Law Society Gazette

Regulars

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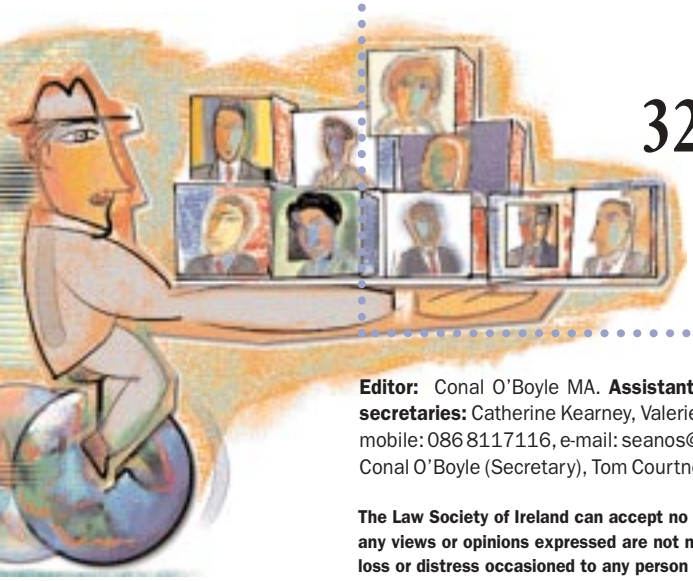
Cover Story



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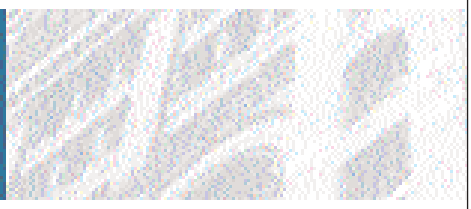

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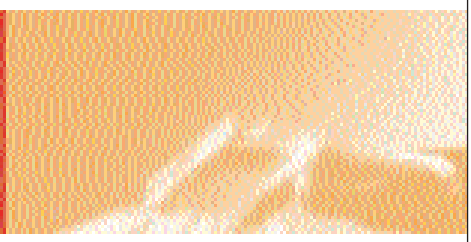

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An Béal Bocht

In July, the Law Society addressed the Joint Oireachtas Committee on Enterprise and Small Business on insurance reform, and again stressed that we accept that there is a crisis in the insurance industry, which needs to be addressed – but not at any price!

The voices of accident victims who have no organised voice of their own, and many of those whose lives have been devastated as a result of injuries caused by the negligence of others, have not been heard.

We urged upon the committee that, before making conclusions as to what is required to address the problems in the industry in a way which is fair to all parties, they must hear the views of those victims who should be no worse off as a result of whatever reforms are proposed.

Meanwhile, the insurance market in Ireland is becoming, in the words of Alice in Wonderland, 'curiouser and curiouser'. In the past couple of months, four of the largest companies have confirmed significant profits in the Irish market. This is shortly after the Irish Hotels' Federation and other groups representing business told the committee that their members' premiums increased by an average of 351% in 2002–2003. In some cases, the increases were over 2000% In light of this, how can the béal bocht of the insurance companies be justified?

'The voices of accident victims who have no organised voice of their own have not been heard'

We know that the number of claims being made has dropped and that there is a decrease in awards across the board. It is peculiar, to say the least, that the insurance companies have not produced any figures in relation to the decrease in public liability and employer liability claims. If there has been a reduction in the public and employer liability claims, these should be highlighted by the industry, and consequent savings passed on to the business. After all, 'we are losing jobs' has been the constant mantra of an tánaiste Mary Harney.

The Law Society welcomes many of the reforms proposed in the *Civil Liability and Courts Bill, 2003*. However, it is concerned about the proposal to reduce the statutory period to one year, which could lead to severe difficulties for seriously injured victims of accidents who may still be hospitalised up to one year following an accident. These proposals, together with the proposals set out in the Law Society's *Real reform* document, would make the drastic reforms (which are badly thought through, of which there has been no cost-benefit analysis and which will discriminate between people who have means and who are poor) unnecessary. There is a way to take Alice through the looking glass without shattering the glass.

Geraldine Clarke,
President

CONFERENCE TO TACKLE DISABILITY LAWS

The Law Society will hold a major public conference on global trends in disability law at Blackhall Place on Saturday 13 September. The conference is being organised in conjunction with the National Disability Authority and the Human Rights Commission. Speakers will include Barbara Nolan of the European Commission and Stefano Sensi, human rights officer at the High Commission for Human Rights in Geneva. For further information, contact the society's law reform executive Alma Clissman on tel: 01 6724831, e-mail: *a.clissman@lawsociety.ie.*

BOOK SALE

Old and superseded books will be for sale in the Law Society library from Monday 15 to Friday 19 September. All proceeds from the sale will go to the Solicitors' Benevolent Association. A full list of the books on offer can be obtained by e-mailing *library@lawsociety.ie*.

RETIREMENT TRUST SCHEME

Unit prices: 1 August 2003
Managed fund: 398.132c
All-equity fund: 93.475c
Cash fund: 251.354c
Long bond fund: 105.873c

Boost for rural courts

The state is this month finalising plans to improve court facilities at two major rural centres around the country, ending long periods of uncertainty in both cases.

The Courts Service, Cork County Council and Fermoy Town Council are to spend between €4 million and €5 million on building shared courthouses/civic offices in Fermoy, Co Cork. At the same time, the Courts Service has sought planning permission to convert the Mall Theatre in Tuam, Co Galway, into a temporary District Court and ancillary offices.

'We have sought permission for a change of use for the Mall Theatre cinema', a spokesman told the *Gazette* this month. The move from the current courthouse should be complete in a matter of months.

The spokesman added that the former cinema would serve as a court in the medium term while plans for a new permanent home are being finalised. The agency still has to decide if it will upgrade the current court building in the east Galway town or build a new facility on a greenfield site. 'We are in consultation with local people and with the local council', he said.

The Courts Service has already conceded to local media that the Tuam court building has suffered from a long period of neglect and is not adequate for the needs of lawyers, their clients, judges or staff. Its move brings to an end a protracted period of speculation about the future of the town's courts and the theatre.

There were fears last month that Fermoy would not get a new court. The north Cork town has regular District and Circuit Court sittings in a building that has also suffered from a lack of investment. However, the Courts Service and local authorities have since confirmed their plans to go ahead with their joint project.

The final drawings for the new shared facility were scheduled to be completed this month. Local county council engineer, Flan Groarke, told the *Gazette* that the estimated cost would be between €4 and €5 million. But he added that the figure was not final as the project would be put to tender.

New booklet to explain court system
Law Society president Geraldine Clarke and deputy director general Mary Keane officially launch an explanatory booklet to demystify the structure and operation of the Irish court system for the general public. The booklet was produced by the Law Society in association with the Courts Service and the Bar Council, and is available in courthouses throughout the country

ONE TO WATCH: NEW LEGISLATION

Protection of Employees (Fixed Term Work) Act, 2003

The act is designed to prevent fixed-term workers from being treated unfavourably in comparison to comparable permanent employees. It implements an EU directive and was signed and came into effect on 14 July 2003.

The act gives entitlements and employment rights to fixed-term workers under certain conditions:

- It limits the duration of fixed-term contracts with the aim of transferring such workers into permanent employment
- It requires employers to inform fixed-term workers about vacancies for permanent jobs as they arise, and
- It requires enterprises to include fixed-term workers in calculating the total employment numbers for the purposes of the requirement to establish worker representative bodies over certain thresholds.

The act applies generally to all fixed-term workers, including those employed in the civil service, local authorities, harbour authorities, health authorities or health boards and vocational education committees. It does not apply to trainees or apprentices, or members of the Defence Forces, trainee gardaí or trainee nurses. It also does not apply to agency workers employed by a temporary work agency and put at the disposal of an employer who has contracted with the agency for their services. However, such workers get the benefit of the act in relation to the agency employing them.

Section 5 gives guidance on which workers are comparable permanent employees. Section 6 permits different treatment if justified on objective grounds, or different pension arrangements if the fixed-term worker is working less than 20% of the hours of a permanent worker. In other respects, equality of conditions of employment or better is required. 'Objective grounds' are clarified in section 7. Insofar as they entail less favourable treatment of the employee, they must be based on considerations other than the employee's temporary status, and must be for the purpose of achieving a legitimate objective of the employer, and the treatment must be appropriate and necessary for that purpose. Less favourable treatment may be regarded as objectively justified if

Solicitors set the judicial benchmark

Solicitors filled almost half the judicial vacancies in the country last year, according to the statutory body that advises the government on recruiting for these positions.

The Judicial Appointments Advisory Board's annual report for 2002 shows that solicitors filled six of the 14 vacancies on the Supreme, High, Circuit and District Courts between 10 April 2002 and 31 December 2002. One of the appointments was former solicitor and Law Society Council member, Mr Justice Michael Peart (see *Gazette*, July/August 2002, page 14).

The other solicitor appointees were James O'Donohoe in the Circuit Court, and Geoffrey Browne, Cormac Dunne, Bryan Smyth and John Coughlan in the District Court. Dunne, Browne and Smyth were all appointed to the Dublin Metropolitan District.

The report shows that members of the profession showed plenty of interest in applying for judicial appointments, with solicitors accounting for 94 out of 98 applications for District Court posts and 52 out of 91 applications for the Circuit Court bench.

Mr Justice Michael Peart: first solicitor on the High Court bench

The board considered ten applications from solicitors out of 27 in a competition for four High Court places in June 2002. Mr Justice Peart was appointed in this round. In December, the board considered 12 solicitor applications for the same court. The total number of participants was 25. One solicitor and one senior counsel competed for appointment to the Supreme Court last year. Neither was successful as long-serving High Court judge, Mr Justice Brian McCracken, pipped both at the post.

Along with the Supreme Court appointment, five positions were filled in the High Court, three in the Circuit Court and five in the District Court.

The president appoints judges on the advice of the government. The Judicial Appointments Advisory Board screens and interviews suitable candidates and recommends their appointment to the government, which must consider the recommendation before advising the president.

Its 2002 report covers April to December, as the *Courts and Courts Officers Act, 2002* came into force on 10 April last year.

SOCIETY TO HOST CONVEYANCING SEMINAR

The Law Society will host a series of five afternoon seminars on *Essential conveyancing for practitioners* beginning on Wednesday 5 November. The series will aim to provide participants with a basic understanding of the key issues requiring consideration in a typical conveyance, and to highlight the problems and pitfalls that practitioners are likely to encounter. Taking part in the seminar will be worth 17 continuing professional development (CPD) hours. Details are available in a brochure enclosed with this *Gazette* and on the society's website.

HIGH PROFILE SPEAKERS FOR SOCIETY CONFERENCE

Judge Rosalie Abella of the Ontario court of appeal, justice minister Michael McDowell and Mr Justice Brian Kerr of the Belfast High Court will address a conference on the proposed *European charter of fundamental rights* and the *All Ireland charter of human rights* at Blackhall Place on Saturday 18 October. For further information, contact the society's law reform executive Alma Clissman on tel: 01 6724831, e-mail: *a.clissman@lawsociety.ie.*

the terms of the contract as a whole are at least as favourable as those of permanent employees. So, for example, more difficult work could be traded off against more flexible hours or other perks.

An employer is required to give a written statement to a fixed-term employee setting out what will terminate the contract: a specific date, completion of a specific task or occurrence of another specific event. A written statement containing this information is also required on renewal and must also state why a fixed-term contract rather than an indefinite contract is on offer. Successive fixed-term contracts in existence on enactment (14 July 2003), which amount to three years or more, may only be renewed once more. Such contracts entered into after enactment cannot have an aggregate duration of longer than four years. After these periods, the workers are entitled to an indefinite contract, unless there are objective grounds justifying a further renewal. This provision cannot be contracted out of, and employees relying on the act cannot be penalised.

The enforcement mechanism involves the employee, or a trade union on his or her behalf, making a complaint to a rights commissioner, with a procedure including an oral hearing and a written decision. The rights commissioner can require re-instatement of the employee and order compensation of up to two years' remuneration. Complaints must be made within six months of the contravention or termination of employment, whichever is the earlier, but this may be extended by 12 months if for a reasonable cause. Proceedings are in private. Appeals lie to the Labour Court within six weeks of a decision, and the minister for enterprise, trade and employment may, at the request of the Labour Court, refer a question of law to the High Court, whose decision is final. If the employer does not carry out a decision, the matter can be referred to the Labour Court and ultimately for enforcement to the Circuit Court. Interest on a monetary award may be payable.

(See also the article by Michelle Ní Longain in the June issue, page 49.) G

Alma Clissmann is the Law Society's parliamentary and law reform executive.

PRESIDENT TO ADDRESS WITNESS CONFERENCE
Law Society president Geraldine Clarke and the acting chair of the Personal Injuries Assessment Board (PIAB) Dorothea Dowling will address the third conference on the role of the expert witness in the Royal Hospital, Kilmainham, on 28 November. Justice Catherine McGuinness will chair the conference which will feature a panel of high-profile lawyers.

MCDOWELL TO LAUNCH LITERACY CAMPAIGN
Justice minister Michael McDowell will launch the National Adult Literacy Agency (NALA) campaign, *Low literacy levels can be a barrier to the legal/justice system*, at the Department of Justice, Equality and Law Reform on 5 September. The campaign will have three general themes: access and understanding of individuals' rights; using plain English to boost the effectiveness of text-based legal materials; and the link between low levels of literacy, crime and social exclusion. For further information, contact NALA on tel: 01 855 4332.

DPP 'considering' explaining decisions

Director of Public Prosecutions (DPP) James Hamilton has said that he is 'investigating' ways of giving explanations to crime victims in cases where his office decides not to prosecute the suspected perpetrators.

Hamilton told the *Irish Examiner* that he was carrying out a fact-finding mission to establish how other jurisdictions dealt with the issue, and said it was something he 'would like to be able to do something about'.

However, he stressed that it was a difficult problem. He argued that if his office commented on one case, it would have to comment on all of them, while at the same time there would be situations where it would be grossly unfair to somebody to give a reason, as it would be tantamount to saying they were guilty.

Hamilton: fact-finding mission

Law Society Criminal Law Committee member Michael Staines welcomed Hamilton's remarks this month, saying: 'It's long overdue'. Staines added that there were situations where, from the victim's point of view, it appeared that the perpetrators were known to the police but still seemed to escape prosecution. 'It would be of great help to victims in those circumstances', he said.

