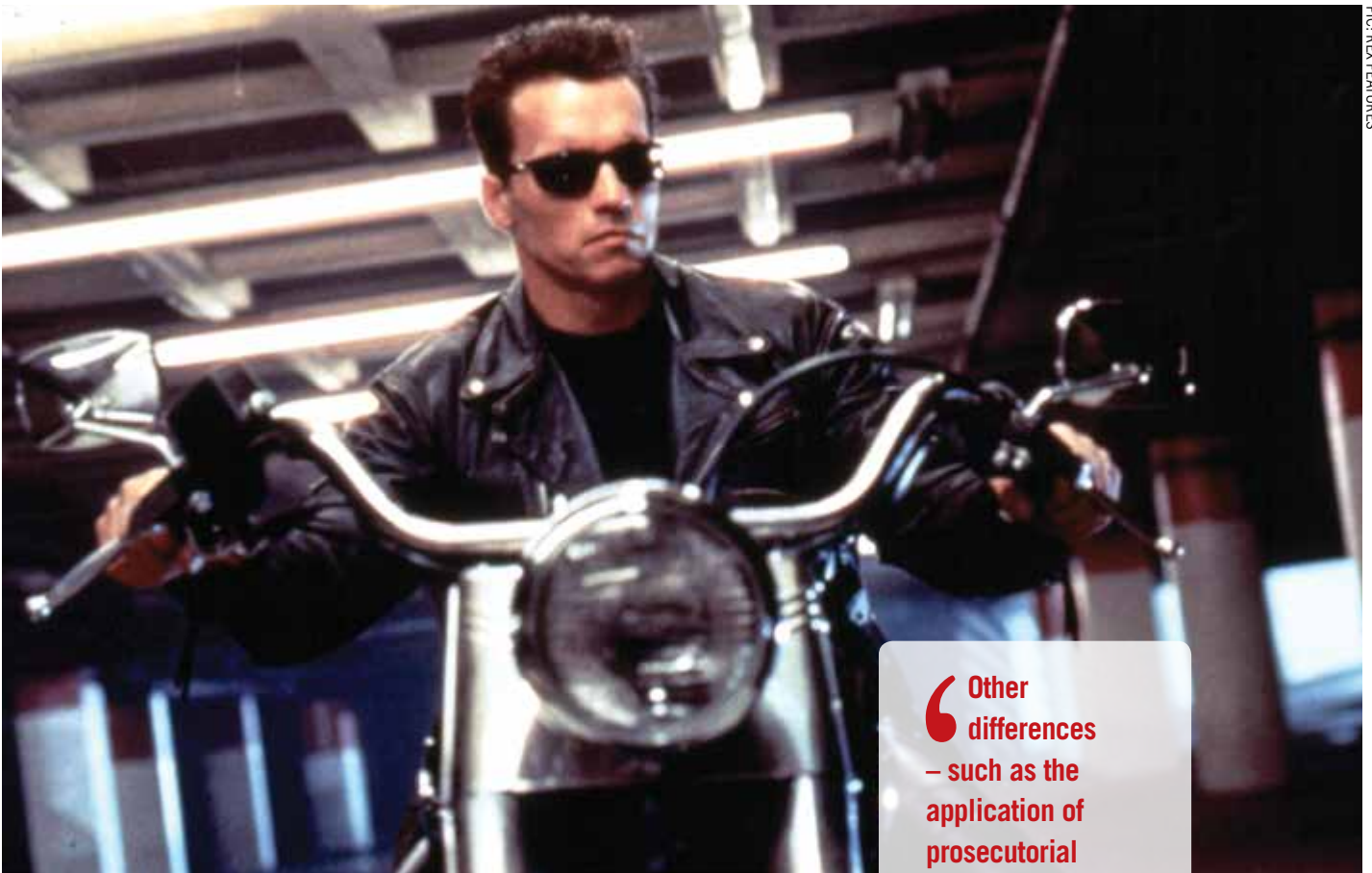
A more recent research project, carried out at the University of Luxembourg, sought to design a model set of rules delineating the investigative and prosecutorial powers of an EPPO, with procedural safeguards and minimal evidential standards.

These rules have a civil law feel. They give that office primacy over PIF crimes, require an investigation once a suspicion exists, provide some coercive investigative powers without judicial intervention, and decree that all evidence is admissible so long as it is obtained in compliance with those rules.

Safeguards include

the minimum necessary intrusion, suspicion-based investigation, translation into own language, access to a lawyer during investigation stage, right to seek investigation into defence issues, and access to investigation documents. As these rules seek to take from all types of

Some of the features of the proposal are inconsistent with Ireland's criminal justice system, in particular the division here between the investigative and prosecutorial role, and the full independence of the DPP



PIC: REX FEATURES

Terminator of funds fraud? He'll be back...

criminal justice systems, they may be compatible with none, yet are of such a generic nature that many member states may have little difficulty in their implementation.

Views of prosecutors

In April 2013, the Director of Public Prosecutions of Ireland, while holding the presidency of the Consultative Forum of Prosecutors General, convened a seminar in conjunction with Eurojust, which focused in detail on the practical implications and issues for prosecutors were such an office to be established and, where possible, sought to identify solutions. General consensus was achieved on the following:

- An EPPO, if it is to be established, must be effective and bring added value.
- Due to the diverse nature of prosecution structures within member states, an element of flexibility is required within the design of the structure.

- Both structures and competencies must be sufficiently clearly defined to minimise conflict and confusion between agencies and jurisdictions.
- Significant benefits were seen in the application of a decentralised model, well integrated within the national system. Such a model could (a) rely on the pre-existing criminal procedural code, (b) rely on evidential rules within the member state, and (c) reduce barriers to international cooperation.
- It was acknowledged that the ceding of the competence to direct prosecutions of offences to EPPO rather than national prosecutors may call for constitutional change in some jurisdictions.

Proposed directive

These recommendations were forwarded to the European Commission, which published its [proposal for a regulation](#) on 17 July

2013. It sought to establish an agency with a union-wide operational authority, yet with sufficient flexibility to operate effectively within the various member states. The proposed directive suggests that:

- Coordination, strategy and primary decision-making functions are to be centralised under the direction and control of the EPPO, possibly based in The Hague, while investigations and prosecutions are to be carried out nationally, by European-delegated prosecutors located in the member state, using their national powers.
- The EPPO, while investigating and prosecuting, is to be defined as a national authority,

Other differences – such as the application of prosecutorial discretion, the admissibility of evidence, data protection rules, safeguards for suspects – could result in the creation of a two-tier prosecution system

and, accordingly, national criminal procedural and evidential rules apply. Thus the model rules were not adopted.

- Competence is to be (generally) limited to PIF offences.
- The EPPO is to be independent in the exercise

of its function (in particular and expressly of national authorities, including prosecutors), yet accountable to the European Parliament and Council (to whom an annual report must be presented), national judicial authorities in the exercise of coercive investigative functions, and the European Court of Justice in relation to the performance of duties or serious misconduct,

- A German/French proposal of a college structure is not reflected in this proposal.

National perspective

The response was almost unprecedented, with 14 chambers of national parliaments, representing 18 votes out of a potential 56 (including Ireland) filing reasoned opinions, generally known as a 'yellow card', on the basis that the

proposal did not comply with subsidiarity requirements.

The commission's response was to maintain its existing proposal, as they said article 86 of the TFEU "gives a strong indication that the establishment of the European public prosecutor's office cannot be considered *per se* and in the abstract to be in breach of the principle of subsidiarity".

Some of the features of the proposal are inconsistent with Ireland's criminal justice system, in particular the division here between the investigative and prosecutorial role, and the full independence of the DPP.

Other differences – such as the application of prosecutorial discretion, the admissibility of evidence, data protection rules, safeguards for suspects – could result in the creation of a two-tier prosecution system. The Government did not exercise its right under article 3 of Protocol 21 to opt in within the initial three-month period.

Alternative proposal

The council subsequently (17 March 2014) presented an alternative proposal, the critical change being the adoption of a 'college structure', that is, the approach earlier suggested

by Germany and France. This structure, which is the basis on which Eurojust operates, tends to give national members a greater input into such issues as the internal design structure, the determination of policies, and the choice of chief European prosecutor.

It will be interesting to monitor developments in the area, as significant political alignment may have occurred on the compromise 'college model' proposal. It may not be so much a question of 'if' such an office is created, but 'when' and perhaps 'by whom'. The provision that allows a group of at least nine member states to proceed to establish enhanced cooperation between themselves and refer a draft proposal to the European Union, if the council itself can not reach unanimity, is under active consideration by a number of member states.

FOCAL POINT

eurojust

Eurojust is an agency of the European Union dealing with judicial cooperation in criminal matters. Established in 2002, it was created to improve handling of serious cross-border and organised crime by stimulating investigative and prosecutorial coordination among agencies of the EU member states. Eurojust is composed of a college formed of 28 national members – experienced judges, prosecutors or police officers of equivalent competence from each EU member state.

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letters

European Court AG's holiday pay opinion looks significant

From: Marina Keane, Michael Houliban & Partners, Bindon Street, Ennis, Co Clare

I was interested to read the note in the March issue of the *Law Society Gazette* with regard to the European Court advocate general's opinion on holiday pay (see [Bill Holohan's piece](#) on page 9). This may be of significance to many Irish cases.

I wonder if you might have the case reference or title of the proceedings, so that readers can access the AG's opinion to ascertain its significance to Irish cases. Thank you for bringing the interesting case to the attention of *Gazette* readers.

Bill Holohan responds

The case is *Lock v British Gas Trading Ltd* (case C-539/12), where commission accounted, on average, for some 60% of the monthly pay of the claimant in a sales consultancy. He took three weeks' annual leave at the end of 2011; during this time, he did not earn any commission as he was not making any sales and, as a result, his salary in the months following was reduced. He did receive a commission




payment while he was on holiday, but this was for sales he had made earlier in the year, which he would have received in any event – whether or not he had been on holiday.

He then decided to ask for, in effect, a 'top-up' to reflect later losses of commission, in the form of a claim for unpaid holiday pay. The Employment Tribunal referred the claim to the European Court; Britain's

Working Time Regulations do not make it clear precisely what must be included in holiday pay in this sort of case, and there has been a conflict between a British Court of Appeal decision (suggesting that only basic pay should be taken into account) and a more recent European case about airline pilots' holiday pay that had ruled that any pay "intrinsically linked" to performance of the

worker's job must be included.

The European Court has traditionally been fiercely protective of annual leave and generally looks to stop any practice that might dissuade employees from taking it. In this case, the [advocate general's suggestion](#) to the court is to reject the employer's arguments that their commission policy is structured to take account of holidays (both in terms of the targets set for sales staff and the rate of commission paid) and to rule that the employee should get holiday pay that includes basic pay, commission actually payable during that period, and a proportion of commission (averaged over a period of, say, 12 months) to reflect what he would have earned had he been working rather than on leave.

The European Court does not have to follow this opinion but, more often than not, it does (although, if so, the ruling would apply only to the minimum four weeks' annual leave under the European directive). A cautious approach would be to proceed on the basis that commission (and any other regularly earned variable pay elements, such as shift allowances, for example) ought to be factored into holiday pay. 

Singapore sling for General Percival!

From: B J O'Beirne & Co, Solicitors, 3 Church Buildings, Main Street, Arklow, Co Wicklow

It was very nice to read your article on Edward O'Driscoll (*Gazette*, Jan/Feb 2014, p44).

Halfway down the first page of the article, a story was triggered in my mind that my late father told me. My father served in the Irish Medical Corp during the so called 'Emergency'. I think he may have been stationed in Cork at some time. I do remember him telling me a postscript to the Singapore surrender, which goes something like this.

On hearing that General Percival was about to surrender 125,000 empire troops to a lesser force of 40,000 Japanese in the Ford Works at Singapore, some of the Cork citizens (probably members of the former flying column) went to the Ford Works in Cork and accessed the newly installed state-of-the-art telex and sent a hearty telex of 'Congratulations to General Percival on your fine achievements from the people of Cork'.

This caused consternation among the Japanese, who suspected it was something else, and delayed the negotiations of

surrender until it was explained to them where Cork was and what the telex really meant.

I am not sure if it is a true story or just a yarn. Maybe Edward O'Driscoll might know better, or better still, may be he acted for some of the good citizens who sent this historical telex – if it really happened!

My dad died in 1980 but he always remembered with fondness the years he served in the Irish Medical Corp in various locations around the country between 1940 and 1945.

Best wishes to Mr O'Driscoll in his retirement.

PRACTICE MAKES PERFECT

‘Working on your practice – not in it’ was the theme of the Society’s annual conference at Dromoland Castle in Co Clare. Mark McDermott reports



Mark McDermott
is editor of the *Law
Society Gazette*

Nobody would win any prizes for calling the Law Society a conservative organisation that takes itself, and what it does, very seriously – or for saying that the vast majority of its members would consider themselves to be cut from that same cloth. Solicitor Bill Holohan shattered that mould, however, with his rapid-fire delivery at the Society’s annual conference this year.

Bill talks a mile a minute, doesn’t stop for breath, and admits that his Cork accent makes him even harder to understand. Stick with him though and you just might learn something!

The theme of the conference was ‘Working on your practice – not in it’. In his opening address, Law Society President John P Shaw explained that the theme had been chosen to explore the ways in which solicitors could adopt new technology and work practices in order to improve efficiency and retain a healthy work/life balance in a challenging environment.

As one of the main speakers, Bill Holohan focused on the changing legal services market. One of the greatest lessons he had learned, he said, was that people only come to solicitors when they are in trouble. “In other words, you are a grudge purchase. It taught me a lesson, though, in terms of how I should deal with ordinary people.”

“People are not going to pay you for what they can get for free on the internet. What they want, however, is the combination of all of your acquired knowledge, sound legal advice, and a strategic approach to legal problems”

Quoting from Richard Susskind, he reminded those present that people are not going to pay you for what they can get for free on the internet. “What they want, however, is the combination of all of your acquired knowledge, sound legal advice, and a strategic approach to legal problems.”

The legal landscape is facing major change, he warned – thanks chiefly to the impending introduction of the *Legal Services Regulation Bill*. While many lawyers see this as a major threat to their livelihoods, Bill recognised that new opportunities would present themselves. He quoted famous ice-hockey player Wayne Gretzky: “Skate where the puck’s going, not where it’s been.”

In other words, think ahead.

“Sometimes, we are so caught up in our busy practices that we forget to think about working on them. We need to think about where we want to go and what we have to do to get there. If we stay the same, eventually we will run out of road. You have to think of things in new ways,” he warned.

Fresh focus

The Law Society’s new director of representation and member services, Teri Kelly, shared her vision for building stronger bonds between the Society and its members through more effective communication.

She referred to significant changes taking place in the Society, with the creation last January of two new departments – Policy and Public Affairs, headed by deputy director general Mary Keane; and Representation and Member Services, headed by Teri. This

development had been influenced by recommendations made by the Future of the Law Society Task Force in its report.

Teri laid out her communications strategy for the Society for the next 12 months. “The task force report tells us that a key priority is defending and promoting the profession,” she said. “The Millward Brown survey in 2012 determined that our members’ priorities include better representation, active defence of the profession in the media, and regular communication with members and with the general public.”

She laid out the Society’s communications strategy for the next 12 months. There are five key messages that should pervade all communications, whether it’s a tweet, a press release, or a *Gazette* article:

- Solicitors provide expert and valuable help throughout their lives,
- Solicitors are independent, trustworthy and respected,
- The Law Society is the ally and advocate of the solicitors’ profession,



Law Society President
John P Shaw delivering
his opening address



(Above): President of the Law Society of Northern Ireland Richard Palmer warned practitioners to beware fraudulent online banking transactions

(Right): Law Society President John P Shaw with his wife Mary Nolan and special guest speaker Ruby Walsh



Speakers on day one of the conference (l to r): Maurice Buckley (NSAI), Bill Holohan (Holohan Law), Dermot Benson (Bendo International Ltd), Law Society President John P Shaw, Attracta O'Regan (Law Society), John Elliot (director of regulation) and Michelle Nolan (Law Society)



FOCAL POINT

Q&A

During his talk on regulatory matters, director of regulation John Elliot referred to the importance of having proper limitations in place when accessing bank accounts – particularly for online access: “A number of firms haven’t paid sufficient attention to who has access to the accounts online, and this has caused some surprises in certain firms that weren’t alert to the issue.”

In the Q&A that followed, director general Ken Murphy stressed the importance of treating online banking with the same care and attention that is normally paid to chequebooks.

He said that he was aware of several incidences of online fraud that had affected a number of Northern Ireland firms. The fraudsters appeared to have gained access to certain bank account details and were thus able to convince the bookkeeper or person in charge in the particular firms to grant the fraudsters access to the security codes, which then enabled them to remove, in one particular case, up to Stg£600,000.