Directing traffic

The Boardroom Centre (BRC) is the only formal, independent source of non-executive directors and chairmen in Ireland. It is a non-profit organisation, sponsored by a number of major institutions, including the Law Society. The BRC keeps a register of 400 experienced people who have a diverse range of skills and experience and are available to act as non-executive chairmen/directors on company boards. Law Society members who would like more information should contact Rosemary Wilson at The Boardroom Centre on tel: 01 408 4549 or e-mail *boardroom@iodireland.ie*.

PRACTICE MANAGEMENT NEWS

As most members will know by now, the Law Society launched its new website on 11 June last. What many members may not know is that it contains a significant amount of information on various practice management topics, which can assist solicitors in running their practices more efficiently. Here are just a few of the items available.

Guide to drafting a safety statement
Under section 12 of the *Safety, Health and Welfare at Work Act, 1989*, employers are obliged to draft a safety statement for their workplace, specifying the manner in which health and welfare shall be secured there. The purpose of the safety statement is to require employers to assess their workplace and identify potential hazards to safety, health and welfare in that place of work. To help solicitors, the society has published a *Guide to drafting a safety statement*, which is available on the website. It can be found in the members' area under *Precedents for practice*.

Quality service statement
Solicitors' clients as consumers of legal services seek the assurances they would expect when purchasing any service. The Guidance and Ethics Committee has prepared a *Quality service statement* which solicitors are encouraged to display to their clients, ideally in the reception or other suitable area. A sample *Quality service statement* can be found on the website in the members' area under Guidance and Ethics Committee.

E-mail policy note
The Technology Committee has prepared a short note on *Guidelines on the use of e-mail in a solicitor's office*. Again, this is available in the members' area of the website under *Society committees* – Technology Committee.

Conferences and seminars
Well-known financial and management consultant, Andrew Otterburn, will host two seminars in the Morrison Hotel, Dublin, in November which may be of interest to members. The first seminar on Wednesday 19 November will cover the area of law firm management for new/prospective partners and associates, and the following day Otterburn will lead a management refresher for partners and practice managers. Both seminars will be based around a combination of group work and speaker input and each will be limited to 15 places. For further information and booking, contact Otterburn Legal Consulting on tel: +44 1484 682928 or web: *www.otterburn.co.uk*.

Managing Partner will host a two-day conference on *Strategic marketing for the legal profession* on 29-30 September next at the Hilton Olympia Hotel in London. The conference focuses on how law firms can maximise their profitability through strategic marketing and business development, how to develop positioning strategies for law firms and tips for generating business from new and existing clients. For further details and booking, contact Ark Group on tel: +44 208785 2700 or web: *www.ark-group.com*.

Family law on crash course with ECHR

Irish family law clashes with the provisions of a human rights convention due to be enacted in this jurisdiction by the end of the year, Law Society deputy director of education Geoffrey Shannon warned recently.

Launching the new edition of the *One-parent families' information guide* in Dublin Castle, Shannon said marriage enjoyed a privileged position in the Irish constitutional order and pointed out that the courts were steadfast in asserting the exclusivity of the 'constitutional family'.

'Irish law is clearly inconsistent with the provisions of the *European convention on human rights and fundamental freedoms* (ECHR), which will become part of Irish law by the end of December', he said.

Shannon pointed out that, unlike the Irish constitution, the convention made no distinction between marital and non-marital families. 'Cohabitation agreements, for example, are not generally recognised by Irish law as such contracts are viewed as contrary to public policy and are therefore unenforceable. The High Court has recently stated that unmarried persons are free agents who owe no duty to each other'.

Geoffrey Shannon: 51,000 children live with cohabiting couples

He told the gathering that recent census figures showed the number of lone-parent families was rising. It revealed that there were 90,000 such families living in this country last year.

'There has also been a significant increase in the number of cohabiting couples, which now make up one in 12 of all family units. Cohabiting couples have more than doubled since 1996, from 31,100 to 77,600', he said. And he added that 52,000 children live with cohabiting couples, while one third of births in 2002 were outside marriage.

He called for a new approach to family law based on the fact of the parties living together rather than the nature of the relationship between them. 'We need to depart from a system of family law where legal status alone is the sole determinant of family rights and privileges', he said.

INTERIM SYSTEM FOR COURTS ACCOUNTANT

The Office of the Accountant of the Courts of Justice has introduced interim arrangements for managing Supreme and High Court funds pending the introduction of a new computerised system. All cheques required to be lodged in court pursuant to a court order or legislation should be made payable to the Accountant of the Courts of Justice. They should be accompanied by the relevant schedule and affidavit and lodged at the public counter or posted to: Accounts Receivable, Accountant's Office, The Courts Service, 15/24 Phoenix Street, Smithfield, Dublin 7. All correspondence in relation to payments out should be addressed to Accounts Payable at the same office, and all correspondence in relation to auctioneers should be addressed to the auctioneers' section. Practitioners should note the Court Service strees that cheques should not be made payable to, or lodged with, Bank of Ireland.

Outsource, the Irish-based business advisor to professional service firms, will hold its fourth annual *Practice management and profitability conference* on Monday 20 October at Blackhall Place. Topics to be covered this year include current market developments, risk management, marketing for law firms, and wealth management. The conference will also assess the Irish legal market in 2003, examining how profits are holding up, investigating growth areas for law firms and detailing which areas are in decline. It will also examine the changes that have occurred in the market in the past 12 months and will include a special section on money laundering and how to implement the new regulations. Further details from David Rowe at Outsource, on tel: 01 678 8490. This seminar qualifies for a continuing professional development credit.

And finally, practical tips on how to improve your client focus

- Listen to your client. Structure your client interviews, listen carefully to what the client has to say and resist the temptation to rush to a preliminary view of what is important
- Advising your client. Your client should receive your undivided attention – that means no telephone interruptions, no visitors, no distractions
- Taking instructions. Use an instruction form; it prevents unnecessary conversation and avoids repetition
- Billing your client. Address the issue of money early on: your client will want to know the bottom line
- Speak the client's language. Avoid legalese, use plain English. Poor communication between client and solicitor is one of the most common reasons for complaints against lawyers
- Delight the client. Take pains to establish mutual trust and respect with your client
- Drop the bad client. If your instincts tell you that you will never satisfy your client, then drop him
- Build client loyalty. Never assume client loyalty – it has to be carefully nurtured through regular contact and greater involvement with the client.
- Establish and agree client expectations. Do not set expectations too high, but don't appear unnecessarily negative or discouraging either
- Be proactive with your client. Take the initiative; don't wait until the client calls to complain about lack of progress. Organise regular reviews of your files and processes
- Work on your networks of referral. Treat even the most insignificant client properly. Every satisfied client is a possible passport to more.

Any members with queries or suggestions on practice management issues, can contact Claire O'Sullivan directly on tel: 01 672 4829 or e-mail: c.osullivan@lawsociety.ie.

Claire O'Sullivan is the Law Society's members' services executive.

Why the farmer and the hill

Is it time that the law dealing with who can go where in the Irish countryside is finally clarified? Pat Igoe argues that it would be good for farmers and ramblers alike

Around 60% of the tourists who come to Ireland now cite the humble pursuit of walking as one of the reasons for their visit. What do we have to offer them, compared with, say, Wales or Scotland? Well, we offer beautiful scenery, a friendly welcome and some sort of access to the countryside. It is only some sort of access since there is often uncertainty and a significantly greater possibility of confrontation with a farmer telling you to get off his (and it is usually his) land.

When or how to lawfully access a country walk or a mountain trail is now increasingly taxing the attention of those concerned with free access to the Irish countryside. Farmers are still not overly-enthusiastic about hill walkers, mountain climbers and ramblers crossing their lands. Why should they be? The link with local tourism and benefit to the local economy is not always made.

One incentive scheme to encourage farmers to facilitate rights of way, mark out crossing styles and generally welcome walkers on designated walkways, which began in 1994, ended in 1999. More than 45,000 farmers joined the first rural environment protection scheme (REPS), but fewer than 200 of them opted for the public access payment. The second REPS is now operational, but the public access payment has been dropped on the requirement of the European Union Commission. Its take-up rate was, in any event, abysmal. It obviously did not address the reality of encouraging farmers to welcome walkers.

Too often, walkers, both foreign and native, bring back stories of signs warning 'No entry' and 'Trespassers will be prosecuted', while not omitting the 'No walkers allowed' sign that was erected a few years ago by *Feirmeoiri an Baile* at the Three Sisters near Dingle, County Kerry. Not a *céad mile fáilte* to talk about back home in Salzburg or Stuttgart in the winter evenings. Next year, Wales.

A walk in the park? Not if you're navigating the laws dealing with rights of access

Changing times

Various proposals have been put to the government in recent years by bodies interested in access to the countryside. One such came from mountain group leader, John O'Dwyer, who cited the *Countryside and Rights of Way Act*, which was enacted in England and Wales in 2000 and which provides at least a measure of clarity in relation to a legal right to roam in areas of open and uncultivated countryside.

There is no such certainty in this country when looking for scenic rights of way. You look for direction signs to scenic routes but probably won't find any. Then you may reach the 'keep out' signs. So you take your chances. You may find helpful signs, or you may not. Many farmers have traditionally been generous and indulgent towards walkers and mountain climbers, but there is no legal obligation on landowners to allow public access.

There is, of course, *de facto* access to many upland areas where the landowners have taken no steps over time immemorial to hinder public access. Experienced hill walkers and mountain climbers talk of the tolerance and good humour of many farmers over the years.

But times are changing. Not only is rambling becoming a growth leisure activity, encouraged by our increasing health consciousness, but we are becoming more legalistic: rights and duties, exposure, insurance.

Enter the law and definitions – if you can find either. Clarification is increasingly being required both by walkers and farmers on such issues as whether customary walking and access rights have now accrued to a particular group to enter a particular area which their group has been doing without interruption since time immemorial. Also, regularly uncertain is whether there is, in a particular scenic and traditional walking place, a public right of way from use since time immemorial. Such rights would be based on either a particular statute or by proving either express or implied dedication to the public by the owner of the underlying soil as established in *Bruen v Murphy* (unreported, High Court, 1980), which case is cited in *The law of easements and profits* a prendre by Peter Bland BL.

The beaten path

Contrary to popular myth, public rights of way do not accrue as a result of prescription or long use as explained in *Bruen v Murphy*. But, as noted by Peter Bland in his text, the same evidence of user-over-time may be sufficient evidence to support a presumption by the court of dedication by the owner of the land being walked over.

In his arguments, Mr O'Dwyer notes that more than 10% of land in England and Wales is within a national park. These parks are mostly comprised of private farms, with the farmers subject to additional planning regulations, giving precise access along certain routes, and at the same time receiving enhanced state support.

Such access here to the countryside by tourists and the public, if controlled by a warden service, with defined rights and obligations and clearly-marked pathways and entrance stiles, would also be good for farmers and be better than the present free-for-all. This country lacked

walker should be friends

the consensus to effect a walking network, with the farmers gaining nothing but grief from increasing numbers of ramblers.

Access to scenic sights and 'traditional' walking areas are likely to trouble the courts in the current physical and legal uncertainties. The Supreme Court earlier this year was called on in *Ashbourne Holdings Limited v An Bord Pleanála and Cork County Council* to consider whether a planning condition requiring public access to the Old Head of Kinsale was *ultra vires* where the condition was not for the betterment of the land, which happened to be a golf course. It was.

The one significant judicial decision in recent years on rights of way in Ireland, giving as much clarity as can be given by the courts without legislative clarity, came in the 48-page unreported High Court judgment of Mr Justice Kearns in March 1999 in *Murphy v Wicklow County Council* ([1999] IEHC 225) (the Glen o the Downs case), which can be found on the British and Irish legal information website (BAILII). There, the judge provided a brief review of the law as it stands in respect of public rights of way. Of course, clarifying the law is one thing, legislative reform is another.

First, he noted that a public right of way, once created, lasts indefinitely unless it is extinguished by the appropriate procedures. One such would be the *Roads Act*, 1993, which contains a mechanism for extinguishing public rights of way. The procedure can include a public hearing.

Second, he noted that the route of a public right of way cannot lawfully be either altered or obstructed. The fact that it might be unused for many years is immaterial. It cannot be abandoned.

Road to nowhere

Also, the fact that a path or track is a cul-de-sac does not dislodge the notion of a public right of way, although an inference of dedication of a right of way would be more difficult in the case of a cul-de-sac.

In addition, the judge noted that a public right of way may be more readily inferred when it leads to a place of public interest rather than when it simply peters out. Use of a right of way must, of course, also be open and unconcealed, and this is less cogent if the land owner is not resident close by.

In the case, Justice Kearns decided that there was no public right of way in the Glen o the Downs, other than the existing road, the old road and the median break at the commencement of the dual carriageway to the south of the downs. There was no evidence of any formal written dedication. The three other points or paths to which the court was pointed were all accessed by the public on foot of a licence.

Mr Justice Kearns also helped to clarify the confusion regarding rights to stray over an open space known as *jus spaciendi*. Peter Bland refers to it in his book as 'a right to stray, as opposed to a right of way'. The judge noted that there could be no such common-law right in the public or any customary right in inhabitants of any particular place to stray over open space.

He added that 'the only common-law right of the kind which can be claimed by the public is to pass and repass from one point to another across an open space and the only customary right of the kind which can be claimed by the inhabitants of a particular place is to use a green for exercise and recreation, including the playing of lawful games'.

Judicial clarifications are indeed helpful at law. But what about the situation literally on the ground across the country and with what urgency is the government moving to bring much-needed clarity?

It does seem that something is now rumbling in the undergrowth. A rural/agri-tourism advisory group was established by the government in February of this year, among other things, to 'identify and consider opportunities for tourism in agricultural areas', which should include clarification on such matters as public rights of way and access to uplands and scenic routes.

Just walk away

A consultation group has also been established, bringing together the various bodies interested in access to the countryside. Later this month, they will meet to hear how they do these things in Northern Ireland, where they have a Countrywide Access and Activities Network. It is hoped to establish a partnership-based countryside forum here 'to manage all issues relating to access to land for recreational use, including walkways and uplands'.

It's a start. But it seems a long way to clarity for walkers and legislative reform. G

Pat Igoe is principal of the Dublin law firm Patrick Igoe and Company.

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Conveyancing 'reform' ideas fail competition analysis

Some arguments are academic; some are merely misinformed. Ken Murphy replies to an article that is a little bit of both

An article by Edward Shinnick of the Economics Department in University College Cork (UCC) appeared in the ESRI's quarterly economic commentary for summer 2003 and its contents were subsequently reported in the media, in particular in the *Irish Times* and the *Irish Independent*.

In the course of his article, Mr Shinnick recommends a number of changes which, in his opinion, would constitute 'reforms' of the manner in which the solicitors' profession in Ireland is regulated. In particular, he calls for deregulation, which would allow banks and other financial institutions to provide conveyancing services directly to the public.

Although Mr Shinnick made no contact with the Law Society when he was preparing his article, the society has now written to invite him to meet with us as we believe in many respects his analysis and conclusions are wrong and his 'reforms' would not benefit the public. However, as his article has been reported in the media, a public response to it is appropriate.

The following response is based on a more extensive review and evaluation of Mr Shinnick's article by the independent economic consultancy Europe Economics.

There have been major reforms of the regulation of the legal profession in Ireland in recent years, as described in Mr Shinnick's article. For example, there are now no scale fees, no general ban on advertising and, in particular, no ban on fee advertising.

Mr Shinnick's article states that the Law Society's dual role of representing and policing solicitors 'should be abolished due to an inherent conflict of interest, which is not in the public interest'. This view contrasts with the finding of the economic consultants Indecon in their report to the Competition Authority.

Considerable doubt

Given this verdict, there must be considerable doubt at least whether the costs of setting up 'a fully independent body (or regulator) responsible for admission, policing solicitors and investigating complaints' would be justified. As to Mr Shinnick's suggestion that the admission of solicitors should be independent of the Law Society, the fact is the education and entry of new solicitors is effectively regulated by bodies independent of the Law Society. These are the Oireachtas, the Minister for Justice, the President of the High Court and the Board of Examiners.

Mr Shinnick deals with a specific entry issue in relation to the conveyancing market. He calls for deregulation, which would allow banks and other financial institutions to enter the market. Two points need to be addressed here: the effectiveness of competition between solicitors in supplying conveyancing services, and the likelihood of effective entry if the present restrictions were lifted. Mr Shinnick implies that any competition within the market is wholly ineffective. Clearly this is not so. In fact, there are probably no less than 2,000 firms of solicitors who provide conveyancing services; there are no scale fees; there is the opportunity for solicitors to advertise; and customers are free to shop around. In recent times, there has been considerable publicity for certain firms of solicitors now offering conveyancing services anywhere in the jurisdiction for fees of under €1,000 regardless of the price of the property. Accordingly, there is no reason to believe that the present structure of the market is inimical to effective competition.

As to the likelihood of effective entry, the UK experience with licensed conveyancers showed little effective entry and little impact from providing competition from outside the legal profession. Mr Shinnick acknowledges this point, but allows it no weight.

Moreover, as the Law Society points out in its Competition Authority submission, there are risks of allowing institutions such as banks to carry out conveyancing. Competition problems could arise if these institutions engaged in conditional selling or 'tying', where the provision of a mortgage might be conditional on using the institutions' own conveyancing service. There is also the possibility of cross subsidisation of services. Finally the solicitors employed by these institutions could be subject to a conflict of interest, jeopardising the impartiality of their advice.

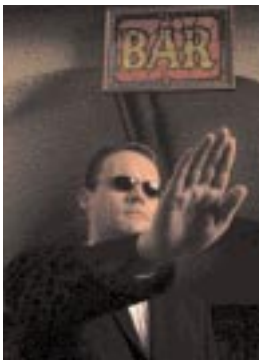
Protection of conveyancing

In order to overcome these problems, extensive regulation and monitoring would be required, reducing the attractiveness of such an option. The case for ending the restriction of conveyancing services to solicitors is therefore much less convincing than Mr Shinnick suggests, and again he appears to give too little weight to the benefits to competition that have followed the easing of earlier restrictions on conduct.

Minor restrictions

The Law Society and the authorities have made considerable reforms over the last two decades, leaving relatively minor restrictions on competition, to be weighed against the protection of consumers of legal services faced by informational asymmetries. Mr Shinnick's article argues at a high level of generality that deregulation can bring substantial consumer benefits – which is true, if the restrictions removed had a significant adverse effect on competition – and goes on to assert that removing the specific remaining restrictions in Ireland would be beneficial. This is a *non sequitur*. The merits or otherwise of altering the present arrangements will have to depend on a closer examination of the facts than is provided in his article. G

Ken Murphy is director general of the Law Society. This article summarises a review and evaluation of Mr Shinnick's article provided to the society by Europe Economics. The London-based firm, Europe Economics, is an independent economic consultancy, specialising in economic regulation, competition policy and the application of economics to public policy and business issues.



LAST CHA

Publicans who refuse to serve members of the traveller community are now finding themselves under the spotlight, as an increasing number of complaints come before the Equality Tribunal. Cliona Kimber explains the procedures involved in bringing a claim and the successful defences that have been made

When Kathleen O'Driscoll was suddenly refused entry to her local nightclub in Cork where she had been a regular for over two years, she said that she knew immediately that it was due to her membership of the traveller community. She said that the discrimination against her had started from the time that her traveller identity came to light. The Equality Tribunal, to which she brought her claim of discrimination, agreed with her. Kathleen O'Driscoll was awarded €5,000 in compensation.

Kathleen O'Driscoll's case is unusual because of the high level of award, but her action in bringing a complaint is not. There has been a recent huge increase in the number of actions taken against licensed premises by members of the traveller community, complaining that they have been discriminated against by not being served. The Equality Authority's annual report shows that such claims are by far its largest single category of complaint under the *Equal Status Act, 2000*. Practitioners are often uncertain as to how to deal with complaints of this nature as they involve proceedings before the Equality Tribunal and they may not be involved with this tribunal on a regular basis. Furthermore, this is a new area of law and it is difficult for a busy practitioner to keep up to date with the law and practice in this area. This article aims to help the practitioner in this regard by providing a short and clear summary of the practice and procedure before the tribunal and by discussing some of the relevant cases.

MAIN POINTS

- **Bringing a complaint under the *Equal Status Act, 2000***
- **Burden of proof**
- **Defences to a discrimination complaint**

NCE SALOON

Complaints against publicans for discrimination have only been possible since the introduction of the *Equal Status Act, 2000*. Discrimination against travellers was one of the facts creating the need for this act as it is the only piece of legislation to address discrimination outside the workplace. The act prohibits discrimination in the provision of goods and services to members of the traveller community, among other groups. Licensed premises are clearly included within the wide definition given to goods and services in section 2 of the act as 'a service or facility of any nature which is available to the public generally or to a section of the public'. This straightforward legislation, together with the no-frills approach to making a complaint, has opened the floodgates for this type of claim.

'Discrimination against travellers was one of the facts creating the need for this act'

Bringing a complaint

The legislation is designed to make it cheap and easy to bring a complaint to the Equality Tribunal, but there are some important procedural steps in initiating such an action. Before a complaint can be brought to the tribunal, a person who claims that he has been discriminated against must, within two months of the date of the incident of discrimination, notify the alleged discriminator in writing of the nature of the allegation and of the intention to refer a claim to the tribunal.

It is only when no response has been received after one month, or if the response is unsatisfactory, that the victim can then refer the claim to the tribunal. This requirement to notify the alleged discriminator in writing prior to bringing a claim is an important procedural step that must be taken, and failure to comply can have a complaint deemed invalid and essentially struck out.

Time limit on complaints

Very strict time limits are set by the *Equal Status Act* for referring a claim to the tribunal and, unlike litigation in the courts, these time limits are strictly applied. They were adopted to prevent stale claims being brought against service providers. Section 21 of the act provides that a claim must be brought within six months of the most recent occurrence of the discrimination. Although there is provision for a further six-month extension, it is tribunal policy that extensions will be given rarely and only where extenuating circumstances can be shown.

Assuming that the procedural hurdles have been cleared, and the matter successfully referred to the Equality Tribunal, the next stage is the making of written submissions. Once the matter has been referred to the Equality Tribunal, an equality officer is assigned and the complainant will be required to make written submissions setting out his claim. These submissions are then passed to the respondent who will be asked to submit a reply. It is worth making detailed submissions at this point because, although additional evidence can be adduced orally at the hearing, the submissions are relied upon very heavily and it is difficult to raise new matters not already mentioned in the submissions.

DEFENCES USED BY PUBLICANS TO REBUT A COMPLAINT

In *Sweeney v The Yacht Inn, Sligo* (Dec–2003-015), the equality officer considered in detail a publican's obligations under the *Licensing Acts* in relation to disorderly conduct and noted that there were severe penalties in place under these acts for publicans who did not comply with their obligations to run a peaceable and orderly house. For that reason, he determined that publicans may refuse or limit service to any person who they know to have been involved in disorderly conduct in the past or who they honestly believe would engage in such conduct if permitted onto their premises. He stressed, however, that for a publican's actions to be covered by section 15(2), he must be able to show that his actions were honestly intended and solely for ensuring compliance with the *Licensing Acts*. On this basis, the equality officer determined that the publican had acted in good faith in accordance with section 15(2) in refusing to serve Mr Sweeney, as the Sweeney family had been involved in disorderly conduct on his premises the previous night and the publican honestly feared further disturbances.

The issue of intoxication arose in *O'Reilly v The Dragon Inn Pub, Tallaght, Dublin* (Dec-S2002-017) and was used by the publican to rebut the inference of discrimination. The equality officer found that the complainant had been refused service because, in the opinion of the barman, he had enough drink taken already and that the respondent and his staff were entitled to refuse service in the circumstances in order to ensure compliance with the *Licensing Acts, 1833–1999*. In accordance with section 15 (2) of the *Equal Status Act, 2000*, this does not constitute discrimination.

It is also the case that a customer can be refused service because of a publican's fear that a fight will break out, even though that fear arises from hostility between traveller and settled customers rather than from travellers themselves. In *Martin and Margaret Mongan v The Firhouse Inn* (Dec S2003-034/035), the respondent successfully showed that the complainants were refused service because of the genuine perception by the respondent's barman that there was a potentially explosive situation. The equality officer accepted that the reason for the refusal was the protection of the individual complainants because of the hostility and animosity on the part of patrons towards other members of the traveller community who had caused serious destruction in the immediate area in the recent past. Although the equality officer emphasised in the strongest possible terms that the complainants had not done or said anything to provoke the hostility, she decided that the respondent had successfully invoked the provisions of section 15(2) of the act, and that the refusal was solely to comply with the provisions of the *Licensing Acts*.

In invoking the defence under section 15(2), it is important that the publican be able to show that the decision to refuse service was made in good faith. In *Delaney v Jamesons Hotel* (Dec-S2002-102), the respondent submitted that the complainant was refused service because the bar manager genuinely believed that the complainant had been involved in a violent incident in the bar on Christmas Eve 2000. The equality officer found that there was an inconsistency in the respondent's evidence, and that the respondent had failed to exercise

There is no procedure for discovery, but the director of the tribunal has the power to require a person to attend and to furnish her with information. Once the submissions are received, the complaint will come on for hearing. It should be borne in mind that it generally takes up to six months or more to get a hearing date.

Procedure at the hearing

The actual hearing is *in camera* and is meant to be informal. However, it is now usual for parties to be legally represented, often by both solicitors and counsel, and witnesses are generally called. The equality officer usually takes an investigative approach, which means that she will come to the hearing with her own detailed list of questions that she wishes to ask both sides. A certain amount of time is taken up with her questioning of all the relevant parties in an attempt to get at what is perceived to be the central issue. There is then, generally, an opportunity for each side to make its case and to put questions to the other side, although 'cross-examination' is often not permitted by the equality officer. The refusal to allow cross-examination can be frustrating for both complainant and respondent, and it can make it difficult to adequately bring or defend a complaint.

Burden of proof

Unlike other civil actions, the burden of proof in discrimination cases is not straightforward. A complainant is only required to establish a *prima facie* case, at which point the burden of proof shifts

due care and consideration before identifying the complainant as the person involved in the violent incident. For these reasons, she held that the respondent had not acted in 'good faith' and that his actions were motivated by the complainant's membership of the traveller community. She awarded the complainant €750 in compensation.

Another possible ground of defence is where a publican's refusal to serve a customer is due to his desire to protect other customers. In *Augustine Sweeney v John Biggins, The Corner Bar, Ballinrobe*, the complainant stated that he was barred from the Corner Bar following a disagreement with another customer from the settled community. The respondents maintained that the complainant had a history of violent behaviour and was refused service because of the likelihood of further violence if both gentlemen were on the premises at the same time. The equality officer found in favour of the respondents in the matter. He noted that this case raised the issue of a publican's responsibility under section 11 of the *Equal Status Act, 2000* for ensuring that customers did not suffer harassment while on his premises and that 'there is an onus on publicans to take such steps as are reasonably practicable to prevent the harassment on a discriminatory ground, by staff or customers, of any person who has a right to be present on their premises'.

On the other hand, a publican cannot simply jump to conclusions about the likelihood of a customer causing a disturbance, or accept third-hand information or unsubstantiated information about such matters.

In *McDonagh v The Redcove Inn, Cork* (Dec-S2003-044), the respondent maintained that the complainant's family was known to have been involved in a 'traveller feud' and that this was the reason that the complainant was refused service. On the evidence before him, the equality officer found that the complainant and her husband were 'innocent victims' in a dispute between two traveller families and that the decision to bar them was apparently based on false information relating to this dispute. He also found that the respondent's actions, in accepting the report of a 'feud' without further substantiation or confirmation, was, in all probability, guided by the fact that the families concerned were identified as members of the traveller community. The complainants were awarded €500.

Finally, in defending a claim, it must not be forgotten that the essence of the complaint is that a traveller was treated less favourably than a non-traveller was or would have been treated. If the publican can show that travellers and non-travellers were treated equally, then they are not guilty of discrimination. In *Collins v Kyle's Pub* (Dec-S-2001-005), the complainant had been barred because of a violent incident he had been involved in previously. The complainant alleged that he had been treated in a discriminatory fashion. However, the equality officer found that there was no evidence that the complainant had been treated less favourably because he was a traveller. The respondent's policy was to bar people for life for violent conduct and this policy was applied equally to both the settled and traveller community. Thus, the respondent was found not to have discriminated against the complainant.

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to the respondent to prove that he has not discriminated against the complainant This practice has evolved from sex discrimination cases and the EC *Burden of proof directive*, and has been applied by the equality officers in equal status cases (for example, *Collins, Dinnegan & McDonagh v Drogheda Lodge* [Dec-S2002-097/100]). In traveller cases, three key elements need to be established to show that a *prima facie* case exists:

- Membership of the traveller community
- Evidence of specific treatment of the complainant by the respondent, and
- Evidence that the treatment received by the complainant was less favourable than the treatment a non-traveller received, or would have received, in similar circumstances.