- The Society safeguards the public interest on issues of fairness and justice, and
- The Society and the profession are advocates for the rule of law and the protection of the rights of individuals.

She also gave a sneak preview of the Society’s new logo to members at the conference, which generated considerable interest. The logo will be launched this summer.

Regulatory overview


Director of regulation John Elliot was on hand to speak about the “ordinary, everyday issues” that

solicitors need to be aware of in order to avoid running into regulatory difficulties with the Society. John recommended the model terms and conditions of business that had been devised by the Society’s Guidance and Ethics Committee, which would greatly assist them at the outset of the solicitor/client relationship. “I recommend that they be used for every contract for legal services. They are designed to inform and educate the client. They are also very importantly designed to protect the solicitor and they can be very useful in dealing with resolving complaints or

allegations of negligence.”

He discussed all of the major regulatory matters that can cause difficulties for solicitors:

Finally, Maurice Buckley, CEO of the National Standards Authority of Ireland, addressed the topical issue of quality assurance within the legal sector, and discussed risk and practice standards within the profession.

“The benefits of a quality assurance system are huge,” he said. “Every one of you deals with customers and, no matter how good you think you’re doing, you’ll find it’s better if you have a structured system in place.” 



Speakers on day two of the conference: Neil Butler of Neil J Butler & Co Solicitors, Law Society President John P Shaw and Law Society Director of Representation Teri Kelly

SOCIETY LISTS PRIMARY CONCERNS IN 'GARDA GATE'

The Law Society has published a list of 41 items that it recommends should be encompassed by the terms of reference of the Inquiry into Recording of Telephone Conversations in Prisons and Places of Detention



Mark McDermott
is editor of the Law
Society Gazette

In a letter to the Taoiseach on April 2014, Law Society President John P Shaw described the revelation that telephone conversations had been recorded at a large number of garda stations over a period of decades as “deeply disturbing”, adding that “it strikes directly at the foundations of the criminal justice system”.

In light of the revelations, the president said that the Society's Criminal Law Committee had met to discuss the implications for the justice system, due process, and the Constitutional protection of fundamental rights. Such rights include the presumption of innocence, the right to silence and privacy.

Serious implications

Mr Shaw stated that the Council of the Law Society had also discussed “the very serious implications” at its meeting on 4 April. “It unanimously requested that I write to you directly to communicate the very serious concerns held by solicitors.

“The Society is deeply concerned about the implications for the right to a private conversation between clients and their solicitors while that client is in garda detention,” he added. “This is a right that the Court of Criminal Appeal,

in the case of *Director of Public Prosecutions v Finnegan* (Court of Criminal Appeal, 15 July 1997) has specifically acknowledged and upheld. Barrington J stated that “there was a breach of Mr Finnegan's constitutional rights when he was denied private access by telephone to his solicitor. From that point on, he was in unlawful detention”.

The president said that any breach of the right to private access to a solicitor is, in and of itself, a breach of a person's constitutional rights. “It is important to note that, even where a detainee has not been charged or lawfully convicted, any interception of a telephone call between a client and their solicitor is a breach of their constitutional rights to privacy and rights protected under the *European Convention on Human Rights*,” he stated.

“Where a person also then becomes subject to proceedings following such a breach, their constitutional rights to a fair trial and due process may also be affected. The protection afforded to conversations between clients and their solicitors for the purposes of obtaining legal advice is central to the constitutional right to a fair trial, the justice system as a whole, and may be a potential breach of the article 8 privacy rights of individuals protected under the *European Convention on Human Rights*.”

FOCAL POINT

conspiracy or cock-up?


The commission of investigation to be chaired by Mr Justice Nial Fennelly must establish whether the taping of solicitors' telephone conversations with clients in Garda stations and in prisons resulted from “conspiracy or cock-up”, director general Ken Murphy told interviewer Richard Crowley on RTÉ Radio's *News at One* on 2 April 2014.

“There are said to be two great theories of how the world works,” the director general proposed. “There's the conspiracy theory and there's the cock-up theory. I personally subscribe towards the cock-up theory. But I know many people subscribe to the conspiracy theory and the conspiracy theorists aren't always wrong. What is important here is that we find out what actually happened.

“Is this a conspiracy?” he asked. “Is there something more sinister in this that has been indicated to date by people who, perhaps, self-interestedly are trying to minimise it? Or is it entirely a matter of what can only be described as negligence on the part of State authorities in undermining vital rights of citizens in the criminal justice process? We have to find out.”

Murphy described as “deeply disturbing” the revelation the previous week that the Garda Síochána, whose duty it was to uphold the law, were systematically breaking it – for decades it seems – by recording conversations between solicitors and clients for the purpose of obtaining legal advices, which are protected by the *European Convention of Human Rights* and the Constitution. Now, we had added to it that this had also been going on in the Prison Service.

Crowley asked if the director general had been reassured by what the Director of the Irish Prison Service Michael Donnellan had said on *Morning Ireland*, to the effect that the recordings had not been listened to, and that the Gardaí did not have access to them.

Murphy responded that he was “somewhat reassured” by this, but “like many explanations that have been emerging over the last week or so, in some respects it gives rise to more questions than it answers. For example, the question occurs to me why were these recordings being made if they were never listened to? And if they were listened to, how come it was not noticed until now if these recordings of privileged solicitor/client telephone conversations were being made?” 

human rights watch

RECORDINGS OF LAWYER/CLIENT MEETINGS PERMISSIBLE

The *Öcalan* judgment is particularly topical in light of the recent revelations about the routine recording of phone calls to and from garda stations, writes **Helen Kehoe**



Helen Kehoe is a policy development executive at the Law Society and a qualified solicitor

The European Court of Human Rights has held that the Turkish authorities' recording and monitoring of a prisoner's meetings with his lawyer was permissible in circumstances where the authorities considered it necessary to take exceptional security measures for the detention of the applicant, who had been convicted of terrorist activities.

The court (sitting as a chamber composed of seven judges from the second section) gave its judgment in *Öcalan v Turkey* on 18 March.

Background

Mr Öcalan is a Turkish national currently serving life imprisonment on the island of Imrali (Turkey). In June 1999, Mr Öcalan was sentenced to death for acts of terrorism, having also been identified by the Turkish courts as the founder of the PKK (the Kurdistan Workers' Party), an illegal organisation in Turkey.

In 2002, his sentence was commuted to an 'aggravated' life sentence (that is, without possibility of release) following a change in Turkish law regarding the death penalty (in 2002, the death penalty was abolished, with the exception of the State being in a state of war or at imminent threat of war; it was later completely abolished, in all circumstances, in 2006).

Mr Öcalan lodged his application in August 2003, relying on articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 7 (no punishment without law), and 8 (right to respect for private and family life).

He complained about social isolation in prison and his sentence of life imprisonment without any possibility of release (article 3), restrictions on his communications and visits from relatives and his lawyers (article 8), the change in his sentence following the abolition of death penalty, and he also alleged that

he was being gradually poisoned in prison (article 2).

The European Court of Human Rights stated that, generally, there is no restriction regarding a prisoner's access to a lawyer in Turkey; however, in 2005, an exception was created.

Legislation introduced in Turkey on 1 June 2005 allows for the monitoring and recording of certain lawyer/client meetings. Law no 5275 (*Law on Execution of Sentence and Security Measures*) facilitates the monitoring and recording of the relationship between a lawyer and client where the client has been convicted of terrorism, and where there is some form of evidence that these lawyer/client meetings are being used as a means of communication within a terrorist organisation (that is, that the lawyer is being used as some kind of intermediary between the convicted terrorist and the terrorist organisation). An *ex parte* application can be made to a judge for an order pursuant to article 59 of Law no 5275.

Article 59 of Law no 5275 provides for three main measures in relation to the conduct of lawyer client meetings: the lawyer/client

meetings can be recorded, an 'officer' can be present during the meetings, and the control of all or part of any documents exchanged between lawyer and client (such as the seizure of any such documents, which can then be examined by a judge).

On the same date that this law was introduced, Mr Öcalan was visited by his lawyers. They were informed by the prison authorities that a judge had given a decision to allow the application of article 59 to Mr Öcalan. His lawyers later appealed this decision but, in April and

June 2006, the appeal court rejected the appeal on the basis that the measures were aimed at preventing the transmission of orders within a terrorist organisation and that meeting transcripts demonstrated that the meetings were not related to the procedural or 'defence' rights of the applicant but concerned the functioning and strategy of the PKK. The Turkish court did not provide copies of these reports to Mr Öcalan or his lawyers, on the basis that they contained instructions from Mr Öcalan to the PKK.

The judgment

The European Court of Human Rights placed considerable emphasis upon the specific and highly unusual circumstances of the applicant. The court acknowledged that Mr Öcalan's detention presented the

Turkish authorities with "extraordinary difficulties"; as leader of a large-scale separatist movement, he was regarded by a considerable portion of the Turkish population as the country's most dangerous terrorist.

The situation appeared to be exacerbated by the fact that Mr Öcalan was considered to have remained very active in his contribution to Turkish

political debate as regards the PKK, despite his imprisonment, and the PKK continued to designate him as its main representative.

In light of these "difficult" circumstances, the court understood that the Turkish authorities considered it necessary to take "exceptional security measures" in the detention of Mr Öcalan.

In the context of state authorities recording and monitoring lawyer/client communications, the court stated that national authorities could impose

The general and fairly open-ended manner in which the court classified this kind of surveillance as a 'legitimate restriction' is worrying



Mr Öcalan: serving life in Turkish prison

“legitimate restrictions” of this nature on the rights of those convicted of terrorism, where the restrictions are strictly necessary to “protect society from violence”.

The court therefore found that the Turkish government had acted legitimately and was justified in recording Mr Öcalan’s confidential lawyer/client meetings.

The judgment of the chamber is not yet final as, under article 43 of the *European Convention on Human Rights*, there is a three-month period from the date of the judgment during which it is open to any of the parties to request that the case be referred to the Grand Chamber of the Court.

Equally, the judgment will become final if the parties declare they will not be seeking a referral to the Grand Chamber, or the three-month period expires without any request being made, or the panel of the Grand Chamber refuses a request for referral (pursuant to article 44).

The general and fairly open-ended manner in which the court classified this kind of surveillance as a “legitimate restriction” is worrying: it could be interpreted as creating a novel exception to the general rule of respecting confidential access to a lawyer by allowing national authorities to introduce similar measures on the ‘legitimate’ basis that they consider such actions necessary to protect

society from violence.

It would also appear that, notwithstanding the specific circumstances of this case, the judgment is not entirely consistent with the UN’s *Basic Principles on the Role of Lawyers*, which states: “Governments shall recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential” (principle 22).


The Law Society of England and Wales expressed concern in relation to the judgment: “As it stands, the ECtHR decision allows legal professional privilege to be ignored in circumstances where the state expresses the view that the confidentiality may lead to the commission of violent crimes. This stance is open to misuse by governments and, while the protection of society from violence must be paramount, respect for privileged communications between lawyers and their clients is essential except in the most extreme circumstances.”

The strongest recognition of the importance of ensuring confidential access to lawyers was contained in the partly dissenting opinion of Judge Pinto de Albuquerque (pp54-65 of the *Öcalan* judgment). He strongly disagreed with the

majority judgment on this point, and stated that prisoners have three fundamental rights: access to a lawyer (encompassing the right to consult in private), access to medical treatment, and to inform a relative (or other third party of choice) of their detention.

He also stated that access to a lawyer while serving a prison sentence is particularly crucial, as it offers a form of independent oversight of the prisoner’s conditions of detention: “The lawyer is an essential guarantor of respect for human rights in the execution of a sentence of imprisonment”. He made the point that the right of confidential access to a lawyer had to apply to everyone, no matter what the crime was, and often those suspected of particularly serious crimes (such as terrorism) are often the most at risk of ill-treatment or abuse, and thus they are the most in need of a lawyer. He considered that the question of restricting this right of access had to be assessed on a case-by-case basis, rather than by a general category of offence.

It remains to be seen whether this judgment will be referred to the Grand Chamber. If it is and the Grand Chamber accepts the referral, the decision will be eagerly awaited in relation to the issue of restricting the right of access to a lawyer, as

the Grand Chamber could agree with the approach of the majority or consider the issue in light of the partly dissenting opinion of Judge Pinto de Albuquerque. 

look it up

Case:

- *Affaire Öcalan C Turquie (N° 2)* (application nos 24069/03, 197/04, 6201/06). As the *Gazette* went to press, the judgment was available only in French; the English version should follow shortly

Literature:

- Council of Europe, Committee of Experts on Terrorism (CODEXTER), ‘Profiles on counter-terrorist capacity: Turkey’ (May 2013)
- European Court of Human Rights [press release](#) issued by the registrar of the court, ECHR 077 (2014), 18 March 2014
- United Nations, *Basic Principles on the Role of Lawyers*

CATCH ME if you can



Ruth O'Toole is a solicitor and works as legal counsel at Daon, an Irish company that provides identity and biometric software and services globally, including border control systems for the US and Japan

In the fight against identity fraud, biometric solutions are leading the charge in protective measures. **Ruth O'Toole** examines the key privacy and data-protection considerations associated with biometric authentication

Identity fraud is one of the fastest growing crimes in the world today. As online services continue to grow, the ability to securely authenticate individuals using these services is becoming increasingly important. The use of commercial biometric products to provide secure authentication is a rapidly growing trend. So, what are the key privacy and data protection considerations associated with biometric authentication that practitioners may encounter?

Biometric authentication is the identification of individuals using their inherent characteristics, such as fingerprint, face, and iris recognition. In the fight against identity fraud, traditional online authentication measures, such as personal identification numbers (PINs), passwords, and 'memorable' answers to standard questions, are considered by many not to provide the requisite level of security. This is largely because users tend to choose simple PINs and passwords that, while easy to remember, are equally easy for others to guess.

The use of multimodal biometrics systems, which combine a variety of biometric techniques in a single authentication – either alone or in conjunction with traditional authentication measures – is becoming recognised as an effective way to create higher levels of security protection and combat even biometric spoofing or false biometrics.

The increased number of biometric authentication products has been facilitated by technological developments, such as the reduced costs of biometric-reader devices and storage space for data in the 'cloud'. User acceptance of such products is also increasing, both by the public at large – for example, purchasing smart phones/tablets with inbuilt fingerprint readers – and at a European level.

Increased acceptance

Biometric technology has traditionally been used by governments for border-control systems, to increase security and make identification and authentication procedures easy, fast and convenient.

In the EU, Council Regulation 2252/2004 (13 December 2004) introduced a requirement for all newly issued European biometric passports to include fingerprints (this requirement applies to all EU

at a glance

- Biometric authentication is already being used for most EU member state passports (excluding Ireland and Britain), to secure certain country borders, and its use has been endorsed by the European Central Bank
- Biometric data may only be processed if there is a legal basis for such processing, the grounds for which are provided for in article 7 of the *Data Protection Directive*
- Practitioners should be aware that the current draft of the new *General Data Protection Regulation* proposes a more comprehensive definition of 'the data subject's consent'
- The Article 29 Data Protection Working Party has identified technical and organisational measures that can be adopted to mitigate data protection and privacy risks

“When advising clients who provide commercial biometric authentication products, practitioners should consider data protection and privacy concerns”



member states except Britain and Ireland). Biometric authentication is also currently used to secure USA, Australian and Japanese borders, among others. However, the use of biometrics in Europe to provide secure authentication is now rapidly expanding into the financial, banking, e-health, education, retail and telecommunication sectors.

The use of biometrics as an authentication factor in the financial sector has been endorsed by the European Central Bank (ECB). On 31 January 2013, the ECB issued *Recommendations for the Security of Internet Payments* that require payment service providers (PSPs) to protect the initiation of internet payments and access to sensitive payment data using “strong customer authentication” by 1 February 2015.

The ECB definition of ‘strong authentication’ is “a procedure based on the use of two or more of the following elements – categorised as knowledge, ownership and inherence: (i) something only the user knows, for example, static password, code, personal identification number; (ii) something only the user possesses, for example, token, smart card, mobile phone; (iii) something the user is, for example, biometric characteristic, such as a fingerprint”.

The ECB guidelines are applicable within the Single Euro Payment Area (SEPA), which includes the 28 EU member states, plus Switzerland, Norway, Liechtenstein, Iceland and Monaco. It is proposed that PSPs that do not implement strong customer authentication will be liable for credit-card fraud on their networks, and the e-merchant will be released from liability.