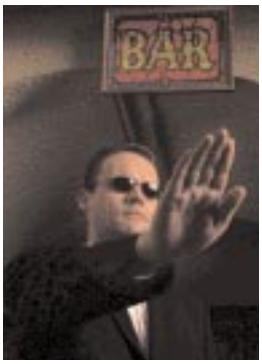
If and when these elements are found, the burden of proof shifts. This means that the difference of treatment is assumed to be discriminatory on the relevant ground. In such cases, the claimant does not need to prove that there is a link between the difference and the membership of the traveller community; the respondent has to prove that there is not.

It may seem that with this facility for shifting the burden of proof it is easy to succeed in a discrimination complaint. However, there are two very important defences open to a publican. Section 15(1) of the *Equal Status Act* makes it clear that a service provider is not required to serve a customer if he has reasonable grounds, other than discriminatory grounds, for believing that the provision of the service would create a substantial risk of criminal or disorderly conduct or behaviour or cause damage to property. Section 15(2) provides that action taken in good faith for the sole purpose of complying with the *Licensing Acts* is not discrimination. These defences have been used successfully on many occasions by publicans to rebut a complaint of discrimination (**see panel, page 12**).

Section 42 of the *Equal Status Act* makes a publican vicariously liable for the actions of his employees, unless the employer took such steps as were reasonably practicable to prevent staff from engaging in discrimination. So it is no defence for a publican to say that it was a doorman or barman who acted in a discriminatory fashion, unless the publican has adopted a policy under the *Equal Status Act* or given instructions to staff on how to deal with customers in a non-discriminatory manner or taken other steps to prevent discrimination occurring.

Modest remedies

If a complaint is successful, the remedy awarded is generally modest. Although the *Equal Status Act* provides for compensation of up to £5,000 (now €6,231), awards of €500 to €1,000 are the norm. *McDonagh, McDonagh and McDonagh v Davitt's Public Bar* is a typical example. Here, the equality officer determined that the complainants had been



'It is no defence to say it was a barman or doorman who acted in a discriminatory fashion'

treated less favourably than non-traveller customers in being refused access to a confirmation disco. The complainants were awarded €1,200, €600 and €100 respectively.

Occasionally awards can be very much higher if there are particularly aggravating circumstances. In *Kathleen O'Driscoll v Blackmore Developments Ltd t/a Elroy's Nightclub*, an award of €5,000 was made. The complainant had been a settled traveller who had not disclosed her traveller identity. Her identity had emerged and in a complaint to the Equality Tribunal she alleged that she had been discriminated against by the nightclub from that day forward. It also appeared that her child had been bullied and tormented at school about being a traveller, and that neighbours, who included the family of the doorman in the nightclub, had changed in their attitude to the complainant. In awarding such a high amount, the equality officer remarked that this was 'one of the worst cases of discrimination he had encountered'. It is probable that the large amount of compensation awarded was influenced by the treatment O'Driscoll's child had received at school.

However, lower awards are the norm, and such awards can be very informal. For example, in *Denis Harrington v Mustang Sally's* (Dec-S2002-118), a meal and a bottle of wine on any night of the complainant's choosing were awarded as a remedy for the discrimination suffered. On another occasion, a night's hospitality at the publican's premises was awarded to the complainant.

With complaints of discriminatory treatment being brought against publicans by travellers on a regular basis, it is clear that practitioners will increasingly be involved in representing travellers or defending publicans. Early responses are crucial in such cases, and many can be settled or mediated. If cases go to the Equality Tribunal, I hope this article will help practitioners in the process.

The *Intoxicating Liquor Bill, 2003* was presented to the president for signature at the start of July; it may bring about some changes in the way claims of discrimination are dealt with. If the relevant provisions of this act are commenced, they will transfer jurisdiction for travellers and pubs away from the Office of the Director of Equality Investigations (ODEI) to the District Court. At the time of writing, no date has been given for the commencement of the relevant section. In any event, if and when the section is commenced, it will not affect the more than 800 claims already referred to the ODEI. The ODEI has said that these claims alone will keep it going for another two to three years. Practitioners are therefore likely to be appearing before the ODEI for some time to come. G

Cliona Kimber is a practising barrister.

PUBLISH and BE

MAIN POINTS

- Summary of the Defamation Advisory Group's proposals
- Fast-track relief for plaintiffs
- Recent reforms of English libel law

A complete overhaul of our defamation law is on the cards, following the recent publication of a report from the justice minister's Defamation Advisory Group. Pamela Cassidy looks at the report's main recommendations and their likely effect on libel actions

Speedy justice for damage to reputation is imperative, the late Éamon Leahy SC declared at a media seminar last year, and the Defamation Advisory Group agrees. Its recent report (published on 20 June) proposes two forms of fast-track relief: first, where a plaintiff has requested, and been refused, a timely apology; and, second, where a plaintiff or defendant can demonstrate that the defence/claim has little prospect of success.

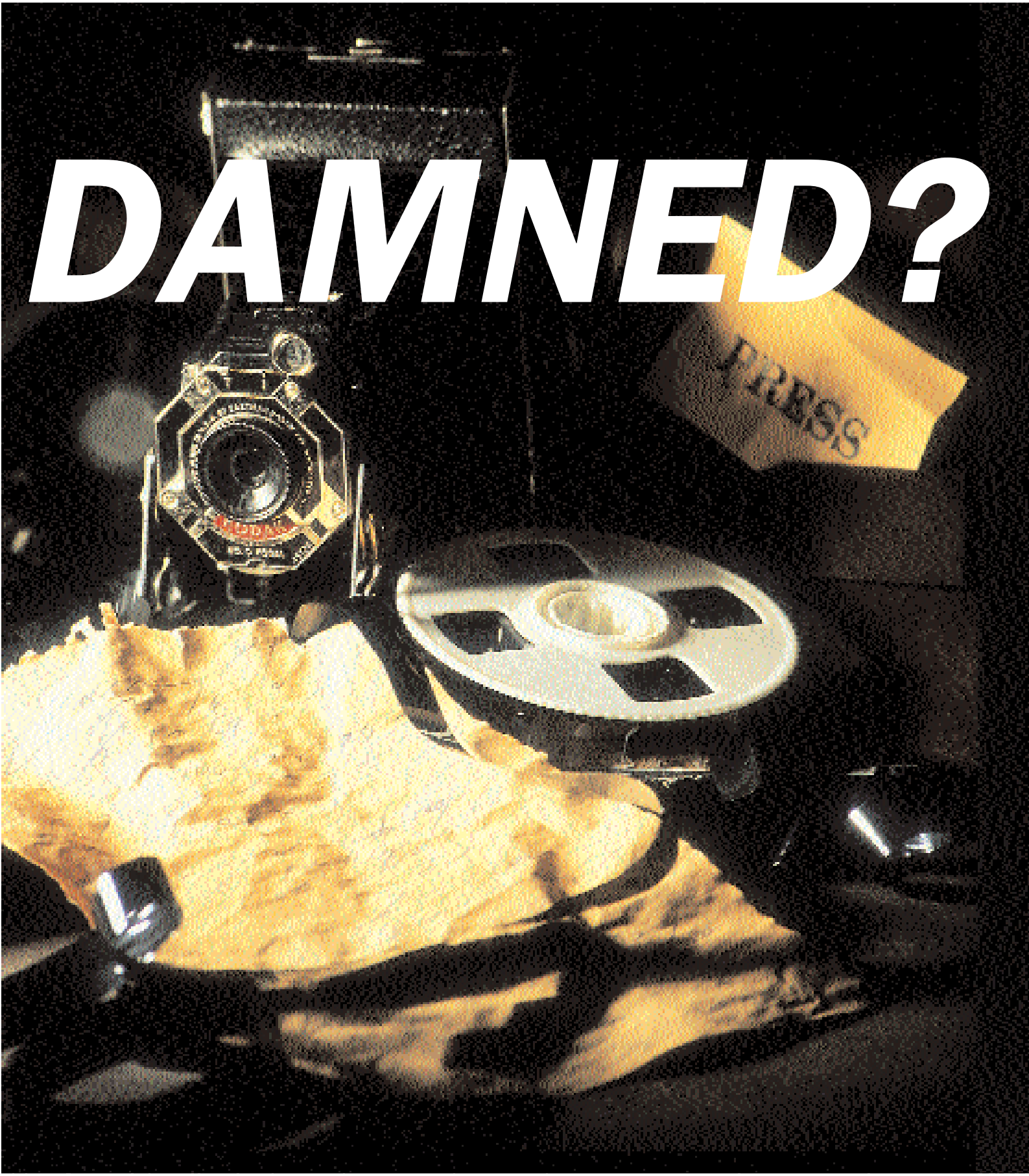
The successful plaintiff can obtain a declaration that the published words are false and defamatory, and be granted a correction order and an injunction, but he is not entitled to damages. This may well make the fast-track provisions so unattractive as to be irrelevant to the majority of defamation plaintiffs since an award of damages is widely regarded as an essential element of vindication.

The group's proposals draw on the English *Defamation Act 1996*, which provides summary relief where the claim has no realistic prospect of success. The relief offered is a declaration, correction order, injunction *and* damages (with a current ceiling of £10,000). Critics of this provision were initially concerned that the ceiling was too low, since a defamation claimant who is seeking less than £10,000 is one who is likely to be amenable to reasonable settlement anyway. The English claimant who wants speedy relief and a full assessment of damages can opt for summary judgment under the *Civil procedural rules*, part 24, followed by a assessment of damages by a jury.

Mr Leahy had a novel suggestion on damages: the successful fast-track plaintiff would obtain *special* damages only. If he presses on to full trial (for his fast-track relief was in addition to, not in place of, the plaintiff's right to a full trial), he could be cross-examined as to why he was not satisfied with the initial award.

In a further new departure, the group proposes that the court can, when making a correction order, specify the contents of the correction. This goes beyond both the provisions of the English act and Mr Leahy's proposals. In England, a publisher cannot be forced to subscribe to a 'correction' with which he disagrees. If he refuses, the court can direct publication of the terms of the summary judgment. Likewise, Mr Leahy suggested that the court should direct a report of the verdict in a position of equal prominence to the original allegations. This is not merely an academic point: a correction gives the plaintiff's reputation a clean bill of health. That may prove frustrating for a publisher who is satisfied that the charge is true but cannot prove it to the standard required in a civil court.

The group's proposal that evidence that a publisher *'made or offered an apology to the plaintiff … shall not be construed as an admission of liability'* is an attempt to address publishers' concerns that a timely apology exposes them to claims for unlimited damages, since they cannot protect their position on damages or costs by a lodgement. If the group's recommendation as to a lodgement without admission of liability is accepted, then publishers


DAMNED?
PRESS

The late Éamon Leahy SC: special damages only for the successful fast-track plantiff

'The group proposes that the court can specify the content of the correction'

will have this protection. But is it realistic to insist, in addition, that a judge or jury, or indeed the plaintiff, ignore a public apology at trial? It has a curious logic – to admit publicly that you got it wrong but to maintain, nevertheless, that you are not liable for the wrong. For obvious reasons, a lodgement is not disclosed to judge or jury until after the verdict, but a public apology will be common knowledge.

The proposal follows a 1991 recommendation by the Law Reform Commission (LRC), which defined apology as 'simply a matter of courtesy and draws the reader's attention to the fact that a matter concerning the plaintiff is somehow in dispute ... it is quite distinct from a correction, retraction or any form of admission that the publisher was in error'. By contrast, the *Concise Oxford Dictionary* defines apology as 'the regretful acknowledgement of fault or failure'. Even if the group was to include the LRC definition of apology, this proposal may prove unworkable in practice.

Warning for practitioners

Good news for publishers, and a warning for practitioners to keep a wary eye on time: the group recommends the abolition of the distinction between libel and slander and a reduction in limitation periods to one year from six (unless there are exceptional circumstances within six years of publication).

Qualified privilege, a defence based on a nexus of duty and interest, is a vital protection for the honest individual in the ordinary conduct of social and business affairs. It applies in situations as various as staff complaints, advice within family relationships and volunteering information to the Garda. The group makes two recommendations. The first gives statutory basis to the general principles (while preserving existing common-law privilege) but confines the protection to communications made 'to a particular person or group of persons only'. The second recommendation formulates a new defence of 'reasonable publication' to the world at large of public interest information, provided the publisher takes various factors into account. These should include the extent of public concern about the information, whether it concerns the public functions or activities of the subject, the seriousness of allegations, their source, and whether the information contains the substance of the plaintiff's response.

SUMMARY OF LIBEL REFORM RECOMMENDATIONS

- Fast-track procedure where a judge sitting without a jury can give summary relief, excluding damages
- Clarification of circumstances in which a plaintiff can obtain aggravated damages
- New statutory defence of reasonable publication
- New statutory defence of 'innocent publication' for distributors, printers, broadcasters and internet service providers
- New statutory press council with power to formulate a press code of conduct, investigate complaints and order corrections
- Reduction of limitation period from six years (libel) and three years (slander) to one year, save in exceptional circumstances
- Long-standing common-law definition of defamation to be given a statutory basis
- Abolition of distinction between libel and slander
- Jurisdiction of the Circuit Court to be increased to €50,000 for defamation cases
- Modern re-formulation of the defences of fair comment, justification and privilege
- Modern re-formulation of malicious falsehood
- Modern re-formulation of the defence of unintentional defamation
- Statutory basis for the defence of consent
- New statutory rule that a single cause of action lies for multiple publications, including publication by electronic means
- Criminal libel to be replaced by publication of 'gravely harmful statements'
- Defamation action to survive the death of the plaintiff
- Press conference giving an account of a 'public meeting' to attract statutory qualified privilege.

An effective right of reply *before* publication is novel, as is the assessment of whether the allegations relate to the public functions of the subject. This new public interest defence reflects, to an extent, the reasoning of the English House of Lords in *Reynolds v Times Newspapers* ([2001] 2AC 127). This judgment rejected a generic privilege extension based on political discussion but formulated a wider, more modern basis for privilege, expanding the traditional duty and interest test to embrace publication to the world at large of information that the public is entitled to know. A consideration of whether the information relates to the 'public functions or activities' of the plaintiff is a departure from English law, which bases privilege on the status of the *information*, and in line with US law, which bases privilege on the status of the individual (see *New York Times v Sullivan* ([1964] 376 US 254).

Following a 1991 recommendation from the LRC, current statutory qualified privilege will no longer be confined to the media. The privilege is also extended to cover reports of press conferences convened by, among others, the organisers of a public meeting 'to give an account to the public of the ... meeting'. This is a different approach to that taken in a 2000 House of Lords decision that a press conference could itself constitute a 'public meeting' and thus attract privilege. The case concerned reports of a press conference organised to generate publicity for the campaign to secure the vindication of Private Lee Clegg. Privilege was rejected in the Northern Ireland Court of Appeal because of the absence of the general public, but the House of Lords ruled that in contemporary society the press is the eyes and ears of the public. Additionally, statutory privilege is extended to meetings of private as well as public companies, following another LRC recommendation.

Authoritative verdicts

Quicker, cheaper access to justice is the thinking behind the recommendation that the jurisdiction of the Circuit Court be increased to €50,000 for defamation claims, but the actual result may be to deprive plaintiffs, and indeed publishers, of their right to jury trial. The defamation plaintiff is already constrained by the costs provisions of section 17 of the *Courts Act, 1981* as amended by section 14 of the *Courts Act, 1991*. This contrasts with the position in England, where jury trial is regarded as a constitutional right and defamation claimants can pursue their claims in the High Court without cost penalty for a low award.

The English reforms also recognise that defamation actions can present complex legal issues that make them more suitable for determination in the High Court. Speaking extra-judicially, Mr Justice Hardiman has said that 'the verdict of a jury is felt to carry a degree of authoritative vindication difficult to replace in any other way'. Similarly, Mr Leahy noted that 'the best judge of what is or is not defamatory is the jury' and 'there are powerful arguments to be made for involving juries in the administration of justice'. A more balanced recommendation, offering real choice, would give the High Court a greater discretion on costs in jury and complex cases.

PROCEDURAL REFORMS

- Defendant can make payment into court without admission of liability
- Plaintiff who accepts payment can make a public statement in court
- The making of an apology, or an offer of an apology, is not an admission of liability
- Both parties can make submissions to the jury on damages, and the judge can direct the jury on damages
- Supreme Court can substitute its own award of damages on appeal
- Meaning of published statement can be determined by the court at a preliminary stage
- Defamation plaintiff must verify particulars of claim on oath
- Dismissal for want of prosecution motion where plaintiff has taken no step on the record for a year
- A conviction or acquittal by a court in the state is evidence of that conviction/acquittal and the facts on which it is based.

An innovative, carefully constructed recommendation proposes offering speedy correction where the press is judged, by a government-appointed press council, to have fallen below ethical standards (which would be incorporated in a code of conduct). The group recommends a statutory basis to 'secure public confidence' in the process and also mandatory compliance with the code. The press council will have the power to direct publication of a summary of its adjudication or a correction, and can apply to the Circuit Court to compel compliance. A press council claimant, who must make his complaint within three months of publication, will forgo his right to sue over the publication and his right to damages. The council's remit will include issues of defamation, privacy, non-defamatory but inaccurate information, and material that is defamatory of the dead.

The recommendations are significant, but for real progress a more fundamental reform – fully pleaded cases within a strict timetable (personally attested by each party), pre-trial automatic disclosure of documents and witness statements, and early judicial case management – may be necessary. This 'cards on the table' approach facilitates a realistic assessment of the merits of each case, and promotes timely settlement. The English experience is that procedural changes (accompanied by a defamation pre-action protocol) have proved more significant than legislative reform.

The Minister for Justice, Equality and Law Reform, Michael McDowell, has invited comments on the Defamation Advisory Group's report. This consultation period is set to end in December. G

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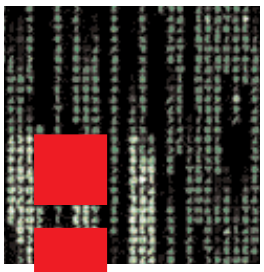


A huge amount of personal data is generated every day, and physically retaining it is becoming increasingly expensive. So how long should organisations hold on to such information, and how do you balance their rights against the rights of people seeking access to it? Denis Kelleher discusses the current data protection and freedom of information legislation

It is a modern truism that information is power, and the information available through the *Data Protection Acts, 1988* and *2003* and the *Freedom of Information Acts, 1997* and *2003* has been a powerful tool for the transformation of Irish society. The *Freedom of Information Act, 1997* had an important role in accessing files relating to individuals held in state institutions. As Cathal O'Gorman, head of the One in Four support group, told the Oireachtas: 'We cannot overstate the importance of such files. So often they are the only evidence, the only validation that exists of such brutal and hidden crimes'.

These acts have limitations. The *Data Protection Acts* apply to just about every person or institution that holds personal data but can only be invoked by living people seeking access to their own data, so they are of no use to the personal representatives of deceased accident victims. The *Freedom of Information Acts* (FOI) apply only to specified state organisations ranging from the Department of the Taoiseach to the National Concert Hall. But where they apply, these acts allow for access to information without any of the restrictions of relevance imposed on applications for discovery during litigation. These acts are convenient; they allow for access to information by simply writing a letter and paying the appropriate fee. This contrasts with discovery, which can normally only be used once litigation has been started and a statement of claim and defence exchanged. Information accessed through the acts is of greater use than information discovered in a court action.

Normally, discovered documents can only be used in the particular court action in which they were discovered, while there appear to be no limitations on what can be done with documents accessed under the FOI acts. In *H v The Information Commissioner*, O'Neill J commented that anybody disclosing information under FOI 'must assume that the disclosure of a record will be to the world at large'. Similarly, the data protection legislation contains no limitations on how information accessed through its procedures may be used. There is little difference in the cost of accessing personal information between the different acts. A maximum charge of €6.35 can be levied in respect of a request for access to personal data under the data protection legislation, while no charge may be levied in respect of personal information sought under FOI. However, the amended FOI act does provide for increased costs in relation to other types of information.

A key difference between the two pieces of legislation is their constitutional status. The FOI act was the result of a domestic Irish initiative and therefore can be amended by the Oireachtas. The *Data Protection Act, 2003*, on the other hand, implements EU directive 95/46 and as such is immune from constitutional challenge. Both acts have recently been amended. The bulk of the *Data Protection Act, 2003* came into effect on 1 July 2003, while the *Freedom of Information (Amendment) Act, 2003* was enacted on 11 April 2003.

Access to data

A key change made in the *Data Protection (Amendment) Act, 2003* is that it now applies to manual data as well as to electronic records. The act defines manual data as: *'information that is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system'*.

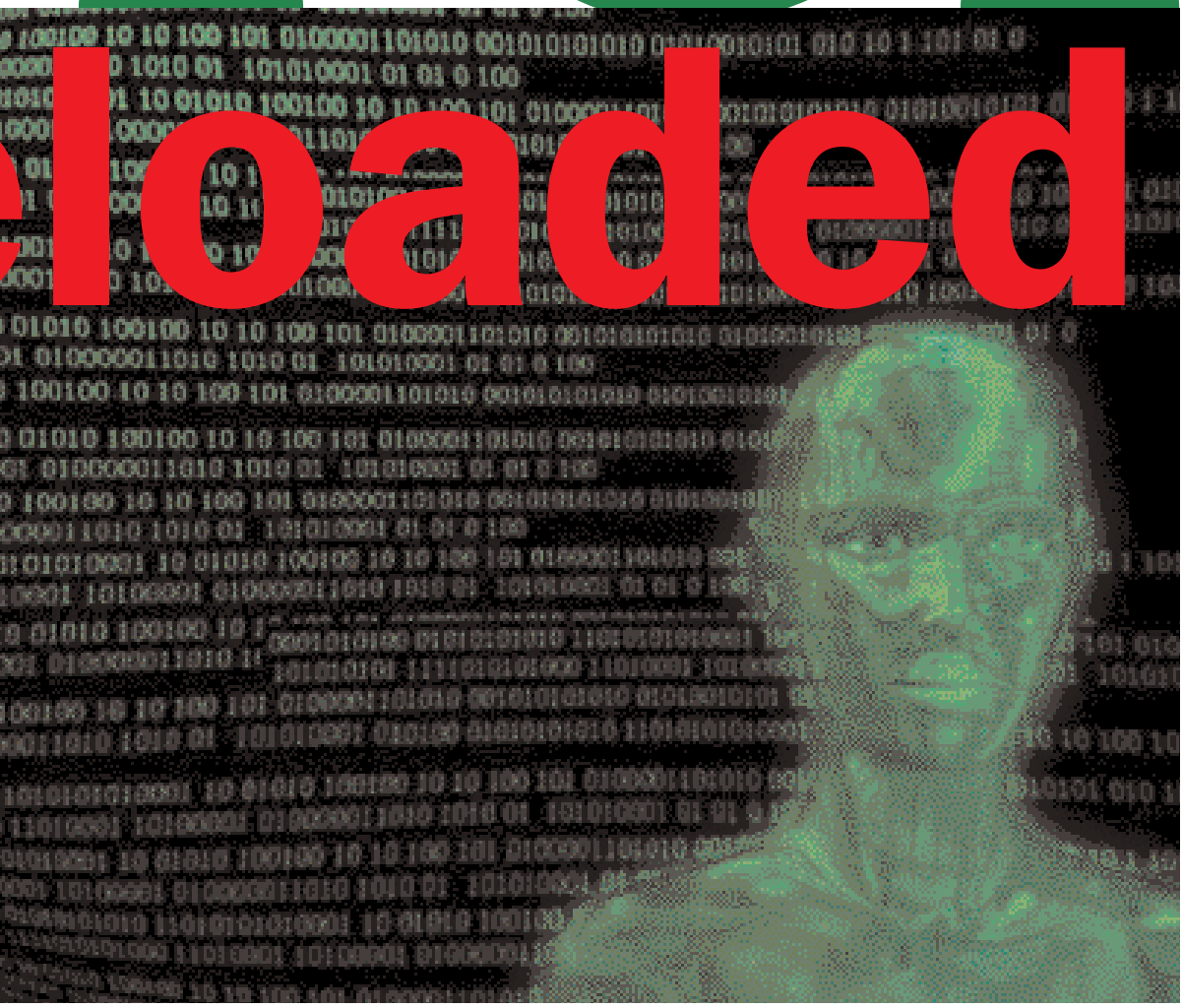
The definition contained in the 2003 act of a relevant filing system is complex: *'any set of information relating to individuals ... (which) ... is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible'*.

The act allows any person to write to any data controller asking to know whether or not the controller is processing any information relating to him and, if processing is taking place, to be supplied with that data. The 2003 act means that from 1 July 2003, any individual who seeks access to his personal

MAIN POINTS

- ***Data Protection Acts***
- ***Freedom of Information Acts***
- **How long should records be kept?**

FOI



data will have to be given both electronic and manual data in response. This right of access is very intrusive; software-based search engines mean that just about any data that relates to an individual can be identified and so may have to be disclosed.

Access is a straightforward procedure. Any person can seek access in writing from a data controller such as his employer, a health board or anyone who may hold personal data relating to him. The controller must then respond in writing within 40 days, and any personal data disclosed must be in 'permanent form'. Simply outlining what is held in a file in a phone call or in person will not suffice. Procedure under FOI is broadly similar. A letter must be written stating that a request is being made under the FOI acts, identifying the records sought and specifying the manner in which access to them is being sought. A decision on the request must be taken within four weeks and communicated to the requester.

ACCESS TO LEGAL RECORDS

The *Freedom of Information Act, 1997* does not to apply to the courts. This means that the act cannot be invoked to gain access to material generated during a trial, such as transcripts. An attempt to use the act in this way failed in *The Courts Service v The Information Commissioner*. Finnegan J further suggested that the existing practice of confining access to central office files to parties and their representatives could not be by-passed by invoking the FOI legislation.

In *Deely v Information Commissioner*, Mr Deely had been involved in a car accident and the DPP subsequently decided that he should be prosecuted as a result. He felt aggrieved and sought access under the *Freedom of Information Act, 1997* to get the DPP to disclose information about why this decision was taken. His application ultimately found its way to the High Court, where McKechnie J refused his application, not least because section 46(1)(b) of the act states that it does not apply to the DPP in this case. Similarly, section 5(1)(a) of the *Data Protection Act* exempts data held for the purposes of investigating or prosecuting offenders and both the FOI and data protection regimes permit the refusal of access to information that is protected by legal privilege.

However, there is no exemption under the data protection legislation for information held by the courts. In general, this may not matter that much as, if the courts hold personal data relating to an individual, it may well be available to him anyway through court procedures. The right of access does not apply to material consisting of an estimate of the amount of liability faced by the controller in respect of a claim for the payment of a sum of money. This provision probably extends to medical reports commissioned by an insurance company as well as to estimates of potential liabilities made on foot of those reports.

The acts differ on the grounds upon which a request can be refused. There are some limited restrictions on the right of access in the *Data Protection Act*, but not many. In contrast, the FOI act contains a variety of different exceptions that may be invoked. For example, section 27 of the act provides that a request for access to 'commercially sensitive information' shall be refused. The data protection regime, however, allows for no such exemption. An attempt to develop one failed in *Data protection case study 3/99*, where a mobile phone company refused to disclose complete details of personal data to a subject as this would involve disclosing the software that it was using to process the data, and the company felt that this was 'commercially sensitive information'. The data protection commissioner rejected this reason as the exceptions to the right of access do not contain 'any reference to *commercially sensitive information*'. A key difference between the two acts is that the FOI acts contain 'catch-all' exemptions: for example, access to information can be refused if access would have a 'serious adverse affect on the financial interests of the state or on the ability of the government to manage the national economy'. The *Data Protection Acts* contain no equivalent.

Expressions of opinion

Given the strength of Ireland's defamation laws, it is understandable that data controllers will wish to limit access to 'expressions of opinion' that could expose the author to an action. This was at issue in *FOI case 99270*, which related to a letter written to the Department of Justice making a 'serious allegation' about the requester. The author of the letter objected to its disclosure as there might be 'legal consequences' to its release. Nevertheless, the commissioner ordered the disclosure of the letter subject to the deletion of personal information about the author. Concealing the identity of the author of a defamatory statement is unlikely to offer him much protection. Once the existence of a defamatory statement is disclosed by the operation of FOI, a *Norwich Pharmacal* order may be sought to identify the author of that statement. Where statements such as references are given in confidence, section 28 of the FOI act may offer some

protection, but this protection may be conditional upon the author seeking or receiving assurances of confidentiality.

The *Data Protection Act* does contain some protection for confidential statements. Section 4A provides that confidential expressions of opinion about a person may not be disclosed in response to a request for access without the consent of the author. This may create a dilemma for an employer or other person who is asked to give a confidential reference. Restricting the reference to expressions of opinion may ensure that it cannot be accessed under the data protection legislation, but this strategy may expose the author to other, more serious, forms of action. This is because there is a strong view, at least in the UK, that references should be limited to statements of fact that have preferably been verified in consultation with the employee.