It is proposed that payment service providers who do not implement strong customer authentication will be liable for credit-card fraud on their networks, and the e-merchant will be released from liability

The European Commission has endorsed the ECB recommendation on authentication in its latest draft of the proposed new *Payment Services Directive*. Article 87 of the draft directive requires all electronic payment transactions to use “strong customer authentication”, which it defines as “a procedure for the validation of the identification of a natural or legal person based on the use of two or more elements categorised as knowledge, possession and inherence that are independent, in that the breach of one

does not compromise the reliability of the others and is designed in such a way as to protect the confidentiality of the authentication data”.

Privacy concerns

When advising clients who provide commercial biometric authentication products, practitioners should consider data protection and privacy concerns. Biometric data is in most cases personal data, and the European legal framework for biometric authentication is provided by the *Data Protection Directive* (95/46/EC) and, in Ireland, by the *Data Protection Act 1988* and the *Data Protection (Amendment) Act 2003*.

Biometric data may only be processed if there is a legal basis for such processing, founded on one of the grounds of legitimacy provided for in article 7 of the *Data Protection Directive* (section 2A of the acts). In the case of commercial biometric authentication, the grounds for legitimacy will, more often than not, be where the data subject has provided their “unambiguous consent”, pursuant to article 7(a) of the directive, or their “consent” to the processing, pursuant to

section 2A(a) of the acts.

Practitioners should be aware that the current draft of the new *General Data Protection Regulation* proposes a more comprehensive definition of “the data subject’s consent” as follows: “Any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed.”

Article 7 of the draft regulation also sets out more stringent conditions for consent, which provide that (a) the data controller shall bear the burden of proof for the data subject’s consent, (b) the data subject shall have the right to withdraw his or her consent at any time, and (c) consent shall not provide a legal basis for the processing where there is a significant imbalance between the position of the data subject and the controller.

Adoption of the draft regulation was aimed for in 2014, with full implementation by 2016; however, progress has been delayed.

Data storage

One of the key drivers behind commercial biometric authentication products is the cheaper availability of storage space. The ability to engage third parties to store information remotely in the ‘cloud’ has significantly reduced the cost of storing the large volumes of data accumulated by a biometric authentication system and has made such products more commercially viable.

Practitioners should be aware that the use of cloud storage raises the issue of ensuring adequate protection of data protection rights where there is a transfer of biometric data collected within the European Economic Area (EEA) to countries outside the EEA, where such cloud providers may locate their data centres.

One method of addressing this concern is for practitioners to advise commercial organisations to ensure that biometric data will only be held by cloud providers in data centres within the EEA. Where this is not possible, practitioners should advise that, pursuant to article 25 of the directive (section 11 of the acts), organisations that transfer personal data outside of the EEA must ensure that the country in question provides an adequate level of data protection. The EU Commission has approved some third countries for this purpose, and the USA ‘*Safe Harbour*’ arrangement has also been approved, for US companies that agree to be bound by its data protection rules.

A data controller may also make such a transfer using model contracts prepared by the commission for this purpose. Where a country or company has not been approved in this way, a data controller may still transfer

FOCAL POINT

data protection rules

Where a commercial organisation provides biometric authentication on its own behalf, it will be a data controller and must comply with the eight ‘data protection rules’. Biometric data must be:

- Obtained and processed fairly,
- Kept only for one or more specified and lawful purposes,
- Processed only in ways compatible with the purposes for which it was initially provided,
- Kept safe and secure, and
- Accurate and up-to-date,
- The processing must be adequate, relevant and not excessive,
- The data must be retained for no longer than is necessary for the specified purpose or purposes for which it was initially provided, and
- The data subject must be given a copy of his/her personal data on request.



Practitioners should advise that, pursuant to article 25 of the directive (section 11 of the acts), organisations that transfer personal data outside of the EEA must ensure that the country in question provides an adequate level of data protection

Tinker, tailor, soldier, spy. Not to mention pilot... and, er, lawyer

information outside the EEA if the data subject has given their 'unambiguous consent' pursuant to article 26(a) of the directive, or their 'consent' pursuant to section 11(4)(a)(ii) of the acts, to the proposed transfer. However, practitioners should note that article 44(1)(a) of the new draft regulation proposes to add an extra requirement that a data subject's consent to such a transfer may only be given after they have been informed of the risk that the European data protection safeguards will not apply to their information after such a transfer.

Mitigating risks


Practitioners may also wish to advise clients that the Article 29 Data Protection Working Party (an independent advisory body established by the directive) has identified technical and organisational measures that can be adopted by commercial biometric authentication providers to mitigate data protection and privacy risks. Its *Opinion 3* of 27 April 2012 on developments in biometric technologies recommends:

- Privacy by design – the concept of embedding privacy proactively into technology itself,

- Privacy impact assessment – a process by which an entity carries out an evaluation of the risks associated with the processing of personal data and a definition of additional measures designed to mitigate these risks,
- Technical measures – including use of encryption and automated data erasure, and

- Organisational measures – such as access policies and control of contractors/cloud providers.

According to the *Europol EU Serious and Organised Crime Threat Assessment 2013*, the volume of cybercrime offences, including identity fraud, looks set to increase in the future as the internet becomes even more essential to everyday life. There is a real need for individuals to protect their identity.

There is no panacea. However, the use of commercial biometric authentication products to provide higher levels of security protection is becoming increasingly widespread. Practitioners must be ready to advise clients providing such products and services of the best ways to do so, while also addressing data protection and privacy considerations. 

look it up

Legislation:

- *Data Protection Act 1988*
- *Data Protection (Amendment) Act 2003*
- *Data Protection Directive* (95/46/EC)
- *EU Council Regulation* (2252/2004, 13 December 2004)

Literature:

- Article 29 Data Protection Working Party, *Opinion 3/2012 on developments in biometric technologies* (adopted on 27 April 2012)
- European Central Bank, *Recommendations for the Security of Internet Payments* (January 2013)
- Europol, *EU Serious and Organised Crime Threat Assessment* (SOCTA 2013)
- *Proposal for a Directive of the European Parliament and of the Council on Payment Services in the Internal Market* (24/07/2013)
- *Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)* 2012/0011 (COD) (25/1/2012)

the importance of being **ERNEST**

Stalwart litigator and human rights defender Ernest Cantillon once shunned the medical for the legal profession, but now spends much of his time defending clients in groundbreaking medical negligence cases.

Mark McDermott speaks to the man about life, liberty and the pursuit of happiness

PICS: JOHN SHEEHAN PHOTOGRAPHY



at a glance

- Medical pedigree and troublesome teenager
- Turning his back on secondary school for the bright lights of the USA
- *O'Keeffe* victory in the European Court of Human Rights
- Drawn-out litigation battles with the State – the human expense and monetary cost



Mark McDermott
is editor of the Law
Society Gazette

Ernest Cantillon looks like a doctor pretending to be a lawyer. One suspects, on entering his personal office at 39 South Mall, Cork, that there's a fully functional TV studio out the back somewhere, where he dons his white coat and stethoscope to play the lead role in *ER*, *Casualty* or *Grey's Anatomy*. His rakish good looks, easy manner and mischievous eye could see him walk away with the lead role in any Hollywood screen test. Clooney would not rest easy if Cantillon was doing the rounds at County General.

There's an irony here, however, which is evident when we get to discussing his family pedigree. Ernest's dad was a doctor, operating from the building next door to his. "He was a GP and a 'baby-puller'," volunteers Ernest. "I don't know how he managed to do it, but the maternity hospital here in Cork for many years was the Erinville Hospital and he ran that along with two brothers, two Doctor Kearneys. As well as being a GP, he was effectively an obstetrician. My mother was a nurse who had two sisters who were nurses – and my brother is a GP. My grandfather was a doctor and all my paternal uncles were doctors, surgeons, ophthalmologists and so on. And then a number of nephews and nieces are doctors."

Did he miss his true calling then? He answers by referring to his 'hate' relationship with the educational establishment. "I didn't like academia. There seemed to be a view that you couldn't leave school before you were 16. I was in the Christian Brothers' college here in Cork and, if I had stayed, I would have left college at 18 or 19. I left after my Inter Cert, as it was then, and went to a school that was immediately more attractive, where you attended from 9.30am 'til 12.30pm, and no more than that."

"It was a private school run by a lady called Ms Walsh. A lovely lady. But there were some rather eccentric characters there, and good, fun people too. We'd sit around a table in her sitting room and we'd do a different subject each day."

"I managed to scrape five Ds in five subjects, which was the minimum number of subjects you could do at the time in the Leaving Certificate. I did the exam in one year – I was about 15 or so – but I wanted to get out of school because I perceived that there was good fun to be had elsewhere, and I was interested in fun!"

Was he the archetypal *enfant terrible* – the 'troublesome teenager'?

"Probably yes. I would say, of course, that I was just having a good time, but others would call it troublesome."

As soon as the Leaving was out of the way, he headed for the US. "I landed in New York at just 16 years of age. I had never really been outside the country before that. And it was

fascinating. I arrived into Times Square at 2am, where you were met with prostitutes in hot pants – stuff you'd never seen before. At the time, *Playboy* and the like were banned in Ireland, but to see this kind of carry on – well it certainly opened my eyes!"

He found New York "strict" when it came to serving alcohol, so he moved to Boston, taking on any work he could get. "I loved my time there, visited Florida, and did stints in London and Europe too."

"Come September, my father called me, asking me to come back to repeat the Leaving Certificate. After some years, I returned and taught myself economics and chemistry or applied chemistry. I can't even remember what bloody subjects I did now! I effectively self-taught, but I just didn't see that I could do the science subjects for medicine on my own, and I didn't like the discipline. The discipline of a

school after having tasted the dizzying heights of Times Square, well I suppose I wasn't likely to go back to the Christian Brothers!"

He was around 20 or 21 when he sat the Leaving Cert for the second time. He admits that it was his difficulty with discipline that led to him considering the law as a profession. "Law appealed to me. I did the subjects – the minimum – to get enough points to get into law and spent my time in UCC."

Filling in the blanks

Ernest completed his BCL in the late '70s and qualified as a solicitor in the Trinity term of 1980. Trying to win an apprenticeship was hard. "I found a man in Clonakilty, a lovely man, Michael Harrington, who took me on. But the nature of the work was far from stimulating. He did debt-collection work, and I didn't like that."

"Then I managed to get an apprenticeship with Goldberg Fleming – the famous Gerald Goldberg and Peter Fleming. Both were involved in very interesting, unusual cases. They had a great sense of the law, and if Mr Goldberg or Mr Fleming gave you a file, the worst thing in the world you could do was to go away and ring up somebody and say 'what do I do next?' They wanted you to research what the position was and know it. If either

of them asked you subsequently what the legal position was, and you came back with 'Joe Bloggs, senior counsel, says...', Mr Goldberg would retort 'I don't care what Joe Bloggs, senior counsel, says: you look up the law and you tell me what your view of the law is!'

"It taught you from an early stage that the answer to whatever your question was was in books of some sort or another, and to go away and look them up – which, unfortunately, is a trait that a lot of people fail to develop, seeming to prefer to rely on others. You learn from looking it up, and you remember it for all time."

"It was an old-fashioned office in some ways. In my time, believe it or not, there were the remnants of a partition

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set up with one secretary/receptionist, while I was chief cook and bottle-washer. I used to do a lot of legal aid, a lot of exotic cases. At the time, legal aid was not well populated by solicitors, who regarded it and criminal work as poorly paying.

"I started fighting cases, which got me noticed, firstly in the newspapers and subsequently by the guards. When they themselves got into difficulty, they'd come to me as clients. That led to a heightening of my profile."

Eventually he got fed up with "the standard criminal cases, where you found yourself making the same repetitive arguments". He needed a stiffer intellectual challenge. Litigation proved to be a welcome mistress.

Louise O'Keeffe victory

One of his biggest cases to date has been the Louise O'Keeffe case. Her victory in the European Court of Human Rights in January 2014 was groundbreaking for the victims of child sexual abuse. Louise has recounted to the media her embarrassment and shyness when she first walked into Ernest's office to broach the subject of her experiences.

"She was obviously speaking to a stranger – and a male – about matters of sexual abuse," recounts Ernest. "These were matters that she hadn't spoken to anybody about, other than to the gardaí before that. So it was difficult. Fortunately, she had the statement, which the guards had helpfully taken over a long period of time. And she was able to give me that and I was able to read it. That left us free to discuss the impact it had had on her. There were all sorts of problems in relation to the *Statute of Limitations* and suchlike ... about how we were going to get over that, and that's what we concentrated on. Then we launched our case and it ended up where it ended up."

This was Ernest's first appearance before the European court. "The case was heard before 17 judges," Ernest recalls. "It was daunting. I'd say that that was my first and last time. I mean it's a fascinating thing to do, but I'm sure that I won't be putting a sign outside the door saying I specialise in cases for the European Court of Human Rights!"

He speaks about the ramifications for the State arising from the case. "It won't be able to hide behind agencies – be it boards of management, the Catholic Church or patrons. There is a positive obligation on the State to prevent torture and it can't say: 'Well, if someone else tortures someone, we don't have a liability. They do have a liability now and they need to take proactive steps in their 'Stay Safe' programmes to do those properly and to take active steps to prevent abuse. It has

SLICE OF LIFE

ernest cantillon

Hero or heroine?

Gillian O'Neill, a great friend of mine! We've been married for about 30 years. My second hero, by the way, is Andy Gaw! – if I can have two.

Best advice to fellow lawyers?

"Talk straight, don't fudge. And keep your word."

Favourite writer or favourite book?

One Flew Over the Cuckoo's Nest. It's a great book – much better than the film. I like Arthur Koestler as well – *Darkness at Noon* – and all that kind of stuff.

that originally had separated a first-class and second-class waiting room. Goldberg and Fleming used to act for a lot of criminals – and then they had certain commercial clients who were operating in perhaps a different criminal sphere and so were regarded as 'respectable' clients! It was interesting work. It got me onto the road of litigation and criminal law. I've the distinction of being able to say that I've never done a single conveyance in my life – and never will do! I've read titles, and I've had to do, because I've acted in defence of conveyancing solicitors, so I needed to know what they were at, but I've never found it stimulating."

After he received his solicitor's parchment in 1980, he started out on his own. "I didn't want to be anybody's underling, so I set up on my own in Cork City next door to where we are now – in the offices where my dad used to be."

"I had a portable typewriter, but no money. I



I've the distinction of being able to say that I've never done a single conveyance in my life – and never will do

Ernest Cantillon: amongst women

implications, too, throughout all the other countries who have signed up to the *European Convention on Human Rights*. It was a bold judgment.

"I'm not so sure that it's going to open the floodgates, though. There's a greater, more important obligation on the State, however, to put in place mechanisms to protect children in schools so that a child who is the subject of abuse will know what to do, or their parents will know what to do if there is abuse, that there is a helpline or that there is a counsellor, or there is somebody to talk to.

"But back in Dunderrow National School, the parents of Louise O'Keeffe were criticised by the State for not reporting it in these proceedings. Who the hell were they to report to? There wasn't a department inspector hanging around the local bush saying 'I'm ready to hear your complaint, Ms O'Keeffe.'

"I think that if abuse were being perpetrated on children now, they could rely on Louise O'Keeffe's case to sue the State. But they would have a more readily available target in the boards of management who would have a liability, I would think."

"I don't understand – whether it's through incompetence or some other reason – why the State persistently fails to come to grips with problems at an early stage. There has been a perception that apologising is an admission of

liability. I, for the life of me, have never understood that."

"In addition, the acknowledgement that you've done wrong means that you

can start remedying whatever the defect or problem was. But if you don't know about it, and you're hiding behind some sort of cloak of secrecy, you're never going to be able to come to grips with the problem."

Is he proud to be called a medical negligence lawyer? Does he dislike the association with fat-cat lawyers who make fortunes out of people's misfortune and misery?


"I suppose everybody is a parasite on somebody else. The shopkeeper on his hungry or thirsty customers. The conveyancer on the purchaser who is buying the house. And the medical negligence lawyer on the victim of malpractice. Pride isn't the word that comes to mind, but I'm not ashamed of it by any stretch of the imagination. I don't have any problem with it, no."

Righting wrongs

What about the cost of taking cases? "There have been swingeing cuts in costs and we have taken work on, *pro bono*, but we expect to be paid if we can. There have been cuts, however, of between 30% and 50% compared with previous costs. I deplore that because, obviously, it affects my pocket. One can say 'to

hell with Cantillon and his pocket!' But from a societal point of view, I think that we do some good work in many of the cases we manage to shine a light into and sort out. You can point to procedures that I think have changed in hospitals as a result of some of the cases that we've brought – and that I think has benefited society. But if the cuts continue, we will not be bringing some cases and, already, we have been forced to decline to take certain cases.