This is a complex area of the law and the difficulties now associated with giving references are such that many employers have decided against giving them altogether, and judges of the English Court of Appeal have advised 'employers and employees who prefer to avoid time-consuming, costly litigation about job references' to 'ensure as far as possible that the exact wording of a fair and accurate reference is fully discussed, clearly agreed and carefully recorded in writing'. At least UK employers have the consolation that employment references are completely exempt from the UK *Data Protection Act 1988*. This is not the case in Ireland. An employer who tries to bring himself within the terms of the exemption contained in our section 4A by confining himself to 'expressions of opinion' about a former employee would be going against an emerging consensus of legal opinion that references should be confined to simple statements of fact without the benefit of any opinions, whether good or bad.

Medical records

Both acts have similar provisions in relation to medical records. Section 28(3) of the *Freedom of Information Act* provides that access to medical records may be refused if such access might be prejudicial to the applicant's 'physical or mental health, well-being or emotional condition'. However, the section goes on to provide that in such cases, access may be permitted through a health professional with the appropriate expertise. The application of this provision was recently reviewed by the commissioner in *case 99189*, in which the health board had the opinion of four separate psychiatrists that such harm would be occasioned to the applicant in this case. The commissioner expressed the opinion that 'he considered that there should be evidence of a real and tangible possibility of harm being caused to the general health, welfare and good of the requester as a result of direct access to the records in question'. On this basis, he refused access. Access to medical records under data protection is similarly controlled.

Although the data protection legislation does give victims a greater right of access to personal

information, in time it may effectively reduce the importance of this right. This is because of section 2(1)(d)(iv), which provides that data may not be held for longer than is necessary. So, on a very strict reading of this provision and taking the example of a child in care, once the child has reached its majority, the records relating to its care should be destroyed. Such destruction would disregard the great importance that may attach to such records, an importance acknowledged by the European Court of Human Rights in the past.

This is just one example of the continuing difficulty in assessing how long records must be held for. Legislation is of little help. The *Tax Acts* require the retention of records for 'at least' six years, and limitation periods vary between different items of legislation. The Department of Justice, Equality and Law Reform has initiated a review of data retention policy in the sphere of telecommunications, but there is an urgent need to clearly define how long is 'necessary' for the purposes of the *Data Protection Act*.

The widespread use of information technology means that colossal amounts of personal data are generated every day and physically retaining this data is prohibitively expensive. A balance needs to be struck between the need to destroy data when it is no longer necessary, and the need to retain data to protect the rights and interests of different parties. At present, there is no general rule of interpretation that can be applied to identify for just how long it is 'necessary' to retain data and a decision will have to be made based on the facts and the law in each individual case. A key issue here is: if a potential defendant is concerned that he may be sued by a data subject, does that prospect make it 'necessary' to retain data relating to that person? Alternatively, can the potential defendant destroy data that would disclose its wrongdoing, justifying its actions by reference to the *Data Protection Acts*?

These are questions that need to be answered urgently, not least because of their impact on institutions such as the national archives. G

MOTIONS FOR DISCOVERY

An application under FOI may give wider access to documents than would ever be available on foot of a motion for discovery, a fact noted by the master of the High Court in *Meaney v Minister for Education and Science*. Similarly, in *H v The Information Commissioner*, allegations of sexual abuse had been made against the appellant, which were strenuously denied by him and on foot of which he initiated an action for damages against the Eastern Health Board. During this action, some 119 records were discovered to him and he gave an undertaking to respect the confidentiality of these. In the High Court, O'Neill J refused to permit access to these records as to do so would amount to a contempt of court. However, he was willing to consider whether records other than those previously discovered to the applicant might be available under freedom of information.

'Software-based search engines mean that just about any data that relates to an individual can be identified and so may have to be disclosed'

Denis Kelleher is a barrister and co-author of Information technology law in Ireland, *Butterworths, (1997). The second edition will be published shortly.*

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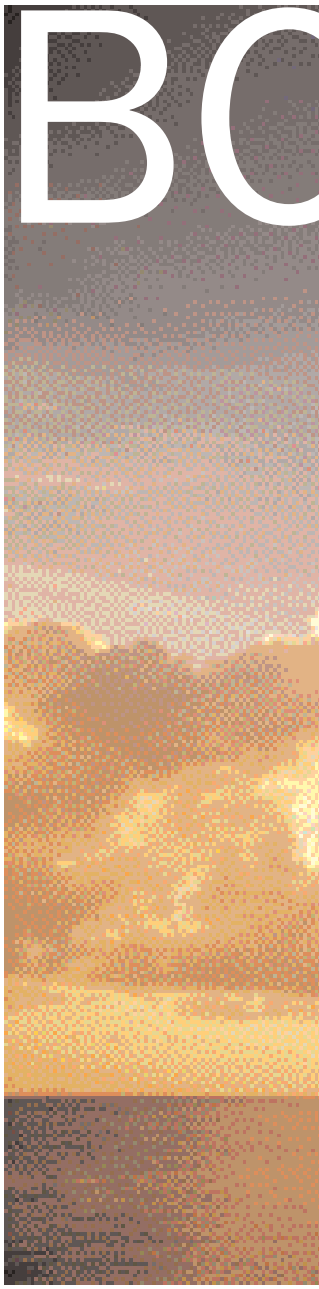


From 15 September, many employers will be obliged to give their workers access to a personal retirement savings account. Maureen Dolan examines the latest means of planning for your golden years

A personal retirement savings account (PRSA) is an investment account that can be used to provide for retirement. The PRSA product used for this purpose must have been approved by the Pensions Board and the Revenue Commissioners. Any individual (referred to here and in the relevant legislation as a 'contributor') will be able to set up a PRSA by contract with an authorised PRSA provider. A contributor does not need to be in employment in order to provide for retirement under a PRSA, but, if in employment, the PRSA is portable from job to job. Contributors must be able to stop, restart and vary contributions, although it is not necessary for a contributor to make contributions.

A PRSA may be either a standard or non-standard. The standard PRSA will be distinguished by maximum charges, investment restricted to pooled funds (except for temporary cash holdings), marketing and disclosure restrictions. A non-standard PRSA will be more flexible because it will not be restricted to investment in pooled funds and neither will it be subject to maximum charges.

PRSA assets will consist of contributions and investment return. Contributions may be paid by and on behalf of the individual contributor who has set up the PRSA. That contributor will be the beneficial owner of the PRSA assets but will not be able to use the assets as a form of collateral. If a provider wants to set a minimum contribution as a condition of agreeing to provide someone with a PRSA, then that minimum cannot be more than €300 a year, or €10 for each electronic transaction, or €50 for each transaction by other payment methods.

Each PRSA will be required to have a default investment strategy for investment in pooled funds. A contributor may elect that the strategy should not apply to that person's PRSA. The default investment strategy must adopt an investment profile that will be consistent with fulfilling the reasonable expectations of a typical contributor to a PRSA product in making savings for retirement. There will be an obligation on the PRSA provider to report to the contributor on the investment performance at least every six months.

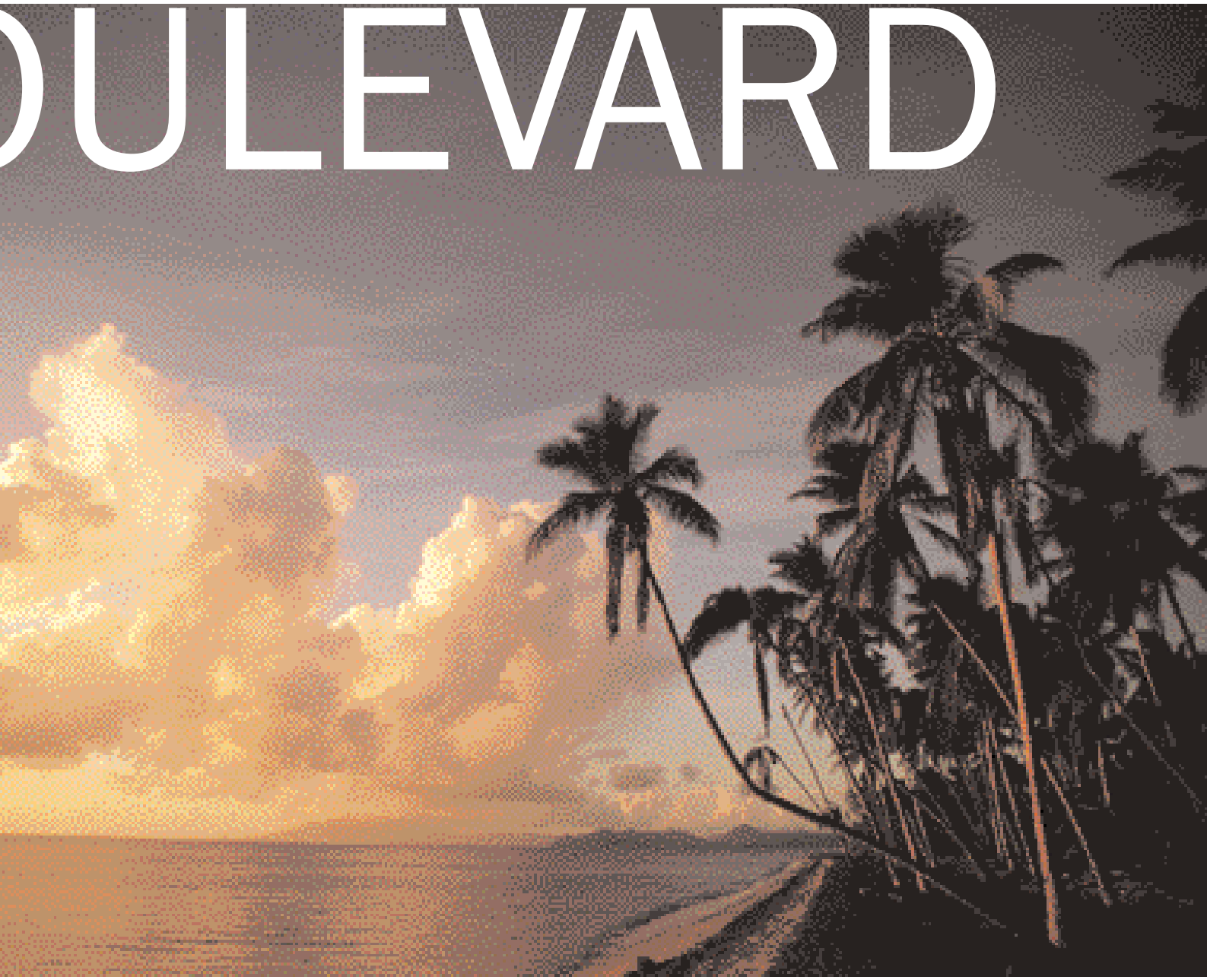
Charges under a PRSA contract may only be calculated as a percentage of each contribution or the value of the assets or both. In a standard PRSA, a maximum of 5% of contributions and 1% of assets a year is permitted. Charges cannot be applied on transfers to or from PRSAs.

There will be various obligations on PRSA providers and pension scheme trustees before transfers of assets from occupational pension schemes to PRSAs may be effected. Regulations governing these obligations are not, at the time of writing, in force. As currently provided for in legislation, transfers from occupational pension schemes will only be permitted if a member has 15 years' or less service as a member of the pension scheme, or any other scheme relating to the same employment, or any connected employment and is either leaving service or the scheme is winding up. Transfers may also be made from an occupational pension scheme to a PRSA in respect of the accumulated value of a member's additional voluntary contributions regardless of the length of scheme membership. Transfers from retirement annuity contracts to PRSAs will also be possible.

Retirement benefits will depend on the level of contributions to the PRSA and investment return. Benefits may be taken between ages 60 and 75 (or

MAIN POINTS

- **Personal retirement savings accounts explained**
- **Employers' duties**
- **The tax implications**



earlier than 60 in the case of retirement due to ill health). On death before retirement, the PRSA fund may become part of the contributor's estate. On retirement, a contributor may take up to 25% of the PRSA fund (other than a PRSA used under an occupational pension scheme for additional voluntary contributions) in the form of a tax-free lump sum. The balance may be applied under an approved retirement fund (and, if required, an approved minimum retirement fund) or in cash which is taxable, or to purchase an annuity or a combination of these options. The decision on how to apply the fund will depend on the contributor's individual circumstances.

Employers' duties

Even if an employer already operates a pension arrangement for its employees, it may still be affected by the PRSA legislation. Certain employers will have to facilitate access to a standard PRSA. This obligation will be introduced with effect from 15 September. Employers will not be required to

TAX IMPLICATIONS

Income tax relief will apply on any personal contributions at the contributor's marginal income tax rate (in the case of employees, this may occur through the net pay arrangement that currently applies to occupational pension schemes and will in future apply to retirement annuity contracts). There may be PRSI and health levy relief on contributions. The tax relief on contributions to a PRSA is subject to a minimum of €1,525 and then limited to 15% of net relevant earnings/remuneration under age 30, 20% between age 30 and 39, 25% between age 40 and 49, and 30% over age 50. Contributions to a PRSA and retirement annuity contract and personal contributions to an occupational pension scheme will be aggregated for maximum tax relief.

An earnings cap of €254,000 will apply to all pension arrangements in respect of any personal and employer contributions to a PRSA, any contributions to a retirement annuity contract and any personal contributions to an occupational pension scheme as the maximum net relevant earnings/remuneration on which tax relief may be claimed.

Carry-forward provisions will exist for excess contributions and contributions paid while out of the workforce. Tax relief is non-transferable between spouses. Investment returns will also be tax exempt.

Contributions made by an employer are treated as a benefit-in-kind of the employee and treated for relief purposes within the limits previously mentioned as if made by the employee (so that a benefit-in-kind charge should arise only if the limits previously mentioned are exceeded). Employer contributions will be fully deductible for corporation tax purposes.

contribute to PRSAs, although they may do so. Under the legislation, employers have no liability in respect of the investment performance of a PRSA.

The legislation provides that the following categories of employers will be obliged to facilitate access by 'excluded employees' to at least one standard PRSA. These will be employers who:

- Do not operate an occupational pension scheme to provide retirement benefits, or
- Operate a scheme but limit eligibility for membership for retirement benefits, or
- Operate a scheme but withhold eligibility for membership for retirement benefits until more than six months after starting employment, or

- Operate a scheme which provides death in service benefits only, or
- Do not include a facility for the payment of additional voluntary contributions under an existing scheme of the employer.

The excluded employees will be all employees for whom there is no scheme providing retirement benefits. Otherwise an excluded employee will be any employee who is not eligible for membership of a scheme operated by the employer and who, if he remains an employee, will not become eligible for membership within six months of taking up employment (even if it is known at the outset that the employee will not remain with an employer for six months).

An employer generally means the person with whom an employee has entered into, or works, under a contract of, employment (that is, a contract of service or apprenticeship). However, a solicitor may be deemed to be an employer of an individual who has a contract of employment with an employment agency if under the contract the solicitor is liable to pay the wages of the individual concerned.

Employers of excluded employees must:

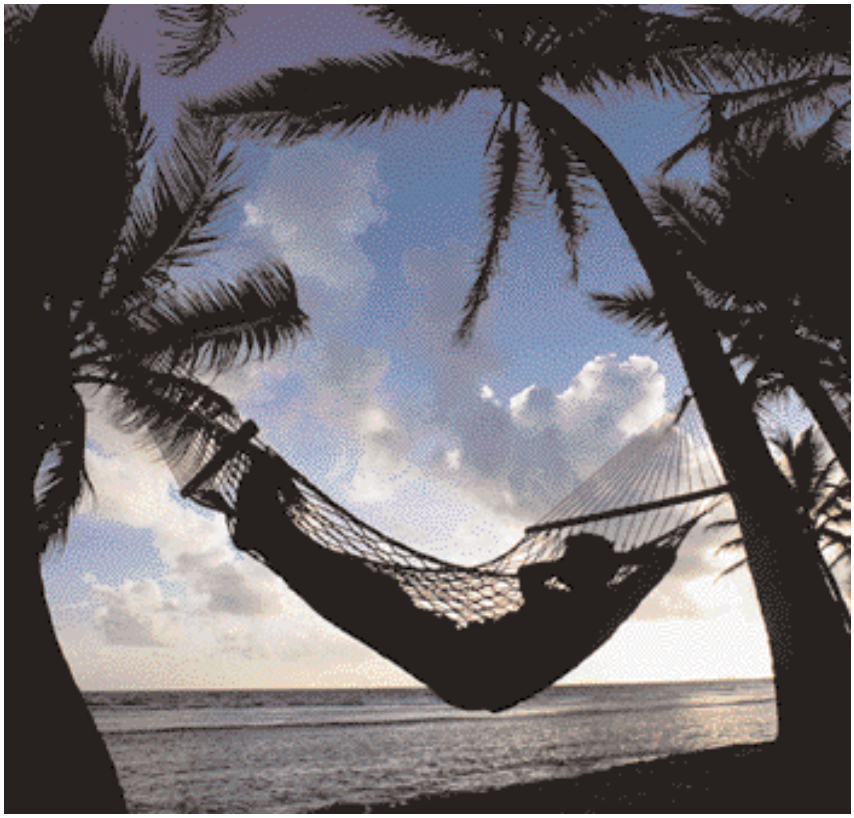
- Enter into a contractual arrangement with one or more PRSA providers to enable their employees to participate in a PRSA
- Ensure that the PRSA product is an approved product
- Notify employees of the right to contribute to the standard PRSA
- Allow PRSA providers or intermediaries reasonable access to employees at their workplace to conclude standard PRSA contracts with the excluded employees
- Make deductions from payroll as requested by excluded employees in respect of the standard PRSA chosen by the employer (if the excluded employee would prefer to use a PRSA product other than that chosen by the employer, the employer is not obliged to operate the net pay arrangement for that employee)
- Remit deductions to the PRSA(s) within 21 days of the end of the month in which the deduction was made
- If the employer contributes to the PRSA, pay over contributions within 21 days following the end of every month
- Provide at least monthly statements of deductions and contributions (which may be on payslips) to employees and the PRSA provider.

Before entering into a PRSA contract with a contributor, the PRSA provider must furnish to the contributor a preliminary disclosure certificate as a generic certificate specifying the benefits that could reasonably be expected under the PRSA product.

A statement of reasonable projection must be prepared by a PRSA provider specifically for the contributor and be provided within seven days of entering into a PRSA contract with the contributor. The statement must then be provided to the contributor annually and also on request by the contributor and within seven days of an increase in the number or amount of charges under the PRSA contract. It must specify the level of benefit that could reasonably be expected at a specified date to be payable under the PRSA contract. It is based on the value of the PRSA at the date of the statement and uses assumptions as to future contributions and investment returns. Before a PRSA contract becomes enforceable, a 15-day cooling-off period must elapse from when the PRSA provider gives the contributor the statement.

A PRSA provider must provide a contributor with a statement of account at least every six months, with details of contributions received since the contract starting date and since the date of the last statement. It must include a breakdown between any employee and employer contributions, and a transfer value of the PRSA.

A detailed *Tax guide to PRSAs* has been prepared by the Revenue Commissioners and is to be found on its website at *www.revenue.ie/publications/leaflets*. The Pensions Board has produced a document entitled *Personal retirement savings accounts: employers' obligations*, which may be found on its website at *www.pensionsboard.ie*. G



Maureen Dolan is a partner with the Dublin law firm McCann FitzGerald and heads its pensions and employee benefits group. Advice as to the appropriateness of financial products to the reader's circumstances should be sought from a financial adviser.

PITFALLS OF pension plan

Although they ought to know better, solicitors can easily make the same mistakes as other professionals when it comes to their pension funds. Olive Donovan highlights a number of typical pitfalls that are regularly encountered when planning for retirement

MAIN POINTS

- **Dangers of a tax-motivated approach**
- **Approved retirement funds**
- **Law Society Retirement Scheme**

Ask any solicitor about their pension planning and you'll probably get a response that includes one of the following:

- *'I have about seven or eight policies set up at this stage, so I'm on the way to being well provided for'*
- *'It's great for keeping my tax bill down, but I've no idea what I'm invested in'*
- *'I couldn't tell you how my fund is doing as I haven't really had time to analyse it'*
- *'I know there's been a lot of change in recent* Finance Acts, *and there's more I could be doing, but I feel it would take an age to get up to speed'.*

If any of these sound familiar to you, then you are in good company. Busy schedules mean that year after year many professionals find themselves hurried into making contributions to a pension plan (sometimes any pension plan) so as to minimise their tax bill. The usual result from this hurried and primarily tax-motivated approach is threefold.

1) Absence of asset allocation. Many professionals will have built up a number of retirement plans independently of each other – each initiated in an effort to make contributions before a tax deadline. One of the most common long-term consequences of this is that an individual is left with little appreciation of his overall asset allocation (quite simply, the amount allocated to shares, bonds, cash and property). As undoubtedly the single most important contributor to the performance of a person's pension plans, it should be a considerable concern, but it too often goes unnoticed.

2) Lack of appreciation of risk. In the absence of an appreciation of asset allocation, the pension investment strategy involves an inappropriate amount of risk – either too much or too little. The three most common flaws are: an over-concentration in a single asset, such as property; overly-conservative investment strategies (if an investor has 25 years to go to retirement, he can well afford and arguably need to take bigger bets with the stock market); and overly-aggressive investment strategies (for example, those with three or four years to go to retirement who still fancy a flutter but who have insufficient time to ride out the bear markets).

Olive Donovan: 'Busy professionals can find themselves hurried into making contributions to any pension plan to minimise their tax bill'

3) Disconnection between funding and retirement objectives. The yearly cycle of maximising the amount you can contribute to a pension plan to minimise the amount of tax is a set of calculations that happens largely without reference to the end result in terms of income in retirement. This 'disconnect' is something for which those getting closer to retirement will have a much greater appreciation as larger and larger contributions become a necessity and not a luxury.

What these common pitfalls result in is a lack of fit between retirement planning and an individual's long-term financial framework. In a perfect world, retirement plans should be integrated alongside property portfolios, shareholdings and funds held by an individual. This is too often not the case.

Until quite recently, assets built up in a pension fund had to be used to purchase an annuity (or guaranteed income) on retirement. What's more, in the event of death, the pension that would then go to the surviving spouse was usually reduced. In all cases, the assets that were built up prior to retirement

ning

rested with the life assurance company and not the individual. So while pensions plans offered a very tax-effective way to invest, when it came to retirement they did not provide control over capital nor did they protect this capital in the event of death.

With the introduction and refinement of approved retirement funds (ARFs) in recent *Finance Acts*, the way in which a retired solicitor can control his or her affairs has been fundamentally changed, giving much greater control over capital in retirement. Under approved retirement fund legislation, the value of assets you have built up in your fund continue to be an integral part of your overall wealth and grow tax-free until they are drawn down as income. In addition, in the event of death, the fund can be bequeathed to a person's estate. Such changes are fundamental and require, at minimum, a rethink about the way in which we treat annual pension contributions and the planning that goes alongside it.

Forward planning

Consider where you are now. If you are like many in the profession, you probably have a share portfolio, a property or two, some funds and a pension. What's interesting to note about all of these is the different way in which they are taxed. The first two attract marginal rate tax on distributions of income and CGT on disposal. Funds usually attract standard rate +3% on gains (paid by the fund on an on-going basis in the case of older funds and on encashment in the case of newer gross roll-up funds). Pensions obviously are tax-free until they are drawn upon, at which time they are subject to marginal rate income tax (on three-quarters of the fund). All of that makes for a very interesting set of variables at retirement. Which 'pool' of assets should be used first? What is the optimum way to plan in advance to ensure the most effective rate of tax through retirement?

If it isn't already evident, a lot of detailed planning is required both in advance and during retirement if one is to make the most of the very considerable body of legislation that is in place to help professionals plan their future income. In short, the opportunities that are presented go a long way beyond what are nonetheless very attractive tax breaks. G

Olive Donovan is a business development manager at Bank of Ireland Private Banking. Bank of Ireland Asset Management is one of the two investment managers of the Law Society's Retirement Trust Scheme.

LAW SOCIETY OF IRELAND **RETIREMENT TRUST SCHEME**

The Law Society Retirement Trust Scheme is the group personal pension scheme set up as a service to members.

Law Society past-president Frank Daly, chair of the Solicitors' Retirement Fund

Retirement scheme by the numbers

- Current value of the scheme: €115,000,000
- Number of solicitors in the scheme: 800 approximately
- Scheme trustee: Gov & Co of the Bank of Ireland
- Investment managers: Bank of Ireland Asset Management manages the cash fund, the long bond fund, the all-equity fund and 67% of the managed fund; KBC Asset Management manages 33% of the managed fund
- Initial fee: 2.5% of each contribution
- Annual fee: 0.5%* (this includes all trust services and investment fees).

* Based on managed fund actual annual costs averaged over the past three years. These may vary from year to year. Different fee rates apply to each fund.

What you need to know

- All gains/losses on investments are passed on directly to scheme members – there is no discretionary element
- No member of the Law Society knows who the members of the Retirement Trust Scheme are. This information is strictly confidential to the trustee
- No charges of any kind are charged by or paid to the Law Society.

Tax relief information

The latest date for investing for 2002 tax year is 31 October 2003. All cheques must be with Bank of Ireland Trust Services by 5pm on Friday 31 October 2003.

Full tax relief may be claimed annually on pension contributions up to the following limits:

- Under 30 years: 15% of net relevant earnings**
- 30 – 39 years: 20%
- 40 – 49 years: 25%
- 50 and over: 30%.

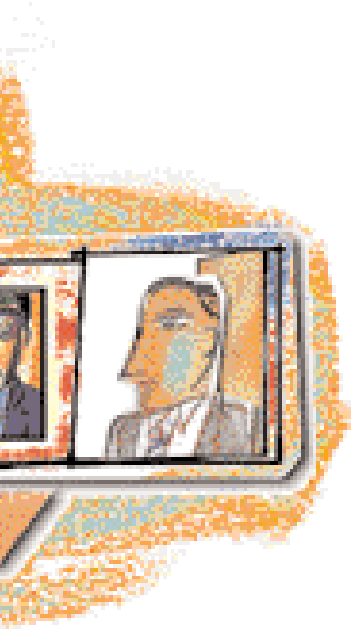
** There is a cap on earnings of €254,000 a year. For example, a 50-year-old can therefore claim full tax relief on contributions of up to €76,200 a year.

If you want to know more

For more information, log onto *www.lawsociety.ie* for a copy of the retirement scheme booklet or contact Brian King or Fiona Kiernan at Bank of Ireland Trust Services, Ferry House, 48/53 Lower Mount Street, Dublin 2 (tel: 01 435 8002/5, fax: 01 435 8020) for a copy, an application form or any details you might require. Bank of Ireland is regulated by the Financial Services Regulatory Authority. G

All the

right MOVES



Companies are bought and sold – that's just business – but what happens to the employees affected by a takeover? Following an EU directive, the government has introduced new regulations clarifying procedures for staff consultation and representation in transfers of undertakings, as Ciaran O'Mara reports

MAIN POINTS

- New regulations implementing the *Acquired rights directive*
- Implications of *Commission v UK*
- Complaints to rights commissioner

The latest attempt by the Irish authorities to transpose the *Acquired rights directive* (the ARD) into Irish law can be seen in the *European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003* (SI no 131 of 2003). These regulations apply to any transfer of an undertaking, business or part of a business from one employer to another employer as a result of a legal transfer or merger.

They came into operation on 11 April 2003 and replace the 1980 regulations (SI no 306) and the amending regulations in 2000 (SI no 487), which had been in operation since 3 November 1980 and 21 December 2000 respectively. The new regulations implement the current codified EC council directive 2001/23/EC of 12 March 2001, aimed at safeguarding the rights of employees in the event of a legal transfer or merger.

Most solicitors are familiar with the basic principles of the ARD. It is reasonably clear that contracts of employment transfer with the business in a business transfer. It is also well known that organisational, technical and economic reasons can be used to justify the refusal to have a transfer of staff. The provisions of the directive on information and consultation rights and on sanctions for breach are less well known. These are the areas most affected by the new regulations.

Information and consultation

In a transfer situation, both the original employer and the new employer must inform the representatives of their employees affected by the transfer of:

- The date or proposed date of transfer
- The reasons for the transfer
- The legal implications of the transfer for the employees and a summary of any relevant economic and social implications of the transfer for them, and
- Any measures envisaged in relation to the employees.

Both employers must give this information to the employees' representatives not later than 30 days before the transfer, where reasonably practicable. In any event, the original employer must give the information in good time before the transfer occurs, and the new employer must do likewise in good time before the employees are directly affected by the transfer as regards their conditions of work and employment.

If either employer envisages new measures that will affect their employees, the staff representatives must be consulted, where reasonably practicable, not later than 30 days before the transfer occurs and in any event in good time before the transfer with a view to reaching agreement. This 30-day requirement is a new departure for the Irish legislation.