"And okay, that will save the State money in respect of those cases that are not brought. But if there's a medical negligence problem in a particular area and a case has not been brought, then you're looking at cases like Dr Neary and Portlaoise arising all over again. They have been exposed as a consequence of medical negligence cases and those procedures have stopped as a result. Just think of those cancer cases where certain hospitals weren't doing triple assessments. As a result of litigation, those triple assessments are now the norm in those hospitals and practices have improved."

What's the attraction for him in taking *pro bono* cases? "It's not just the fee that you get paid at the end of the day. It's the satisfaction of seeing a wrong being righted and someone being able to have the funds to pay for therapies or treatments that will alleviate their problems – there's a great satisfaction in that." 

we are FAMILY

The recently published *Children and Family Relationships Bill 2014* seeks to address the needs of diverse families, with a view to providing legal clarity on many currently contentious legal issues. **Jennifer O'Brien** investigates



Jennifer O'Brien is head of family law at Mason Hayes & Curran

Unless you have been living under a rather large rock, you will be aware of recent announcements by Justice Minister Alan Shatter with regard to proposed changes in family law. The minister has announced a new unified family court structure for 2015, in respect of which he says a referendum may not be required. The draft *Children and Family Relationships Bill 2014* has now been published and a new *Domestic Violence Bill* is also coming.

Published on 30 January, the *Children and Family Relationships Bill* seeks to address the needs of diverse families, with a view to providing legal clarity in terms of parentage, guardianship, custody and access for the new family forms within which children are reared.

As such, it is anticipated that the *Guardianship of Infants Act 1964* and part of the *Status of Children Act 1987* will be repealed and replaced by this legislation when it comes into force.

Best interests

The proposed legislation provides a comprehensive definition of the 'best interests of the child' in the context of guardianship, custody and access proceedings. The definition is broader than the definition of 'welfare' currently contained in the *Guardianship of Infants Act* and is intended to reflect the objectives of the constitutional amendment regarding children's rights.

What is sought is to place the child's interests at the heart of decisions affecting a child's life. The

new definition is intended to encompass the benefits for a child of having a meaningful relationship with both parents,

such that ascertainable views of the child would be taken into account, having regard to age and maturity.

The physical, psychological and emotional needs of the child are included, along with the

child's need for continuity and stability. Account is also taken of the history of the child's upbringing and care, the nature of the child's relationship with both parents and with other relatives.

What is sought is placement of the child's interests at the heart of decisions affecting a child's life

at a glance

- The *Children and Family Relationships Bill* seeks to address the needs of diverse families, with a view to providing legal clarity in terms of parentage, guardianship, custody and access
- In terms of parentage, the birth mother will be the mother of the child and a married father will enjoy a rebuttable presumption of paternity
- The draft bill also aims to ensure that adoption legislation is available to civil partnered couples, such that they are facilitated in adopting children jointly

The child's religious, spiritual, cultural and linguistic upbringing and needs, as well as the child's social, intellectual and educational requirements, are considered.

The draft provisions take account of any harm, or risk of harm, suffered by the child, together with any plans proposed for the child's custody, access, care, development and upbringing.

Guardianship

A statutory definition of 'guardianship' is proposed, which details the many rights and responsibilities of a parent, including in relation to a child's estate. Where a guardian is neither a parent nor *in loco parentis*, he or she would not be required to maintain the child from personal resources. The guardian is explicitly mandated to act in the child's best interest.

Existing provisions are retained, such that a birth mother is automatically the guardian of her child, although it is proposed to expand the category of unmarried fathers entitled automatically to be guardians of their children where, for instance, the father has cohabited with the mother for a period of 12 months

before the child's birth, and where the cohabitation has ended, if applicable, no later than ten months before the birth.

The categories of persons who can apply to become a guardian have been expanded to include a step-parent or the parent's civil partner, or a person who has cohabited with the parent for over three years and who has shared a parenting role for more than two years.

It is also proposed that a grandparent who has been providing day-to-day care for a child for more than 12 months could apply for guardianship where there is no parent or guardian willing or able to fulfil their responsibilities. In such circumstances, each guardian must consent, and provision is also made for the purpose of ensuring that the voice of the child is heard, depending on the level of the child's maturity.

‘The ‘best interests of the child’ is intended to encompass the benefits for a child of having a meaningful relationship with both parents, such that ascertainable views of the child would be taken into account, having regard to age and maturity’

Testamentary and substitute guardian

Section 7 of the *Guardianship of Infants Act 1964* is currently replicated, such that parents will remain able to appoint testamentary guardians, as is currently the case. Provision is made for a new category of



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20 June	CPD Conference 2014 Law Society Skillnet in collaboration with the Kerry Law Society <i>Ballygarry House Hotel – Tralee, Co Kerry</i>	€85 hot lunch and networking drinks reception included		4 General plus 1 Regulatory Matters plus 1 M & PD Skills (by Group Study) (6 total)
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guardian, that is a 'substitute guardian', who would be appointed by the child's parent for a specified period if the parent were unable or unwilling to exercise their rights and duties of guardianship in the context of a family crisis or tragedy.

The bill would also enable the spouse of a biological parent to become a guardian of the child and to acquire parental rights and responsibilities without being required to use the adoption process.

Provision is also made for applications to court for access by grandparents and other relatives of a child. The current procedures, whereby a grandparent must first seek leave from the court prior to bringing an application, will be simplified in order to facilitate applications by a relative or a person acting *in loco parentis* regarding access to a child.

Alternatives to litigation

The draft bill reiterates the duty on solicitors to inform their clients of alternatives to litigation and to encourage them to engage in counselling and mediation for the purpose of finding non-adversarial solutions to family disputes.

It is also proposed to amend section 47 of the *Family Law Act 1995* to enable the District Court as well as the Circuit Court to seek expert assessment reports on issues regarding the best interests of a child. Provision is made for appointment by the court of a *guardian ad litem* in appropriate cases, with a different approach to that currently contained in the *Child Care Act 1991*. In the new proposed legislation, a *guardian ad litem* is defined as an independent officer of the court – neither a party to, nor the subject of, proceedings.

Enforcement of access

Another striking feature of the proposed legislation is the graduated menu of options available to the court in circumstances where a parent has prevented the other parent from maintaining contact with a child.

These options include requiring the respondent to give the applicant compensatory access time or to lodge security with the court. In addition, the respondent could be required to compensate the applicant for expenses incurred in attempting to exercise custody or access.

It is also proposed that the court would have discretion to order the parties to engage, together or separately, in a parenting programme, counselling or mediation focused on parenting.

'Blended families'

The bill deals with the issue of child maintenance with a view to giving children living in 'blended families' or with cohabiting parents the same protections in terms of maintenance as those living in marital families.

It is proposed that a step-parent, civil partner or cohabitant partner of a child's parent would, in certain circumstances, have a maintenance obligation to the child. Factors for consideration include dependency of the child and the nature and duration of the relationship.

As such, it is proposed that the *Family Law (Maintenance of Spouses and Children) Act 1976* would be amended, together with the *Family Law Act 1995*, to enable the court to grant lump sum maintenance orders where the child's parents have not been married to one

another. The court can specify the manner in which the lump sum would be applied for the benefit of the child, including provision for suitable accommodation.

In addition, amendment will be required to the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* for the purpose of creating a maintenance liability for civil partners.

Surrogacy, IVF and parentage

The legislation is intended to provide clarity in terms of parentage, such that the birth mother will be the mother of the child and a married father will enjoy a rebuttable presumption of paternity. The bill also makes provision for new presumptions that take account of existing family formations in the context of assisted reproduction, surrogacy and cohabitation.

It is proposed that altruistic surrogacy would be permitted, but that commercial surrogacy would be prohibited, in line with the situation in countries such as Britain, Canada, Australia, Belgium and the Netherlands.

Provision is made for Irish parents in the context of assisted human reproduction


and surrogacy arrangements, both in Ireland and abroad. The intent is to avoid uncertainty as to the parentage and guardianship of these children.

It is proposed that, in relation to assisted human reproduction, the birth mother would continue to be the mother of the child in all cases and that the child's other parent would be determined by genetic connection to the child or by reference to a committed relationship with the child's mother, and the appropriate consent. As such, the husband, civil partner or cohabiting partner of the child's mother could be declared the second parent of the child.

Where a child is born through surrogacy, the parent of the child would be the surrogate mother. The draft bill provides for transfer of the surrogate mother's parental responsibilities – if she consents – to the commissioning parent. As such, at least one of the commissioning parents must be genetically linked to the child (as currently drafted).

Adoption for civil partners

The draft bill also aims to ensure that adoption legislation is available to civil partnered couples, such that they are facilitated in adopting children jointly.

These are groundbreaking proposals that, if enacted, will update much of our outdated statute law to take better account of new family forms. Clearly, improved resources will be required for the purpose of establishing a separate system of family courts. Quality non-legal services – such as a panel of child experts, including guardians *ad litem* for private family law work – will be required if the best interests and welfare of our children are to truly take centre stage. 

It is proposed that altruistic surrogacy would be permitted, but that commercial surrogacy would be prohibited, in line with the situation in countries such as Britain, Canada, Australia, Belgium and the Netherlands

look it up

Legislation

- *Child Care Act 1991*
- *Children and Family Relationships Bill 2014*
- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*
- *Family Law (Maintenance of Spouses and Children) Act 1976*
- *Family Law Act 1995*
- *Family Law Act 1995*
- *Guardianship of Infants Act 1964*
- *Status of Children Act 1987*

GILDING *the lily?*



Brian Hallissey is a barrister practising on the Munster Circuit who works chiefly in personal injuries and employment law. He wishes to thank Pearse Sreenan BL for reviewing this article

Two cases from 2013 serve as a very real warning to defendants who apply without justification for a section 26 dismissal. Brian Hallissey looks at some recent judgments

Sections 25 and 26 of the *Civil Liability and Courts Act 2004* allow a court to dismiss a plaintiff's claim or a defendant's defence where it is found that they have provided false or exaggerated evidence with the intent to mislead the court.

However, two cases from 2013 indicate that the courts are unwilling to allow a section 26 application to be used as a weapon that could be relied upon to simply throw up obstacles in the hope that the plaintiff will at some point stumble.

Forensic assault

This was evident in *Smith v HSE*, where the plaintiff had sued the defendant for injuries caused in a fall while employed by the defendant. In her replies to particulars, the plaintiff had stated that she had no other accidents of relevance. She conceded discovery of medical records back to 2004 and was cross-examined on them at trial. The defendants highlighted a number of medical entries that showed that the plaintiff had been treated for injuries to her lower back and neck on a number of occasions some years prior to the accident that formed the subject matter of the proceedings. She was unable to give any details on them and appeared to have simply forgotten about them.

The defendant applied for a dismissal of the case, but this was rejected by O'Neill J, who was satisfied that the injuries prior to the incident in question were minor and of a transient nature and that this was or should have been readily apparent to the defendants: "The forensic assault on the plaintiff to set up an application under section 26

of the act of 2004 can only be seen as wholly unjustified and an opportunist attempt to evade their liability to the plaintiff by a misconceived invocation of section 26."

The court gave a clear indication that it would not give additional general damages for the upset caused by the application, but did note that "if any damages were to be awarded to the plaintiff because of the manner in which the defence was conducted, these could only be awarded under the heading of either aggravated or exemplary damages". Counsel for the plaintiff did not apply for such damages and, accordingly, the court simply awarded general damages.

Practitioners should note that social network sites have and will continue to provide ammunition for section 26 applications

Robust defence

The issue of aggravated damages was also raised in *Lackey v Kavanagh*. Here, the plaintiff claimed that both the manner in which the defendant defended the case and the vigorous cross-examination of her principal medical expert entitled her to an award of aggravated damages. The court disagreed with both and stated that, while the defendant's defence was indeed robust, it was not unreasonable.

Although he refused to award the aggravated damages, Cross J was absolute in his judgment: "I am of the view that, since the introduction of the 2004 act, which clearly impacts upon a plaintiff disproportionately more than on a defendant, the issue of aggravated/exemplary damages must always be in the mind of a court where it is alleged that the plaintiff is deliberately exaggerating his or her claim and/or being guilty of fraud or otherwise invokes the provisions of section 26 of the 2004 act. I think the issue of aggravated/exemplary damages is the only real deterrent to an irresponsible or indeed an overenthusiastic invocation of





Recent decisions highlight the fact that, when a plaintiff has been found to have given false or misleading evidence, there is a particularly high threshold required to avail of the discretion to not dismiss the claim

such a plea. I believe the courts should be at least as rigorous as they were of old when such a defence is maintained.”

Deterrent, not opportunity

The approach of the court in *Smith and Lackey* was in keeping with the comments of O’Neill J in *Dunleavy v Swan Park Limited*, where he stated that section 26 “is there to deter and disallow fraudulent claims. It is not and should not be seen as an opportunity to seize upon anomalies, inconsistencies and unexplained circumstances to avoid a just liability”.

All of these cases follow *Conway v Irish*

National Teachers Organisation, where Finlay CJ held that aggravated damages can be awarded in three circumstances, the third being “the conduct of the wrongdoer and/or his representatives in the defence of the claim of the wronged plaintiff, up to and including the trial of the action” and further stated that “the object of awarding exemplary damages is to punish the wrongdoer for

his outrageous conduct, to deter him and others from any such conduct in future, and to mark the court’s ... detestation and disapproval of that conduct”.



at a glance

- Under section 26 of the *Civil Liability Act*, a court can dismiss a claim or defence where it is found that false or exaggerated evidence has been provided with the intent to mislead the court
- A plaintiff who provides overly optimistic speculations of future earnings can also find themselves facing a section 26 application
- However, section 26 is not a provision that should be utilised in a speculative manner, and the threat of aggravated damages should always be considered by the defendant before a section 26 application is made



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While *Smith* and *Lackey* did not actually award aggravated damages, these judgments are a clear warning to defendants who undertake unnecessary applications under section 26.

Recent case law

Notwithstanding the above, many decisions from 2013 indicated a willingness on the part of the courts to accede to such applications in appropriate circumstances.

A clear example can be seen in the recent decision of Peart J in *Salako v O'Carroll*, where the plaintiff alleged that her injuries were caused when her car was hit from the rear by the defendant's car. While there was only minimal impact and minimal damage to the plaintiff's car, she complained of significant head, facial, and back injuries.

The potentially *de minimus* triggering of the section was highlighted by Peart J: "While the defendant has pointed to a great number of occasions on which it is alleged that a false or exaggerated account and presentation of symptoms and complaints was given to consultants, *it suffices in my view for her to be shown to have done so even once, since even that one occasion is sufficient to trigger the section and mandate a dismissal of the entire case*" [emphasis added].

Peart J appeared to be influenced by a number of examples of the plaintiff giving evidence that seemed to be inconsistent, such as an assertion that the impact was severe both in the pleadings and to her medical practitioners, yet the garda at the scene described it as minimal and her own evidence did not appear to explain the incident, nor did her injuries correspond to the account she presented to the court.

"I am quite satisfied that this particular lack of any useful recollection should be described as a convenient amnesia," said Peart J.

A plaintiff who provides overly optimistic speculations of future earnings can also find themselves facing a section 26 application, as demonstrated in *Montgomery v MJED & Anor*, where the plaintiff had been in a road traffic collision with a garda car. O'Neill J dismissed the plaintiff's claim, as she had sought special damages of €800,000 for

future earnings. This was found to be based on misleading evidence that she would have pursued a career in dancing. However, the evidence suggested she had never intended on pursuing this career and that she could have done so as her injuries had settled in 2008, yet she had never attempted to return to dancing.

Social network

In *Nolan v Mitchell*, the plaintiff was injured following a road traffic accident. During his trial, the plaintiff claimed that he had to give up his hobby of 'drifting' and that he had difficulty in squatting down due to his injuries. At the conclusion of the trial, the defendant applied for the case

to be dismissed and introduced evidence from the plaintiff's Bebo account, in particular, a number of videos showing the plaintiff 'drifting' and changing a tyre in a squatting position. Once again, the plaintiff's claim was dismissed in its entirety, in circumstances where he had otherwise succeeded in his claim for negligence. As an aside, practitioners should note that social network sites have and will continue to provide ammunition for section 26 applications.

Information given to medical examiners in the preparation of their reports can also ground a section 26 dismissal, as was seen in *Folan v O'Corraoin & Ors*. Here, the plaintiff fell backwards off a building and suffered personal injuries. In evidence, it emerged that the plaintiff was much more active than he had been portraying and, as a result, he was found to have misled his

examiners by failing to tell them he had returned to farming, sailing and scuba diving. His medical examiner admitted that he was "surprised at the level of activity not disclosed to him". Other medical experts also expressed that this information would have indicated a level of recovery, had they known about it. Unsurprisingly, the plaintiff's claim was dismissed for this reason, which was one of a number of inconsistencies in his evidence.

Resisting a section 26 application

Recent decisions highlight the fact that, when a plaintiff has been found to have given false or misleading evidence, there is a particularly high threshold required

to avail of the discretion to not dismiss the claim afforded to the courts under section 26. In *Meehan*, the court gave one such example: "If a plaintiff who told a relatively trivial lie had catastrophic injuries, then it would be wholly disproportionate in that situation and accordingly unjust to dismiss the whole action because of a relatively unimportant or peripheral or trivial untruth."

Moreover in *Higgins v Caldack*, the court stated that the court could exercise its discretion where there was a fatal injuries claim that, if dismissed, "may unjustly penalise infants or incapacitated dependents".

Therefore, it would seem that only cases of very serious injury, or a fatal injury where there are infant or incapacitated dependents relying on an award of damages, combined with an absolutely *de minimus* mistruth, are a prerequisite to having any chance of sidestepping the dismissal.

Accordingly, both *Smith* and *Lackey* serve as a very real reminder that section 26 is not a provision that should be utilised in a speculative manner, and the threat of aggravated damages should always be considered by the defendant before a section 26 application is made, lest they run the risk of having such an award made against them.

Further conclusions can be drawn from the successful applications made in the other cases highlighted above, which can assist practitioners in ensuring that they will be alert to the possibility of facing a section 26 application. They can also provide guidance in identifying the areas that lend themselves towards successful applications.



look it up

Cases:

- *Conway v INTO* [1991] 2 IR 305
- *Dunleavy v Swan Park Limited* [2011] IEHC 232
- *Folan v O'Corraoin & Ors* [2011] IEHC 487. Murphy J
- *Higgins v Caldack* [2010] IEHC 527
- *Lackey v Kavanagh* [2013] IEHC 341
- *Meehan v BKNS Curtain Walling Systems Limited & Ors* [2012] IEHC 441
- *Montgomery v MJED & Anor* [2012] IEHC 443
- *Nolan v Mitchell* [2012] IEHC 151
- *Salako v O'Carroll* [2013] IEHC 17
- *Smith v HSE* [2013] IEHC 360

If a plaintiff who told a relatively trivial lie had catastrophic injuries, then it would be wholly disproportionate in that situation and accordingly unjust to dismiss the whole action because of a relatively unimportant or peripheral or trivial untruth

you must COMPLY



Sean Nolan is a partner in the Dublin office of Kerman & Co and is a member of the Law Society's Business Law Committee

The issue of whether directors should be required to issue compliance statements as part of their company's financial statements has been ongoing since 2000. Such statements are to be re-enacted in a modified form in the long-awaited *Companies Bill 2012*, says **Sean Nolan**

The requirement for an annual directors' compliance statement to be included in a company's financial statements was placed on the statute book by section 45 of the *Companies (Auditing and Accounting) Act 2003*. Its

purpose was to foster a culture of corporate compliance. However, in response to concerns from the business community in 2003 that the benefits would be outweighed by a disproportionate cost for business, the Government held back and, in 2005, referred the issue to the Company Law Review Group (CLRG) to examine and to report back to Government. Following compromise proposals recommended by the CLRG, the requirement for directors' compliance statements is set to be re-enacted in a modified form in the long-awaited *Companies Bill 2012*, which is scheduled for enactment later this year or in the first few months of 2015.

Demonstrable commitment

In its 2005 report, the CLRG succinctly summarised the rationale for a directors' compliance statement in the context of the 2003 act: "It is to encourage companies to be compliant by fostering a culture of compliance. [Section 45 of the 2003 act] does not impose any new primary obligations on companies; rather, it is a compliance-verification measure, intended to encourage companies to demonstrate their commitment to obeying the laws to which they are already subject. Its benefits are therefore intangible, and it is difficult to point to any particular mischief that its introduction will remedy. As our report shows, the direct and indirect costs of [section 45 of the

2003 act] are, however, manifest and readily identifiable in nature if not completely in scale. The existence of these direct and indirect set-up and ongoing costs is accepted by almost all members of the CLRG."

Companies that will be subject to section 226 and their advisers will need to address now whether their policies, arrangements and structures enable them to satisfy the requirements of the section

Essentially, the CLRG recommended that a more proportionate and targeted measure should be introduced in place of subsections 205 E and F of the *Companies Act 1963*. It recommended a compromise form of directors' compliance statement, coupled with increased financial thresholds. Section 226 of the *Companies Bill 2012* gives effect to the draft provisions as recommended by the group. This provides that all PLCs (irrespective of the value of their assets or their turnover and whether or not they are listed) and those private limited companies, designated activity companies, and guarantee companies that have a balance sheet total exceeding €12.5m and a turnover exceeding €25m will be required to issue a directors' compliance statement (the thresholds under the existing provisions – €7,618,248 and €15,236,856 – are regarded as being too low). Unlimited companies and investment companies will be excluded from the obligation, as will other categories of company if designated by the minister.

Relevant obligations

Essentially, the directors of those companies within the scope of the section will be required to include a statement in the directors' report, to be annexed to the financial statements, that (a) acknowledges that they are responsible for securing the company's compliance with its "relevant obligations" (see panel), and (b) with respect to each of the three matters specified below, confirms that the matters

at a glance

- The requirement for an annual directors' compliance statement to be included in a company's financial statements was placed on the statute book by section 45 of the *Companies (Auditing and Accounting) Act 2003*
- Such statements are compliance-verification measures, intended to encourage companies to demonstrate their commitment to obeying the laws to which they are already subject
- All PLCs (irrespective of the value of their assets or their turnover and whether or not they are listed) and those private limited companies, designated activity companies, and guarantee companies that have a balance sheet total exceeding €12.5m and a turnover exceeding €25m will be required to issue a directors' compliance statement

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- Orange, *Police Powers in Ireland*
- O'Sullivan, *Criminal Legislation in Ireland*
- Pierse, *Road Traffic Law: The 1961–2011 Road Traffic Acts: Annotated Legislation*

Extracts from relevant titles also included:

- Clark, Smyth & Hall, *Intellectual Property Law in Ireland, 3 edition, (Intellectual Property Law – Criminal Offences)*
- Courtney, *Law of Companies, 3rd edition (Courtney: Criminal Liability under Company Law)*
- Ó Floinn, *Practice and Procedure in the Superior Courts, 2nd edition (Criminal Law Practice and Procedure in the Superior Courts)*

Also includes:

The Irish Criminal Law Update – A monthly update briefing practitioners of criminal law developments. This update written by Edward Doocey BL and Jane O'Neill, of Michael Staines & Company Solicitors, is exclusive to subscribers of Bloomsbury Professional's Irish Criminal Law. Each update contains commentary of cases and legislation.

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have been done or, if they have not been done, specifies the reasons why they have not been done. The three matters are:

- 1) The drawing up of a compliance policy statement setting out the company's policies that, in the directors' opinion, are appropriate to the company respecting compliance by the company with its "relevant obligations";
- 2) Putting in place appropriate arrangements or structures that are, in the directors' opinion, designed to secure material compliance with the company's "relevant obligations", and
- 3) Conducting a review during the relevant financial year to which the directors' report relates of any arrangements or structures referred to in paragraph 2 that have been put in place.

The new obligation will not in fact require a compliance policy statement to be drawn up or for the directors to put in place arrangements or structures that are designed to secure material compliance with the company's relevant obligations or to conduct a review of the arrangements or structures.

However, if the company is not in a position to confirm that these matters have been done, the directors' compliance statement must specify the reasons why they have not been done. While it may be strictly open to a company to claim that it does not have

sufficient resources to satisfy the requirements in paragraphs 1 to 3 above, given that section 226 will only apply to PLCs and companies with a balance sheet total of €12.5m and a turnover of €25m, such an admission is

unlikely to convey an alluring corporate message to investors and others having an interest in the company or having dealings with it.

The arrangements or structures in paragraph 2 above may, if the directors of the company so decide, include reliance on the advice of one or more persons employed by the company or retained by it under a contract of services, being a person who appears to the directors to have the requisite knowledge or experience to advise the company on its compliance with its relevant obligations.

Thus, it would be possible for a company to outsource some of the arrangements and structures that are designed to ensure that the company is in material

compliance with its relevant obligations.

Higher burden of compliance


The reintroduction of directors' compliance statements is part of a wider theme running through the *Companies Bill* that places greater corporate responsibility on the directors, secretary and other officers of the company. This is exemplified by the codification of the panoply of existing common law directors'

It would be possible for a company to outsource some of the arrangements and structures that are designed to ensure that the company is in material compliance with its relevant obligations

duties, the creation of an express requirement whereby directors acknowledge their legal duties upon taking office, and the imposition of an express duty to ensure that the company secretary has the necessary skills to undertake his or her record-keeping role in the company.

While companies and practitioners can draw comfort from the fact that the more onerous non-commenced provisions of section 45 of the *Companies (Auditing and Accounting) Act 2003* will be repealed and replaced by the less burdensome section 226 of the *Companies Bill 2012*, it should be noted that a legal requirement for a directors' compliance statement does not apply in many other comparable jurisdictions. To that extent, the Irish *Companies Acts* will impose a higher burden of compliance on Irish companies than exists in other comparable jurisdictions.

Some practitioners urged the Government to continue to defer the introduction of directors' compliance statements and to await any EU company law directive on this subject. It seems, however, that in the absence of any EU initiatives, Irish company law will be breaking new ground, and companies that will be subject to section 226 and their advisers will need to address now whether their policies, arrangements, and structures enable them to satisfy the requirements of the section once it is enacted and brought in to force next year.

My view is that the majority of companies have been addressing the policy and cost implications of directors' compliance statements for the past decade and, having been reconciled to the inevitable, now have a far better understanding of the scope of the areas of compliance that must be addressed in the new regime for their directors'  compliance statements.

A full practice note on the subject of directors' compliance statements will be issued by the Business Law Committee once the Companies Bill has progressed through the Oireachtas.

FOCAL POINT

definition of 'relevant obligations'

'Relevant obligations' in relation to a company are those obligations under the *Companies Acts* where a failure to comply would constitute:

- A category 1 offence (one that, on a summary conviction, carries a sanction of imprisonment not exceeding 12 months or, on indictment, a term not exceeding ten years)
- A category 2 offence (one that, on a summary conviction, carries a sanction of imprisonment not exceeding 12 months or, on indictment, a term not exceeding five years),
- A serious market abuse offence or a serious prospectus offence.

'Relevant obligations' also include obligations under tax law, which broadly includes all obligations relating to tax imposed under the *Taxes Acts* (as defined).

The new restrictive definition of 'relevant obligations' represents a significant dilution of the existing definition. The existing definition includes all obligations under the *Companies Acts*, tax law and "any other enactments that provide a legal framework within which the company operates and that may materially affect the company's financial statements" (this latter catch-all having introduced considerable uncertainty into the scope of a directors' compliance statement under the existing provision).

look it up

Legislation:

- *Companies (Auditing and Accounting) Act 2003*, section 45
- *Companies Act 1963*
- *Companies Bill 2012*, section 226

Literature:

- Company Law Review Group (2001), *First Report*
- Company Law Review Group (2005), *Report on Directors' Compliance Statements*

Police Powers in Ireland

Garnet Orange. Bloomsbury Professional (2014), www.bloomsburyprofessional.com. ISBN: 978-1-78043-477-3. Price: €175.

Even for full-time criminal practitioners, it can be difficult to keep track of case law developments in this constantly moving area. The challenge is even greater for those who dip in and out of the area. This book will be a valuable tool for anyone who is due in court the next morning and needs to brush up quickly on some aspect of policing powers. It is written in an accessible style and covers all the basics.

There are chapters on powers of arrest and detention; powers to search property, persons and vehicles; and on the use of visual identification and

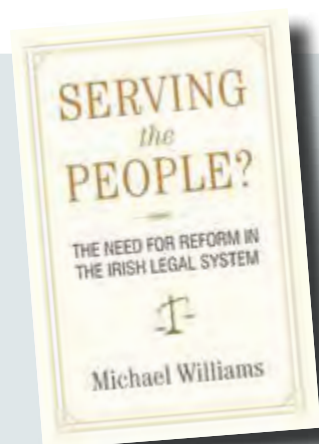
forensic evidence. In light of the recent controversies regarding allegations of bugging and the recording of phone calls, I turned immediately to the chapter entitled 'Observation, surveillance, phones, post and computers'. Although the author does his best to provide a flavour of relevant unreported trial rulings, there would appear to be a shortage of reported case law in this area. One hopes that, in time, either criminal or civil litigation will shine further light on this somewhat unknown area of Irish policing.

The author says that the book is not intended as a critique of

the gardaí or their methods. As a result, neither the legislation nor the case law is subjected to critical analysis, and the book does not make suggestions regarding reform. What the book does have in spades, however, is a rich account of current Irish case law (in the form of references to reported and unreported judgments, as well as relevant trial rulings that the author is aware of) and also the relevant European convention cases. This book represents a helpful tool both to seasoned criminal practitioners and to those who appear only sporadically in their local District Court.



Catherine Pierse works in the Enforcement Division of the Central Bank of Ireland. She previously worked as legal adviser to the Garda Síochána Ombudsman Commission and before that was a criminal defence solicitor.



This is a provocative critique of the Irish legal system by a former solicitor who practised for over 30 years and subsequently practised for many years as a mediator. The author argues that "neither the system nor the people who operate it serve the people well" and suggests how both might be improved.

The overarching theme is that

Serving the People? The Need for Reform in the Irish Legal System

Michael Williams. The Liffey Press (2013), www.theliffeypress.com. ISBN: 978-1-90830-842-9. Price: €19.95.

the legal profession "has lost its way". He suggests that the courts "accommodate the rich and the poor, but have no room for people who are neither very rich nor very poor". He argues that lawyers have a duty, not only to the individual client, but also to the community within which they live and work, to ensure so far as they can that legal services are as cheap and as fast as they can realistically be made. In this regard, the author proposes a ceiling on lawyers' incomes – where they exceed one-and-a-half times the salary of a High Court judge, that would be a *prima facie*

case of overcharging.

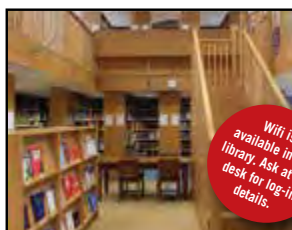
Proposals for reform of the judiciary concern the way judges are appointed, their mobility and training. Appointments should not be on the recommendation of the Government and should have the involvement of the Dáil. As regards judges' training, the author states that it is "inadequate and ill funded". In order to facilitate mobility, the author calls for the abolition of any restriction on judges to return to their former work.

The author's main criticism of the *Legal Services Regulation Bill* is that it fails to make radical

changes in how lawyers charge clients. He suggests that lawyers should not be entitled to be paid for carrying out unnecessary work and that the distinction between solicitor-and-client and party-and-party costs should be ended.

While many of the ideas in this book may be unappealing to lawyers, this book may foster debate and reflection on the effective operation of the Irish legal system and the role of the lawyer in it.

James Kinch is a solicitor in the Law Department of Dublin City Council.



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Contract Law in Ireland

Robert Clark. Round Hall (2013), www.roundhall.ie. ISBN: 978-1-85800-708-3. Price: €95.

One cannot but be enthusiastic at the prospect of reviewing Robert Clark's seventh edition of *Contract Law in Ireland*. Although Prof Clark directs the work primarily at students, it is an indispensable aid to the practitioner.

The book does not confine itself to the usual English and Irish cases, but relies on a wide range of sources, some of which are non-judicial. Thus, in relation to the interesting area of application of the doctrines of offer and acceptance to the formation of electronic contracts, we of course find the leading cases. However, we are also given practical examples of overly generous promises being made on websites, to the subsequent alarm of the traders involved.


Contract law is constantly evolving. Earlier generations of law students struggled with the distinctions between various species of estoppel. That taxonomy is now complicated by the concepts of legitimate expectation that have jumped the barrier from public law. Clark shows us a reassuring path through this complex area.

EU directives have had a profound effect on our contract law, especially in the area of consumer law. Those directives lack coherence and consistency. Our practice of transposing them without much effort to



integrate the resulting regulations into our general law has compounded the problem and has produced a bewildering landscape of domestic and European-inspired legislation. This is an experienced and reliable guide to help us.

Our economic woes have led to a great interest in the law of undue influence. This book sets out the recent developments of the law, including *Ulster Bank v Roche* and *IBRC v Quinn*.

At nearly 800 pages, this book is a clear and comprehensive exposition of one of the key elements of our law. 

Paul Keane is managing partner of Reddy Charlton Solicitors.

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- Briggs, Adrian, *The Conflict of Laws* (3rd ed; OUP, 2013)
- Deeney, John, *Registration of Deeds and Title in Ireland* (Bloomsbury Professional, 2014)
- Fosbrook, Deborah, *The Media and Business Contracts Handbook* (5th ed; Bloomsbury Professional, 2014)
- Foster, Nigel, *Blackstone's EU Treaties and Legislation 2013/14* (OUP, 2014)
- Frost, Martyn *et al*, *Risk and Negligence in Wills, Estates and Trusts* (OUP, 2014)
- Grabenwarter, Christoph, *European Convention on Human Rights Commentary* (Hart, 2014)
- Hamer, Kenneth, *Professional Conduct Casebook* (OUP, 2013)
- Hess, Burkhard *et al*, *European Insolvency Law: the Heidelberg-Luxembourg-Vienna Report* (Hart, 2013)
- Holmes, Matthew, *Administrative Law* (Round Hall, 2014)
- Johnston, Angus, *EU Energy Law* (OUP, 2012)
- Lambert, Paul, *Social Networking: Law, Rights and Policy* (Dublin: Clarus Press, 2014)
- Lewis, Geoffrey, *FA Mann: a Memoir* (Hart, 2013)
- Loose and Griffiths on *Liquidators* (8th ed; Jordans, 2014)
- Ostrove, Michael, *Choice of Venue in International Arbitration* (OUP, 2013)
- O'Sullivan, Lynn, *Criminal Legislation in Ireland* (2nd ed; Bloomsbury Professional, 2014)
- Spencer, JR, *Hearsay Evidence in Criminal Proceedings* (2nd ed; Hart, 2014)

council report

Council meeting – 4 April 2014

Motion: Failure to cooperate with investigation of compliance with CPD

“That this Council approves the Solicitors (Continuing Professional Development) (Amendment) Regulations 2014.”

Proposed: Simon Murphy

Seconded: Valerie Peart

The Council approved amending regulations empowering the Education Committee to seek a contribution towards the costs incurred by the Society in circumstances where a solicitor failed to cooperate with the Society’s investigation of compliance with the CPD regulations.

Motion: FE-1 examinations and trainee code of conduct

“That this Council approves the Solicitors Acts 1954-2011 (Apprentice-

ship and Education) (Amendment) Regulations 2014.”

Proposed: Simon Murphy

Seconded: Valerie Peart

The Council approved amending regulations that reduced from four to three the number of subjects to be taken and passed by a candidate in a first successful sitting of the FE-1. The regulations also provided for the agreement of the trainee solicitor and training solicitor to abide by a code of conduct during the period of in-office training and for confirmation by the training solicitor that he/she had provided the trainee with instruction in ethical matters appropriate to the practice of law and the practice and profession of a solicitor.

New Law Society brand identity and tone-of-voice guidelines

Following a presentation from Mary Doherty of Red Dog Creative Consultants and Teri Kelly, director of representation and member services, the Council approved a new Law Society brand identity and tone-of-voice guidelines, to be officially launched later in the summer.

Status report on recommendations of the Future of the Law Society Task Force


The Council considered a status report on implementation of the recommendations of the Future of the Law Society Task Force.

Legal Services Regulation Bill

The director general briefed the Council in relation to recent meetings with department officials. He noted that, while the timeline for enactment was still unclear, the

department was working towards a commencement date of 1 January 2015.

Garda recordings of telephone conversations

The Council discussed the recent revelations that telephone conversations were recorded to and from a large number of garda stations over a period of decades. The Council agreed that a letter should issue to An Taoiseach and to Mr Justice Nial Fennelly, chair of the Commission of Investigation, expressing the very serious concerns held by solicitors about the potential breach of the Constitutional rights of clients and identifying those issues that the Society believed should be encompassed in the terms of reference of the commission. 



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i Consequences of breaching the *Solicitors (Advertising) Regulations 2002*

This notice is intended as general guidance in relation to the subject matter and does not constitute a definitive statement of law. Reference to a solicitor includes a reference to a firm of solicitors in this context.

It is professional misconduct for a solicitor to breach the provisions of the *Solicitors (Advertising) Regulations 2002*.

Where a solicitor is alleged to be in breach of the regulations, the Law Society will notify the solicitor of the particulars of the alleged breach in writing and will request that the solicitor furnish an appropriate response in a timely manner to the Law Society under regulation 15(b). The Law Society may request the solicitor to appear for interview before the Regulation of Practice Committee, which deals, among other things, with advertising regulations matters, at which the alleged breaches will be considered under regulation 15(c). A solicitor may further be requested to attend before the committee in circumstances where it appears to the Law Society that the solicitor is refusing, neglecting, or otherwise failing without reasonable cause to respond appropriately in a timely manner to the Law Society under regulation 15(d). The solicitor may be accompanied to a committee meeting by another solicitor and/or counsel.

In the event that the solicitor refuses, neglects, or otherwise fails, without reasonable cause, to attend

a committee meeting, the Law Society may apply to the High Court for an order compelling the solicitor's attendance at such meeting under regulation 15(e).

The solicitor will be requested to provide the Law Society with any additional documentation that is considered relevant to the matter, on or before a specified date, to afford the committee sufficient time to consider the documentation before the meeting. In the event that the Law Society considers it necessary, the Law Society may compel the production of documentation pertinent to the investigation of the alleged breaches under regulation 15(f).

The committee will consider whether there have been any breaches of the regulations, having regard to any written submissions made in the course of the Law Society's investigation and any further submissions the solicitor may make at the meeting.

In the event that the committee forms the opinion that there have been breaches of the regulations, it may take action including the following:

1) Where a determination is made that the solicitor has, in the course of the investigation, refused, neglected or otherwise failed, without reasonable cause, to respond appropriately in a timely manner or at all to the Law Society's correspondence and costs have been incurred in connection therewith, the com-

mittee may require a payment of a sum up to €3,000 as a contribution to the Law Society's costs in accordance with regulation 15(g)(i).

2) The committee may issue the solicitor with a reprimand in writing in such terms as the Law Society deems appropriate and reasonable in accordance with regulation 15(g)(ii), including the length of time such reprimand remain on the solicitor's record. It should be noted that reprimands are a matter of public record. A solicitor with a reprimand will be unable to obtain a certificate of good standing from the Society for the duration of the reprimand, and will instead be provided with a certificate of standing from the Society that discloses the reprimand.

3) The committee may require an undertaking in writing that the solicitor will forthwith desist from such breaches or alleged breaches and will not repeat any of them in future, in accordance with regulation 15(h).

4) The committee may direct that an application be made to the High Court in accordance with section 58 of the *Solicitors (Amendment) Act 1994* to suspend the solicitor's current practising certificate.

5) The committee may give the registrar a direction in relation to the solicitor's practising certificate in accordance with sec-

tion 59 of the *Solicitors (Amendment) Act 1994*, including the imposition of conditions on the solicitor's current practising certificate.

6) Where the committee is of the opinion that the breach of the regulations is sufficiently serious, it may under regulation 15(g)(iii), in lieu of a contribution to costs and reprimand, refer the matter to the Solicitors Disciplinary Tribunal for an inquiry into the solicitor's conduct on the grounds of alleged misconduct, pursuant to section 7(1) of the *Solicitors (Amendment) Act 1960* as substituted by section 17 of the *Solicitors (Amendment) Act 1994*.

It should be noted that, pursuant to regulation 15(i), the Law Society shall be entitled to publish to the solicitors' profession, in whatever manner the Law Society deems appropriate, the fact of the imposition of a penalty by the Law Society under regulation 15(g)(i) and (ii), subject to the outcome of any appeal and any order made by the High Court under section 11(1) of the *Solicitors (Amendment) Act 1994*.

Jack Kennedy is the Law Society's advertising regulations executive and is contactable at 01 672 4800 or j.kennedy@lawsociety.ie.

*John Elliot,
Registrar of Solicitors
and Director of Regulation*

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practice notes



CONVEYANCING COMMITTEE

Land Registration Rules 2013 and Registration of Deeds Rules 2013

It is recommended that practitioners familiarise themselves with the new *Land Registration Rules 2013* (SI 389/2013) and the new *Registration of Deeds Rules 2013* (SI 387/2013), both of which came into force on 1 November 2013. Some examples of changes brought about by the new rules include the following.

Land Registry:

- Some existing rules amended – rules 46 (acquisition of easements and profits by prescription) and 110 (registration of judgment mortgages),
- Some new rules introduced for registration of judgment mortgages – rules 110A (judgment recognised under *Brussels I Regulation*) and 110B (on foot of European enforcement order),

- Some existing forms amended – Forms 3, 17, 37, 38, 39, 60, 64, 84, and 96,
- Some new forms introduced for registration of judgment mortgages – Form 60A (judgment recognised under *Brussels I Regulation*) and Form 60B (on foot of a European enforcement order).

Registry of Deeds:

- New rules on registration of judgment mortgages,
- Existing form amended – Form 16,
- New forms introduced for registration of judgment mortgages – Forms 16A (judgment recognised under *Brussels I Regulation*) and 16B (on foot of a European enforcement order).



GUIDANCE AND ETHICS COMMITTEE

Ten steps for initial interviews with clients for solicitors

- 1) Make sure the client has been advised of the need to bring AML (anti-money-laundering) documents,
- 2) Make the client welcome and try and reassure them if they are nervous,
- 3) At the outset, ask them if they have any particular concerns or worries they wish to ask about,
- 4) Take all personal details such as address, phone, email, and so on.
- 5) Explain the purpose of the interview and the fact that you will need to ask a lot of questions,
- 6) As solicitors, we have a duty to probe for information where appropriate – ask the client to expand or clarify information,
- 7) If the file relates to a contentious matter where evidence will be in dispute, explain to the client what the other side are likely to argue,
- 8) Make sure to ask the client what he/she wants you to do – do not assume you know,
- 9) Explain the process/likely timeframe to the client,
- 10) Give the client as much information on costs as is realistically possible. It will be their biggest concern going into the meeting!



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11 March – 7 April 2014

legislation update

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. The links to acts below are to the web page for the various stages of the bill; the PDF for the final version of the act appears at the end of the page. Recent statutory instruments are available in PDF at www.attorneygeneral.ie/esi/esi_index.html

ACTS PASSED

County Enterprise Boards (Dissolution) Act 2014

Number: 4/2014

Provides for the dissolution of County Enterprise Boards and the transfer of their functions to Enterprise Ireland, and provides for related matters.

Commencement: Commencement order(s) required as per s14(2) of the act

ESB (Electronic Communications Networks) Act 2014

Number: 5/2014

Enables the Electricity Supply Board to engage, now or in the future, in the business of installing and operating an electronic communications network and providing electronic communications services either alone or in conjunction with another company. Extends the existing definition of 'electric line' to include infrastructure associated with an electric line for the purpose of carrying electronic communications services, and provides for related matters.

Commencement: commencement order(s) to be made as per s8(3) of the act

SELECTED STATUTORY INSTRUMENTS

Building Control (Amendment) (No 2) Regulations 2014

Number: 105/2014

Provide for alternative but equivalent means of complying with the requirements under the *Building Control Regulations 1997-2014* to assign a person to inspect and certify the works (the assigned certifier) in line with a plan lodged at commencement and implemented

during construction. The alternative means of compliance applies to a limited range of public and privately owned buildings classified as first, second or third-level places of education, hospitals or primary care centres. The alternative means of compliance applies only to projects subject to each of the following circumstances: (a) planning permission, where applicable, has been obtained before 1 March 2014, (b) contract documents have been signed before 1 November 2014, and (c) a valid commencement notice has been lodged with the building control authority no later than 1 March 2015. These regulations also clarify that such fee as is required under part V of the regulations in respect of article 9 applies to all commencement notices.

Commencement: 1/3/2014

General Government Secured Borrowings Order 2014

Number: 120/2014.

Prescribes the persons and bodies subject to the provisions of section 67 of the *Credit Institutions (Stabilisation) Act 2010*, which provides that secured borrowing by the prescribed persons and bodies requires the consent of the Minister for Finance.

Commencement: 14/3/2014

Companies (Miscellaneous Provisions) Act 2013 (Commencement) Order 2014

Number: 121/2014

Commences sections 3 and 4 of the *Companies (Miscellaneous Provisions) Act 2013*. Sections 3 and 4 amend the *Companies Act 1963* and the *Companies (Amendment) Act*

1986 to facilitate the electronic filing of company accounts.

Commencement: 10/3/2014

European Union (Drinking Water) Regulations 2014

Number: 122/2014

Prescribe quality standards to be applied and related supervision and enforcement procedures in relation to supplies of drinking water, including requirements as to sampling frequency, methods of analysis, the provision of information to consumers, and related matters. The regulations update the *European Communities (Drinking Water) (No 2) Regulations*, which are duly revoked, to reflect the provisions of section 7 of the *Water Services (No 2) Act 2013* that provide that certain water services functions, which were the responsibility of the water services authorities, are transferred to Irish Water.

Commencement: 27/2/2014

Public Service Management (Sick Leave) Regulations 2014

Number: 124/2014

Set out in detail the terms of a new sick leave scheme that will apply across the public service. The rationale for the new scheme, which is reflected in the main provisions of these regulations, is to lower the cost of sick leave by reducing the periods during which paid sick leave will be available in future and capping the period during which 'temporary rehabilitation remuneration', formerly 'pension rate of pay', may be paid. The new scheme also provides for the award of extended paid sick leave, on an exceptional basis, where an individual becomes incapacitated as a result of a critical illness or serious physical injury.

Commencement: 31/3/2014

Air Travel Tax (Abolition) Order 2014

Number: 130/2014

Appoints 1 April 2014 as the day on or after which subsection 2 of section 55 of the *Finance (No 2) Act 2008* shall not apply in respect of any departure of a passenger on an

aircraft from an airport.

Commencement: 1/4/2014

European Union (Energy Efficiency Obligation Scheme) Regulations 2014

Number: 131/2014

Gives effect to Directive 2012/27, articles 7, 13, 20(4) and 20(6).

Commencement: 11/4/2014

Building Regulations (Part J Amendment) Regulations 2014

Number: 133/2014

Amend part J (heating producing appliances) of the second schedule to the *Building Regulations 1997* (SI 497 of 1997) in order to (a) provide for the detection and warning of carbon monoxide in dwellings, (b) require a notice giving information on the type of appliance suitable for the hearth, fireplace, flue or chimney, (c) require information to be provided to the owner on the system installed and any continuing maintenance required to ensure its safe and effective operation and avoid risk to health, and (d) protect against pollution from liquid fuel storage. These regulations apply to works and buildings commencing on or after 1 September 2014.

Commencement: 1/9/2014

European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2014

Number: 134/2014

Amend the *European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014*; give effect to the Commission Implementing Decision of 27 February 2014 on granting a derogation requested by Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources. They also make technical amendments to sections 17 and 26 of the 2014 regulations.

Commencement: 12/3/2014

Disabled Drivers and Disabled Passengers (Tax Concessions)

legislation update

(Amendment) Regulations 2014

Number: 139/2014

Ends the excise relief on fuel, provided as part of the Disabled Drivers and Passengers Scheme, from 1 January 2015 by revoking regulation 16 of the *Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations 1994* from that date.

Commencement: 1/1/2015

Freedom of Information 1997 (Prescribed Bodies) Regulations 2014

Number: 140/2014

Prescribe Irish Water as a public body for the purposes of the *Freedom of Information Act 1997* by its inclusion in subparagraph 5 of paragraph 1 of the first schedule to that act.

Commencement: deemed to have commenced on 17/7/2013

Personal Insolvency Act 2012

(Prescribed Fees) Regulations 2014

Number: 141/2014

Set out the fees applicable in respect of an application for a debt relief notice, an application for a protective certificate in relation to a debt settlement arrangement, and an application for a protective certificate in relation to a personal insolvency arrangement.

Commencement: 13/3/2014

District Court Districts and Areas (Amendment) and Variation of Days and Hours (Abbeyfeale, Carrickmacross, Cavan, Limerick, Monaghan, Newcastle West and Virginia) Order 2014

Number: 142/2014

Provides for (a) the amalgamation of the electoral divisions of the District Court area of Abbeyfeale into the

District Court area of Newcastle West; (b) the variation of days and hours at Carrickmacross, Cavan, Limerick, Monaghan, Newcastle West and Virginia.

Commencement: 1/5/2014

Local Elections (Disclosure of Donations and Expenditure) Act 1999 (Period for Reckoning Election Expenses) Order 2014

Number: 144/2014

Determines the period for the reckoning of election expenses incurred by or on behalf of a candidate, designated person, national agent of a political party, or third party at the local elections to be held on 23 May 2014, in accordance with section 12B of the *Local Elections (Disclosure of Donations and Expenditure) Act 1999*.

Commencement: 20/3/2014

Local Government Reform Act 2014 (Commencement of Certain Provisions) (No 2) Order 2014

Number: 146/2014

Commences a number of amendments in part 2 and part 6 of schedule 2 of the *Local Government Reform Act 2014*.

Commencement: 24/3/2014 and 1/7/2014

Road Traffic Act 2014 (Certain Provisions) (Commencement) Order 2014

Number: 147/2014

Brings into operation sections 9 and 14 to 26 of the *Road Traffic Act 2014* with effect from 20 March 2014, and sections 3 to 5, 7 and 8 of the act with effect from 1 August 2014.

Commencement: 20/3/2014 and 1/8/2014



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Solicitors Disciplinary Tribunal

regulation

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 James O'Mahony, a solicitor previously practising as James O'Mahony, Solicitors, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [4831/DT152/10 and High Court 2013 no 86SA] *Law Society of Ireland (applicant) James O'Mahony (respondent solicitor)*

On 22 February 2011, 21 June 2011, 13 October 2011, 1 March 2012, 6 November 2012, 28 February 2013 and 24 July 2013, the Solicitors Disciplinary Tribunal sat to consider an application against the respondent solicitor and found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

- a) Failed to ensure there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001) in a timely manner or at all,
- b) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the matter be brought before the President of the High Court and, on 31 January 2014, the President of the High Court ordered that the respondent solicitor be struck off the Roll of Solicitors and the respondent solicitor do pay the costs of the Society when taxed and ascertained.

In the matter of Gregory F O'Neill, solicitor, formerly practising as Greg O'Neill, Solicitors, Suite 109, The Capel

Building, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [3365/DT123/11 and 2014 no 3 SA] *Law Society of Ireland (applicant) Gregory F O'Neill (respondent solicitor)*

On 19 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

- a) Failed to discharge expeditiously, within a reasonable time or at all, the complainant's fees of €1,000, given on behalf of a named client of the respondent solicitor in a personal injuries/loss of earnings claim, despite having been paid the costs by the defendant's insurance company,
- b) Failed to respond adequately or at all to the complainant's correspondence and, in particular, letters dated 4 November 2010, 20 January 2011 and 8 February 2011,
- c) Failed to respond adequately or at all to the Society's correspondence and, in particular, letters dated 23 February 2011, 16 March 2011,
- d) Failed to attend a meeting of the committee on 2 June 2011, despite being required to do so.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 3 March 2014, made the following orders:

- a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- b) That the respondent do pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement.

In the matter of Gregory F O'Neill, solicitor, formerly practising as Greg O'Neill, Solicitors, Suite 109, The Capel Building, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [3365/DT124/11 and 2014 no 4 SA] *Law Society of Ireland (applicant) Gregory F O'Neill (respondent solicitor)*

On 19 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

- a) Failed to pay over expeditiously, within a reasonable time or at all, the balance of settlement compensation to the complainant, despite having been paid by the defendant's insurance company,
- b) Failed to respond adequately or at all to the complainant's correspondence and, in particular, emails dated 20 December 2010, 26 January 2011 and 22 March 2011,
- c) Failed to respond adequately or at all to the Society's correspondence, dated 13 April 2011.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 3 March 2014, made the following orders:

- a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- b) That the respondent do pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement.

In the matter of Gregory F O'Neill, solicitor, formerly practising as Greg O'Neill, Solicitors, Suite 109, The Capel Building, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [3365/DT125/11 and 2014 no 5 SA] *Law Society of Ireland (applicant)*

Gregory F O'Neill (respondent solicitor)

On 19 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he failed to comply within a reasonable time or at all with a direction of the Complaints and Client Relations Committee whereby he was (a) to furnish an apology to the complainant, (b) waive any entitlement to fees, and (c) pay compensation of €3,000 to the complainant.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 3 March 2014, made the following orders:

- a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- b) That the respondent solicitor pay the sum of €3,000 as restitution to a named client,
- c) That the respondent do pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement.

In the matter of Gregory F O'Neill, solicitor, formerly practising as Greg O'Neill, Solicitors, Suite 109, The Capel Building, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [3365/DT126/11 and 2014 no 11 SA] *Law Society of Ireland (applicant) Gregory F O'Neill (respondent solicitor)*

On 19 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he failed to comply with a direction of the committee meeting on 4 February 2011, whereby he was to compensate the complainant in the sum of €3,000.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 3 March 2014,

regulation

made the following orders:

- That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- That the respondent solicitor do pay the sum of €3,000 as restitution to named clients,
- That the respondent do pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement.

In the matter of Gregory F O'Neill, solicitor, formerly practising as Greg O'Neill, Solicitors, Suite 109, The Capel Building, Mary's Abbey, Dublin 7, and in the matter of the Solicitors Acts 1954-2011 [3365/DT127/11 and 2014 no 6 SA]

**Law Society of Ireland (applicant)
Gregory F O'Neill (respondent solicitor)**

On 19 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he failed to comply with a direction of the committee dated 18 January 2011, whereby he was directed (and to which he subsequently agreed) to refund the sum of €1,235 to the complainant within 28 days.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 3 March 2014, made the following orders:

- That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- That the respondent solicitor do pay the sum of €1,235 as res-

titution to a named client,

- That the respondent do pay to the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement.

In the matter of Gregory F O'Neill, solicitor, formerly practising as Greg O'Neill, Solicitors, Suite 109, The Capel Building, Mary's Abbey, Dublin 7, and in the matter of the Solicitors Acts 1954-2011 [3365/DT146/12 and 2014 no 2 SA]
**Law Society of Ireland (applicant)
Gregory F O'Neill (respondent solicitor)**

On 19 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of

misconduct in his practice as a solicitor, in that he failed to comply with the direction of the Complaints and Client Relations Committee meeting made on 9 February 2012 to refund fees to a named client within 28 days from the date of that direction.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 3 March 2014, made the following orders:

- That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- That the respondent do pay to the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, to be taxed in default of agreement.



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Grilled Teriyaki Salmon with Cucumber and Chilli Raita
A Selection of Chef's Salads
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BBQ Menu C

Chargrilled Beef Burgers with a Sesame Seed Bun and a Selection of Condiments
Pork Sausage with a Mini Glazed Baguette and a Red Onion Compote
Grilled Teriyaki Salmon with Cucumber and Chilli Raita
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Edited by TP Kennedy, Director of Education, Law Society of Ireland

MASS SURVEILLANCE AND THE 14-EYES PROGRAMME

PIC: VELNOVDEVANTART



Mass surveillance activities are of particular concern to lawyers, since the indiscriminate access to most communications between non-US nationals included communications between lawyers and their clients

In 2013, secret documents leaked by Edward Snowden, an ex-contractor of the US National Security Agency (NSA), revealed that the agency had carried out global surveillance of US and foreign citizens, including European leaders and private individuals.

US intelligence authorities have accessed personal data stored in servers located on EU soil by tapping into the internal networks of Yahoo and Google. While US authorities have denied some of this information, they have not contested the majority of it.

Further revelations indicated that certain EU member states had cooperated with US surveillance programmes at national lev-

el, allowing their intelligence services to collect, store and analyse communications data on a large scale. These actions were known as the 'Nine-Eyes Programme' and the '14-Eyes Programme'. (The 'Nine-Eyes Programme' comprises the US, Britain, Canada, Australia, New Zealand, Denmark, France, Norway and the Netherlands; the '14-Eyes Programme' includes those countries and also Germany, Belgium, Italy, Spain and Sweden.)

Mass surveillance practices have caused concerns within the EU, as they constitute a breach of its fundamental rights standards, including the right to private and family life, the confidentiality of communications, freedom of ex-

pression, and freedom to conduct business, as enshrined in the *Charter of Fundamental Rights of the European Union* and in the *European Convention on Human Rights*.

As a result, and following on from the European Commission's proposal in January 2012 for a regulation on the protection of individuals with regard to personal data (*General Data Protection Regulation*), the European Council called, in October 2013, for the timely adoption of a strong EU data protection framework.

More recently, on 12 March 2014, the European Parliament ad-

opted a resolution on the NSA surveillance programme (2013/2188(INI)).

The resolution stresses the fact that intelligence services in democratic societies are given special powers and capabilities; howev-

er, these should be used within the legal limits imposed by fundamental rights, democracy and the rule of law, and their application should be strictly scrutinised.

In this regard, the fight against terrorism can never be a justification for untargeted, secret, or even illegal mass surveillance programmes. The resolution calls

on members states to immediately fulfil their positive obligation under the ECHR to protect their citizens from surveillance contrary to its requirements and notes that, in a recent ruling (Case C-300/11, *ZZ v Secretary of State for the Home Department*, 4 June 2013), the Court of Justice declared that “although it is for member states to take the appropriate measures to ensure their internal and external security, the mere fact that a decision concerns state security cannot result in European Union law being inapplicable”.

Grave impact on lawyers

Mass surveillance activities are of particular concern to lawyers, since the indiscriminate access to most communications between non-US nationals included communications between lawyers and their clients. This constitutes a serious risk to one of the core values of the legal profession: legal profes-

sional privilege (or professional secrecy).

In their daily work, lawyers are using systems for electronic communications and for cloud services that have proven not to be secure. Without the necessary protection in this sense, the role of the lawyer – as the client’s trusted adviser and representative and as a professional respected by third parties – is completely undermined.

For instance, in Ireland, legal professional privilege belongs to a client and cannot be waived by any person other than that client or a lawyer acting with that client’s authority to so waive it.

The Council of European Bars and Law Societies (CCBE) welcomed the European Parliament’s resolution, which:

- Recognises that the revelations on mass surveillance have caused numerous concerns within the EU as to the undermining of press freedom and of communications by

members of professions with confidentiality privilege, including lawyers and doctors,

- Considers it crucial that the professional confidentiality privilege of lawyers (and other regulated professions) is safeguarded against mass surveillance activities, as any uncertainty could negatively impact on the EU’s citizens’ right to access to legal advice, access to justice and the right to a fair trial,

- Decides to launch a ‘European digital *habeas corpus*’ with a series of actions that would include the protection of the rule of law and the fundamental rights of EU citizens, the right of the public to receive

impartial information and professional confidentiality, as well as ensuring enhanced protection for whistle-blowers.

In their daily work, lawyers are using systems for electronic communications and for cloud services that have proven not to be secure

The CCBE recommends, in this regard, that steps are taken at the EU level to establish the minimum level of legal protection afforded to professional secrecy from government electronic surveillance. It also stresses the need to place reasonable limits upon the invocation of national security as grounds to restrict the right

to privacy and calls upon the EU to work towards reinforcing the right to privacy at international level.

Eva Massa is a solicitor and course manager in the Law Society’s Law School.

Recent developments in European law

CIVIL LIABILITY

Case C-371/12, *Petillo and Petillo v Unipol Assicurazioni SpA*, 23 January 2014



In 2007, Mr Petillo suffered injuries in a road traffic accident with Mr Recchioni. Mr Petillo then brought an action against Mr Recchioni’s insurance company, Unipol.

Italian legislation sets out a scheme for compensation payable for non-material damages suffered by victims of road traffic accidents. The scheme provides for restrictions compared with the assessment criteria used for damage arising from other types of accidents. The court’s discretion in increasing compensation in view of the circumstances of the case was limited to one-fifth of the amount provided for. The civil

liability of the insured person was not to exceed the amount covered by compulsory insurance.

The court in Rome asked the CJEU whether the [directives on compulsory insurance against civil liability](#) preclude national legislation that limits the compensation payable for non-material damage resulting from minor physical injuries caused by road traffic accidents, in comparison with the compensation allowed for identical damage arising from causes other than road traffic accidents.

The Court of Justice firstly pointed out that EU law requires the member states to ensure that civil liability in respect of the use of vehicles normally based in their territory is to be covered by insurance. This obligation is distinct from the extent of the compensation to be paid, which is determined and governed by national law.

The directives on insurance do not seek to harmonise rules of the member states governing liability and, in principle, the member states remain free to determine which damage is to be compensated, the extent of such compensation, and the persons who are entitled to it. However, the member states must exercise their powers in that field in compliance with EU law and may not deprive the directives of their effectiveness.

Nothing in the Italian legislation indicates that the amounts it provides for are not in accordance with the minimum amounts established in the directives. Provided that national legislation does not exclude or disproportionately limit the victim’s right to compensation, the directives do not preclude legislation imposing binding criteria on national courts or schemes adapted to the circumstances of road traffic accidents.

In this case, the guarantee that civil liability in respect of the use of motor vehicles, provided for under national law, must be covered by insurance in accordance with EU law is not affected.

FREE MOVEMENT OF PERSONS

Cases C-456/12 and C-457/12, *O, B, S and G v Minister voor Immigratie en Asiel*, 12 March 2014



The Dutch Council of State made two separate requests to the CJEU for a ruling in the context of four decisions refusing a right of residence to third-country nationals who are family members of Dutch nationals. [Directive 2004/38/EC](#) grants EU citizens and their family members the right to move and re-

side freely within the territory of the member states.

Case 456/12 concerned Mr O and Mr B. Mr O is a Nigerian national who married a Dutch national in 2006. From 2007 until April 2010, he lived in Spain. During that period, his wife lived with him for two months in Spain but regularly spent time with him in the form of holidays in Spain.

Mr B is a Moroccan national who lived with his Dutch partner from December 2002. In 2005, he moved to Belgium and lived in an apartment rented by his partner. His partner resided with him every weekend. In April 2007, Mr B returned to Morocco and, in July 2007, he married his Dutch partner.

The referring court asked whether EU law grants third-country nationals who are family members of EU citizens a right of residence in the member state of which the citizens in question are nationals.

The CJEU held that EU law does not confer any autonomous right on third-country nationals. Any rights they enjoy are derived from the exercise of freedom of movement by an EU citizen. Directive 2004/38 only applies where a citizen moves or resides in a member state other than that of which he is a national.

However, a refusal to allow a derived right of residence for a family member of an EU citizen, who is a third-country national, may interfere with the EU citizen's freedom of movement under that provision. An EU citizen might be discouraged from leaving his member state of origin due to uncertainty as to whether he might be able to continue, on returning to that member state, a family life which he might have created or strengthened in another member state.

Such an obstacle only arises where the right of residence is for a period

of longer than three months, as required by Directive 2004/38. In such a case, a derived right of residence is allowed for the family member who is a third-country national. The court held that anything short of three months does not satisfy the requirement. The court noted that Mr B had acquired the status of family member of an EU citizen after his partner's residence in the host member state. A third-country national who has not had, at least during part of his residence in the host member state, the status of family member of an EU citizen is not entitled to a derived right of residence in that member state.

Mr S is a Ukrainian national. She claims a right of residence with her son-in-law, who is a Dutch national. She also takes care of her grandson. Her son-in-law resides in the Netherlands but travels to Belgium at least once a week in the course of his work for an employer established in the Netherlands.

Mr G is a Peruvian national who married a Dutch national in 2009. He resides in the Netherlands but works for an undertaking established in Belgium and travels daily between the two states.

In this situation, the court held that an EU citizen who, under an employment contract, works in a member state other than that of their place of residence, falls within the scope of article 45 of the *Treaty on the Functioning of the European Union*. The effectiveness of the right to freedom of movement for workers may require that a derived right of residence be granted under article 45 to a third-country national who is a family member of the worker in the member state of which the worker is a national.

It is for the referring court to decide whether the grant of a derived right of residence is necessary to

guarantee the EU citizen's effective exercise of the rights guaranteed by article 45. The fact that the third-country national takes care of the EU citizen's child may be a relevant factor to be taken into account. However, the fact that it might appear desirable that the child be cared for by the third-country national, who is its direct relative, is not sufficient in itself to constitute such a dissuasive effect.

REFUGEE STATUS

Case C-12/14, *Daikité v Commissaire général aux réfugiés et aux apatrides*, 30 January 2014



In 2008 and 2010, the applicant, a Guinean national, applied for international protection in Belgium. He argued that he had been involved in protests against the ruling regime in Guinea and had subsequently been the victim of acts of violence. He was refused protection on the basis that there was no 'internal armed conflict' in Guinea, as defined in international humanitarian law.

Directive 2004/83 provides for subsidiary protection for persons who can qualify as refugees – but also for those who do not qualify for this status, but in respect of whom substantial grounds have been shown for believing that, if returned to their state or origin or former habitual residence, they would suffer a real risk of suffering serious harm.

The Belgian Council of State requested a preliminary ruling from the CJEU to ascertain whether the interpretation to be given to the concept of 'internal armed conflict' as referred to in the directive must be independent of the definition used in international humanitarian law. If so, what criteria must be met in order


for a situation to be covered by that concept?

The CJEU held that the concept of an 'internal armed conflict' as used in the directive is unique to it and is not directly reflected in international humanitarian law, which acknowledges only "armed conflict not of an international character".

As international humanitarian law makes no provision for a subsidiary protection regime, it does not identify situations in which such protection is necessary, and the protection mechanisms that it establishes are quite distinct from those provided for under the directive. International humanitarian law is very closely linked to international criminal law, whereas no such relationship exists in the case of the protection mechanism provided under the directive.

The court concluded from this that the concept of 'internal armed conflict' must be given an autonomous interpretation. It stated that it refers to a situation where a state's armed forces confront one or more armed groups, or in which two or more armed groups confront each other.

In the context of the directive, the existence of an armed conflict can be a cause for granting subsidiary protection only where the degree of indiscriminate violence reaches such a high level that an applicant for such protection would face a real risk of suffering serious and individual threat to his life or person solely on account of his presence in the territory concerned.

The court concluded from this that a finding that there is an armed conflict must not be made conditional upon the intensity of the armed confrontations, the level of organisation of the armed forces involved, or the duration of the conflict. 

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professional notices

WILLS

Barrett, Richard (deceased), late of 4 Ardnalee, Crosshaven, Co Cork. Would any person having knowledge of any will made by the above-named deceased, who died on 2 October 2013, please contact Murphy English & Co, Solicitors, Sunville, Cork Road, Carrigaline, Co Cork; tel: 021 437 2425, email: info@murphyenglish.ie

Broderick, Denis (deceased), late of 1 Roselawn, Ballinacurra, Middleton, Co Cork, and formerly of Blossom Grove, Glanmire, Co Cork, who died on 22 February 2014. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Doody Solicitors, 21 South Mall, Cork; tel: 021 427 0053, email: donna@doody.ie

Brohan, Audrey (deceased), late of Marley, Marshalstown, Enniscorthy, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 1 March 2014, please contact Cooke & Kinsella,

Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928, fax: 0402 32272, email: fergus@cookekinsella.ie

Foley, Peter (deceased), late of Rosslara, O'Callaghans Mills, Co Clare, who died on 26 April 1988. Would any person having knowledge of a will made by the above-named deceased please contact

Siobhán McMahon of John Casey & Company, Solicitors, Bindon House, Bindon Street, Ennis, Co Clare; tel: 065 682 8159, email: siobhan.mcmahon@caseylaw.biz

Hogan, Anthony (deceased), late of 62 Springdale Road, Raheny, Dublin 5, who died on 27 March 2014. Would any person having knowledge of the last will made by the above-named deceased or its whereabouts please contact Muldowney Counihan & Co, Solicitors, Office 3, Clon Court, Main Street, Clonee, Dublin 15; tel: 01 825 5863, fax: 01 801 3249, email: muldowneycounihan@msn.com

McDonnell, James (deceased), late of 42 Shangan Gardens, Ballymun, Dublin 9, who died on 26 September 2010. Would any person having knowledge of the whereabouts of a will made on or after 13 November 2001 by the above-named deceased please contact Margaret Reynolds, solicitor, 56 Blessington Street, Dublin 7; tel: 01 830 3811, fax: 01 830 9600, email: quandre@iol.ie

McMahon, John Paul, aka Shane (deceased), formerly of 28 Pontoon Drive, Castlebar, Co Mayo, and of Cathal Brugha Barracks, Dublin 6, or lately of Sarajevo. Would any person having any knowledge of a will made by

the above-named deceased, who died on 22 July 2013, please contact Mannion Solicitors, 6 Main Street, Dundrum, Dublin 14; tel: 01 298 9344, email: thomas@mannionsolicitors.ie

Nolan, Patrick (deceased), late of 898 Piercetown, Newbridge, Co Kildare. Would any person having knowledge of any will made by the above-named deceased, who died on 20 November 2013, please contact Reidy Stafford, Solicitors, 1/3 Moorefield Terrace, Newbridge, Co Kildare; tel: 045 432 188, email: hcraddock@reidystafford.com

O'Dea, Winifred (deceased), also known as Una O'Dea, late of Caherhenryhoe, Loughrea, Co Galway. Would any person having knowledge of a will made by the above-named deceased, who died on 28 November 2013, or if any firm holds same, please contact Swaine Solicitors, 14 Fr Griffin Road, Galway; email: info@swainesolicitors.com

O'Regan, Michael (deceased), late of 30 Lord Edward Street, Ballina, Co Mayo. Would any person having knowledge of any will made by the above-named deceased, who died on 21 February 2014, please contact Dillon-Leetch and Comerford, Solici-

RATES

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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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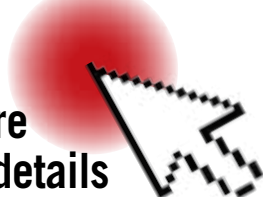
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tors, 3 Mountpelier Terrace, Sea Road, Galway; tel: 091 582 316, fax: 091 587 882, email: galway@dillonleetchcomerford.ie

O'Toole, Christopher (deceased), late of Churchview Nursing Home, 61 Cabra Road, Dublin 7, and formerly of 38 Hestbury Street, Dublin, who died on 29 October 2013. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Cathy McDarby, McDarby & Co, Solicitors, Glebe Street, Ballinrobe, Co Mayo; tel: 094 954

1440, fax: 094 954 1762, email: lawyer@iol.ie

Prendergast, James (deceased), late of 22 Ashgrove Drive, Naas, Co Kildare, who died on 6 October 2002. Would any person having any knowledge of the original will made the above-named deceased or its whereabouts please contact Dermot Fullam, Dermot Fullam & Co, Solicitors, Spring Garden Lodge, Sallins Road, Naas, Co Kildare; DX 49005 Naas; tel: 045 879 607, email: info@fullam.ie

MISCELLANEOUS

Notice: Circuit Court, South Eastern Circuit, Co Tipperary; record no 00720/11

Between: Patrick J O'Brien and Multeen Developments Limited (in liquidation) (plaintiff) and William Costello (defendant)

James O'Brien & Co (solicitor for the plaintiff), 30 Castle Street, Nenagh, Co Tipperary

Notices for incumbrances pursuant to order of the Circuit Court dated

22 January 2013 herein to all persons claiming to be incumbrances affecting the interest of the defendant in the property at Knockanvar, in the county of Tipperary, being the entire property comprised in folio 7847, county of Tipperary, and also the Registry of Deeds lands in the townland of Cappagh in the barony of Kilmanagh Lower and Co Tipperary, are to prove their claims by affidavit and exhibits therein and any security held at the office of the county registrar, Circuit Court Office, The Courthouse, Clonmel, Co Tipperary, on Thursday 26 June 2014 at 9am, and in default may be excluded from the benefit of the said order.

Date: 8 May 2014

Signed: Niall Rooney, County Registrar, The Courthouse, Clonmel, Co Tipperary

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 84 North Circular Road, Dublin 7, and in the matter of an application by Diarmaid Ó Ceallaigh

Any person having any interest in the freehold estate or any intermediate interest in all that and those the hereditaments and premises known as 84 North Circular Road, Dublin 7, in the city of Dublin, held under lease dated 26 September 1947 and made between Linda

Aylward, Mervyn Reigh, Gertie New, Alice M Burns and Frank Osasian of the first part, and the said Linda Aylward and Mervyn Reigh and Gertie New of the second part, and the Munster and Leinster Bank Limited of the third part, for the term of 100 years from 29 September 1945, subject to the yearly rent of £10.

Take notice that Diarmaid Ó Ceallaigh, being the person entitled to the lessee's interest in the said lease, intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of the title to the aforementioned premises to the below-named within 21 days from the date of this notice.

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

Date: 8 May 2014

Signed: Cormac O'Ceallaigh & Co (solicitors for the applicant), 388 North Circular Road, Phibsborough, Dublin 7

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visiting the members' section on the Law Society's website at www.lawsociety.ie. Click on the 'e-zine and e-bulletins' section in the left-hand menu bar and follow the instructions.

A posteriori

Mr Loophole buttonholed



The Advertising Standards Authority in Britain has upheld a complaint against Nick Freeman – aka ‘Mr Loophole’ – a solicitor who is famed for helping celebrities escape motoring convictions, reports the *Law Society Gazette* of England and Wales.

It found that an advertisement on Freeman & Co’s website was at fault for implying that the Manchester solicitor would be directly involved in the details of every case.

A former client of Freeman said the claim “with Freeman & Co you’ll receive Nick Freeman’s expertise and

experience in cases” was misleading, as they understood Freeman was only involved in certain priority cases.

Freeman’s clients have included Jimmy Carr, David Beckham and Jeremy Clarkson. His firm’s website describes him as “the most famous solicitor practising in the country today”.

The firm denied the claim and said Freeman was available to speak to every client and also prepared cases on an *ad hoc* basis, irrespective of whether clients requested this.

But the ASA said: “We considered the overall

impression of the ad was such that it would be understood to mean Nick Freeman would be directly involved with the details of each client’s case.

“Because in some instances Mr Freeman had only overall supervision of cases, we concluded the ad was misleading.”

Responding to the decision, Freeman said: “While I do have an involvement in every case, I clearly cannot personally represent every client. This client never personally requested, or paid for, my representation in court.”

Lights, camera, action

A judge has suggested the addition of blue lamps – to go alongside the normal red, amber and green – to traffic lights.

The Irish Times reported that Judge Anthony Halpin was dealing with a driver who broke a red light after speeding up when it turn to amber.

Judge Halpin told Sergeant Bernard Jones: “Maybe we should consider introducing a light between amber and a red. Could you convey this to the authorities? The amber light isn’t working. When people see it, they speed up. We will cut out all traffic accidents.”

The newspaper report doesn’t indicate whether or not he was being sarcastic.



Land of the free, home of the ... oh, wait!

A New York man who spent nearly 25 years in prison for murder has been exonerated after a judge found that he had been in Florida on holidays at the time of the crime, RTÉ reports.

Jonathan Fleming (51) walked out of Brooklyn Supreme Court a free man after the Kings County District Attorney’s Office dropped all charges against him “in the interest of justice”.

“He’s extremely happy this day finally came but frustrated that he suffered for 25 years for a crime he didn’t commit,”

his lawyer Taylor Koss said.

Mr Fleming had always maintained his innocence in the 1989 shooting death of his friend Darryl Rush in Brooklyn. His lawyers said prosecutors rushed to convict him, ignoring evidence that included phone bills, photographs, hotel receipts and other evidence that placed him in Florida – not Brooklyn – at the time of the crime.

During his trial, a single witness testified that she had seen Fleming at the crime scene in

Brooklyn, but recanted weeks later, his defence attorney said.

After nearly a quarter century of appeals and a review by the Kings County conviction integrity unit, district attorney Ken Thompson said new and existing evidence cleared Mr Fleming of the crime.

“Based on key alibi facts that place Fleming in Florida at the time of the murder, I have decided to dismiss all charges against him in the interest of justice,” he said in a statement.



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CORPORATE PARTNER

Ref BD01

This top ten corporate firm seeks to appoint an additional partner to its growing M&A group which advises on both domestic and international deals. While a client following is not prerequisite, the appointee must have a proven ability to generate new work and maximise cross sell opportunities. As a senior appointee, it is expected that a new partner will bring the benefit of their commercial acumen, client management skills and professional vision to the role.

TAX ASSOCIATE

Ref BD03

Regarded by many as the top tax group in Ireland, the team advises on a broad range of tax issues including domestic acquisitions and MBOs, FDI and inversions, cross border M&A, aircraft financing, the tax components of debt capital markets, tax litigation and Revenue powers. Due to continued growth, the firm seeks to appoint an ambitious associate to the team who has the hunger and ambition to ultimately become a partner.

PROPERTY ASSOCIATE

Ref BD05

One of the top three property teams in Dublin, the group has led the majority of the headline transactions in Ireland over the last 18 months. In joining the group, you will be involved in a broad range of work including commercial land acquisitions, high profile commercial property developments, tax based property acquisition and negotiating & drafting leases. The group now seeks to appoint an ambitious associate to the team.

LITIGATION ASSOCIATE

Ref BD07

In joining the litigation department of this upper tier one firm, you will deal with cutting edge Commercial Court litigation, ADR and Mediation, advising a blue-chip client base on some of the most high profile, public interest litigation matters in Ireland. Due to booming work levels, the team now seeks to hire an ambitious associate to the team. The appointee will be paid extremely competitively and will have a strong trajectory to partnership.

AVIATION FINANCE PARTNER

Ref BD02

This market leading team, which acts both as lead counsel on domestic transactions and Irish counsel on complex cross border aviation financings, seeks to hire an ambitious senior associate or partner to its booming aviation finance practice. The group's broad ranging experience includes acting for high profile domestic and international airlines, lessors, aircraft financing and aircraft engine financing companies.

CORPORATE ASSOCIATE

Ref BD04

Dominating the deal tables for Ireland, this booming tier one team manages a broad range of complex M&A, private equity, takeovers, privatisations, JVS, high profile FDI and inversions across such diverse industries as financial services, pharmaceuticals, food, technology and media. The team now seeks to hire an ambitious associate to the team. The appointee will be paid extremely competitively and will have a strong trajectory to partnership.

FUNDS ASSOCIATE

Ref BD06

This industry leading team continues to dominate the Irish funds landscape attracting and retaining both the best clients and the best talent in Dublin. Consistently ranked as the number one adviser to the asset management industry, the team advises major institutional clients across the spectrum of UCITs and alternative products. The team now wishes to recruit a number of mid level associates to the department due to business growth.

BANKING ASSOCIATE

Ref BD08

The highly regarded financial services department of this top ten firm seeks to recruit an ambitious banking associate to its growing team. The appointee will have a have a direct path to partnership within a timeframe of 2-3 years. Applicants from the top tier will also notice an improvement in their work/life balance. The ideal candidate will be a general banking lawyer who has also gained experience of a more niche area of banking law.

For a confidential discussion on any of these opportunities, or other non-advertised positions please contact:

Bryan Durkan | Principal Consultant Legal Selection | t: +353 1 632 1852 | e: bryan.durkan@hrmrecruit.com

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We have significant new opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the roles our clients are seeking to fill. Please make sure to visit our website for other positions.

In House

In-House Commercial Property Lawyer – Recently Qualified to Assistant level – P00167

Due to an expanding Irish property portfolio, this UK based mortgage company is looking to recruit a junior solicitor to assist in the development of its Irish business. The successful candidate will have strong commercial property/security review experience and will be expected to assist with a significant loan portfolio acquisition where responsibilities will include inter alia: Examination of title deeds, registrations and security reviews generally. You will also be expected to instruct out-sourced Counsel where appropriate.

Private Practice

Asset/Aircraft Finance – Assistant to Associate level – J00447

Rapidly expanding and progressive Dublin law firm seeking to recruit an Asset Finance/Aviation lawyer. You will have prior experience within the asset finance arena to include drafting, reviewing and negotiating leasing documentation and experience in advising on the purchase, maintenance, sale and leasing of aircrafts.

Corporate – Assistant to Associate level – J00470

This top flight law practice seeks a solicitor to join the Corporate team. Transactions span the corporate and commercial spectrum – from M&A, flotations and venture capital to e-commerce. You will be acting for many listed plcs, multinationals and private companies on a broad range of matters.

Employment/Litigation – Associate to Senior Associate level – J00373

An established commercial practice is seeking an experienced employment/litigation solicitor. You will be dealing with an

interesting and varied mix of work covering employment and commercial litigation matters in a 50:50 split. The employment side will entail both contentious and non-contentious work.

Insurance & Reinsurance Solicitor – Associate level – J00449

Top tier firm building on its continued growth and success is seeking a high calibre insurance/reinsurance associate solicitor to work with global insurance and reinsurance companies dealing with M&A, corporate governance and regulation.

Planning/Environmental – Assistant to Associate level – J00375

This top-flight Dublin firm seeks a Planning/Environmental Lawyer to join a growing team. Duties will include provision of environmental due diligence advice on: Property; corporate and banking transactions; environmental infrastructure projects; stand-alone environmental compliance advice as well as a small amount of contentious environmental work.

Project Finance – Assistant to Associate level – J00288

This front ranking firm Dublin law firm seeks to recruit an experienced Project Finance solicitor to join the Projects Group. You will be dealing with: Transactions financed through syndicated debt; debt capital markets; securitisations; joint ventures and secondary market sales of equity interests.

Tax – Associate to Senior Associate – J00337

A Top 5 Dublin law firm is looking to recruit a Senior Tax Assistant with solid general tax experience to slot into a fast growing partner-led team. You will advise Irish and European clients on structuring transactions, such as complex cross-border acquisitions, real-estate investment, private equity, public offerings of debt and equity securities and joint ventures.

Technology & Innovation – Assistant to Associate level – PP0343

An opportunity has arisen for a Technology & Innovation Lawyer to join this front ranking Dublin law firm. You will advise clients on a wide range of technology issues.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.
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