Employee representatives

Under regulation 2(1), '*employees' representatives* means a trade union, staff association or excepted body with which it has been the practice of the employees' employer to conduct collective bargaining negotiations, or, in their absence, a person or persons chosen by such employees (under an arrangement put in place by the employer, including by means of an election) from among their number to represent them in negotiations with the employer'.

Where there are no employee representatives, the 2003 regulations require that employers must arrange for the employees to choose, including by means of an election, representatives for this purpose. However, if there are still no staff representatives in the undertaking through no fault of the employees, the staff concerned must be notified in writing not later than 30 days before the transfer, where reasonably practicable, and in any event in good time before the transfer.

These obligations apply whether the employer, or another undertaking controlling the employer, takes the decision resulting in the transfer. The fact that the information concerned was not provided to the employer by the controlling undertaking will not release the employer from those obligations.

The provision in regulation 8(5) that the employer must put in place a procedure whereby the staff may choose from among their number people to represent them (including by means of an election) for the purpose of the information and consultation provisions could almost be missed by a casual reader. Yet it is the most profound and far-reaching provision of the 2003 regulations, finally implementing the European Court of Justice's (ECJ) judgment in *Commission v UK* (see **panel** below).

This has major implications for businesses. It spells the death knell of the voluntarist approach to the ARD adopted since 1980. It directly opposes the well-understood position in Irish common law and under the constitution. The Irish courts have long set their face against any mandatory system of negotiation in the workplace. Take, for example, the well known case of *Abbott and Whelan v ITGWU and the Southern Health Board* ([1982] 1 JISLL 56), where McWilliam J ruled that the Irish constitution does not protect a right to have one's trade union recognised, and went on to state (at p59):
'The suggestion in the pleadings that there is a constitutional right to be represented by a union in the

ECJ DECISION IN COMMISSION v UK

Any consideration of the 2003 regulations can only begin with an examination of the seminal judgment of the European Court of Justice in *Commission v UK* in 1994.

At a remove of nine years, this judgment needs simply to be summarised. It was a damning indictment of the UK's so-called *Transfer of Undertakings (Protection of Employment) Regulations*, but It might just as easily have been a devastating commentary on the situation in Ireland.

The ECJ decided that the UK had breached the *Acquired rights directive* on the following grounds:

- Failing to provide for the designation of employee representatives where an employer does not agree to it
- Failing to provide for effective sanctions in the event of the employer's failure to inform and consult
- Not requiring consultation with a view to reaching an agreement, and
- Excluding non-profit-making undertakings from the scope of the UK regulations.

The court stated that the directive laid down the principle of compulsory information and consultation. It left to the member states only the task of determining the arrangements for designating the employee representatives who must be informed and consulted. The limited harmonisation envisaged in the directive could not deprive the provisions of the ARD of their effectiveness. Therefore, national law which allowed an employer to frustrate the protection afforded by the directive was contrary to Community law.

In the area of sanctions and enforcement, the ECJ used strong words to confirm its stance on the necessity for effective sanctions: *'Where a Community directive does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, article 5 of the treaty requires the member states to take all measures necessary to guarantee the application and effectiveness of Community law. For that purpose, while the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive'.*

Set against this test of effectiveness, the frailty of the enforcement provisions of our 1980 regulations was fully exposed. The criminal nature of the Irish sanctions and their dependence on ministerial prosecution contrasted with the typical forms of redress for unfair dismissal, redundancy payment, equal pay and so forth. The exceedingly low maximum fines could scarcely stand the test set by the ECJ.

In the aftermath of *Commission v UK*, it was expected that there would be change in Ireland. This has now culminated in the much more comprehensive 2003 regulations, which have revoked all the earlier legislation and provided a framework that is much more akin to one of the many acts of the Oireachtas in the labour law field.

During this period, the *Acquired rights directive* was consolidated into the present council directive 2001/23/EC. It is this directive that has now been transposed into Irish law.

conduct of negotiations with employers has not been pursued and, in my opinion, could not be sustained. There is no duty placed on any employer to negotiate with any particular citizen or body of citizens'.

The 2003 regulations effectively carve out a huge exception to this principle. This is, of course, only the beginning. The new *Information and consultation directive* (directive 2002/14/EC of 11 March 2002) will provide for permanent and general consultation with staff representatives from 23 March 2005. While this directive will affect only larger workplaces, the 2003 regulations apply to all transfers without setting any minimum threshold. Approximately 25% of the Irish private sector is unionised. Accordingly, for the great majority of companies the 2003 regulations will be of huge significance.

What guidance can be given to employers where there are no staff representatives and a transfer is envisaged? We know that there has to be an election of representatives from among the affected employees. We know that the arrangements must meet the test of effectiveness laid down by the ECJ. A booklet from the UK's Department of Trade and Industry, *Transfer of undertakings: a guide to the regulations*, may be useful (see **panel** below).

This guidance appears to be just as applicable in the Irish context. This means real elections, real time for consideration of candidates and no undue

interference by the employer in the process of choice. At the same time, the employer must provide the support and facilities to enable the process to take place.

When it comes to giving the information, the employer cannot simply decide that a one-page document stating that 'there are no implications' will suffice. The consultation depends on giving sufficient information to allow a dialogue to take place 'with a view to reaching an agreement'. Hence, the quality of the information will be vital if the test of effectiveness is to be met. The consultations must be meaningful to meet the test.

Trade unions and employer representative bodies may, in this new environment, decide to provide services in these situations. There is no reason why lawyers should not equally see this as a business opportunity.

New enforcement procedures

The 2003 regulations totally revamp the enforcement mechanisms of the directive in Ireland and take on board the ruling in *Commission v UK*. The resort to criminal law enforcement and ministerial inspection has been abandoned. Instead, the provisions on sanctions closely align the regulations to the standard forms of redress already existing in Irish employment law. The choice of forum of first instance is the increasingly-popular rights commissioner. Now,

ADVICE FROM THE UK'S DEPARTMENT OF TRADE AND INDUSTRY

'The legislation does not specify how many representatives must be elected or the process by which they are to be chosen. An employment tribunal may wish to consider, in determining a claim that the employer has not informed or consulted in accordance with the requirements, whether the arrangements were such that the purpose of the legislation could not be met. An employer will therefore need to consider such matters as whether:

- *The arrangements adequately cover all the categories of employees who may be affected by the transfer and provide a reasonable balance between the interests of the different groups*
- *The employees have sufficient time to nominate and consider candidates*
- *The employees (including any who are absent from work for any reason) can freely choose who to vote for, and*
- *There is any normal company custom and practice for similar elections and, if so, whether there are good reasons for departing from it.*

What must an employer do?

First, the employer of any employee who may be affected must tell their representatives:

- *That the transfer is going to take place, approximately when, and why*
- *The legal, economic and social implications of the transfer for the affected employees*
- *Whether the employer envisages taking any action (reorganisation, for example) in connection with the transfer which will affect the employees, and if so, what action is envisaged, and*
- *Where the previous employer is required to give the information, he or she must disclose whether the prospective new employer envisages carrying out any action which will affect the employees, and, if so, what. The new employer must give the previous employer the necessary information so that the previous employer is able to meet this requirement. The information must be provided long enough before the transfer to give adequate time for consultation.*

Second, if action is envisaged which will affect the employees, the employer must consult the representatives of the employees affected about that action. The consultation must be undertaken with a view to seeking agreement. During these consultations, the employer must consider and respond to any representations made by the representatives. If the employer rejects these representations, he must state the reasons.

If there are special circumstances which make it not reasonably practicable for an employer to fulfil any of the information or consultation requirements, he must take such steps to meet the requirements as are reasonably practicable'.

Extract from *Transfer of undertakings: a guide to the regulations*, published by the UK's Department of Trade and Industry.

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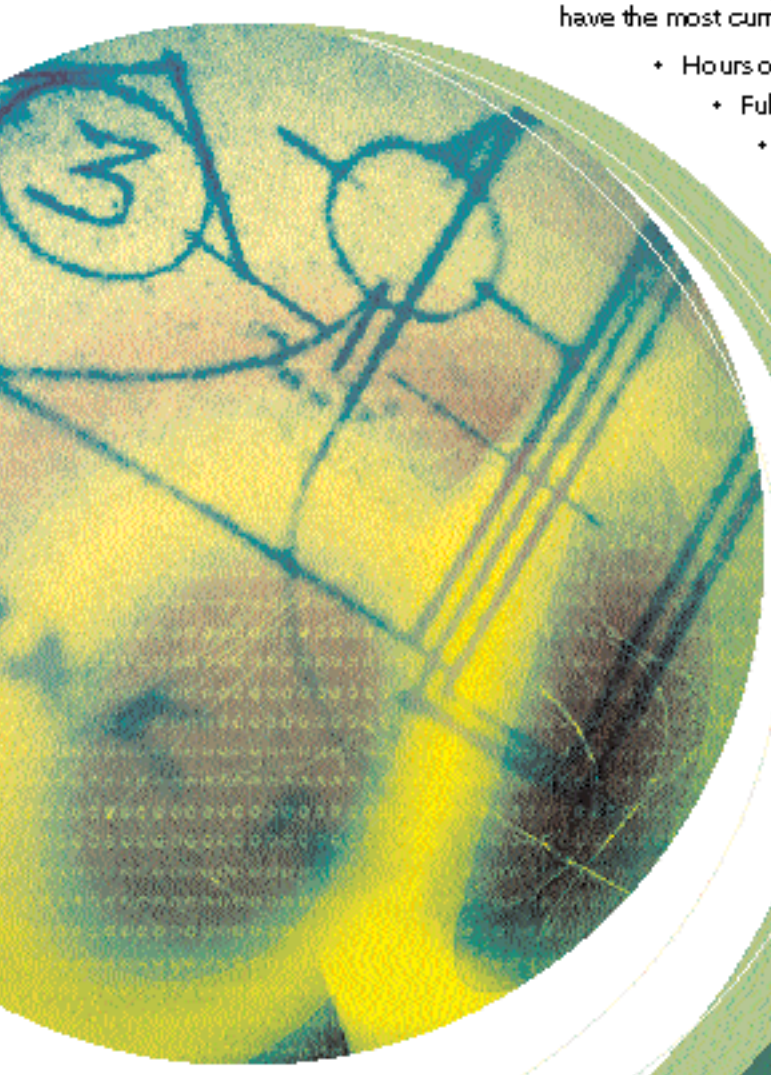

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every dispute apart from pensions can be presented to the rights commissioner.

Under regulation 10, an employee, trade union, staff association or excepted body on behalf of and with the employee's consent may present a complaint to a rights commissioner that an employer has contravened any provision of the regulations. Written notice of the complaint must be presented to the rights commissioner within six months of the date of the alleged contravention. This time limit may be extended by a further six months if the rights commissioner is satisfied that the failure to present the complaint within the initial six-month period was due to exceptional circumstances.

On receipt of a complaint, the rights commissioner will send a copy of the notice of complaint to the employer. He or she will then give the parties an opportunity to be heard and to present any evidence relevant to the complaint. After hearing the parties, the commissioner will issue a written decision. Proceedings before a rights commissioner will be held in private.

It is worth noting that the rights commissioner has no power to summon witnesses, to order the production of documents, to visit the workplace or to take any step on his own initiative. He is essentially a 'receiver' and has a largely passive role in contrast to, say, the more investigative role of the Equality Tribunal under the *Employment Equality Act, 1998*.

Rights commissioner's decision

The decision of the rights commissioner must do one or more of the following things:

- Declare that the complaint was, or was not, well founded
- Require the employer to comply with the regulations and for that purpose to take a specific course of action, or
- Require the employer to pay to the employee compensation not exceeding:
  - four weeks' remuneration in the case of a contravention of the information and consultation provisions of the regulations, or
  - two years' remuneration in the case of a contravention of any other provision.

An arguable case can be made that in a very urgent matter the High Court still has jurisdiction to grant injunctive relief to a claimant who alleges a breach of the directive and the Irish regulations.

On the broader question of sanctions to be applied by the rights commissioner, the strict limitation of a maximum of four weeks' pay as compensation for breach of the information and consultation rights may be disastrous for employers.

Since the remedy has to be 'effective, dissuasive and proportionate' to meet the test of EC law, failure to inform and consult may impel the rights commissioner to make mandatory or restraining orders that could cut across the transfer and perhaps even render it void. An argument could be presented that four weeks' pay is simply inadequate as a remedy and that injunctive-type relief is more appropriate. In my experience, rights commissioners are already inclined to take such a course in determining the relief to be ordered in maternity protection cases and others. It is noticeable that they are inclined to order that someone is returned to his or her job on the same terms rather than simply awarding compensation.

The consequences of such an approach would be horrendous for the parties to a transfer and over time will lead, in my opinion, to a more rigorous compliance with the legislation.

A decision of the rights commissioner may be appealed in writing by either party to the Employment Appeals Tribunal within six weeks from the date it was communicated to them.

'The saga of Ireland's unhappy relationship with the Acquired rights directive looks like it is drawing to an end'

The saga of Ireland's unhappy relationship with the *Acquired rights directive* looks like it is drawing to an end. It is not over yet; we still await the primary legislation, promised by the Department of Enterprise, Trade and Employment, dealing with pensions and insolvency situations, but the main decisions have been taken. There is now a proper system of sanctions in place. We now have provision for compulsory recognition and election of employees' representatives.

It is a source of regret, however, that no form of public consultation took place at any stage regarding the form that the 2003 regulations (or indeed their predecessors) would finally take, even if only to eliminate the typographical errors in the regulations. G

Ciaran O'Mara is a partner in the Dublin law firm O'Mara Geraghty McCourt, Solicitors, and vice-chair of the Law Society's Employment and Equality Law Committee.

Tech trends

Bats in your belfry

What could be better than hot buttered monkey, you ask? Well, how about a vacuum cleaner that will hoover the house and then put itself away. No, really. Electrolux has just brought out the *Trilobite*, the world's first robotic vacuum cleaner, which uses radar and acoustics to navigate around a room 'just like a bat'. Apparently, it spends between 90 seconds and 15 minutes calculating the size of the room by following the walls, and when it is finished mapping the room it automatically starts cleaning. The manufacturer claims that it can vacuum around a glass of water without spilling a drop. And if you like your monkey served with cheese, then you'll love the fact that you won't even have to put the *Trilobite* away: when it's finished cleaning, it automatically returns to its docking station to recharge. On a more disturbing note, Electrolux has begun likening its new product to 'a furless time-saving pet'. That could spell bad news for monkey butlers everywhere.

The Trilobite *from Electrolux is available from electrical retailers, priced around €1,500.*

Talk to the hand

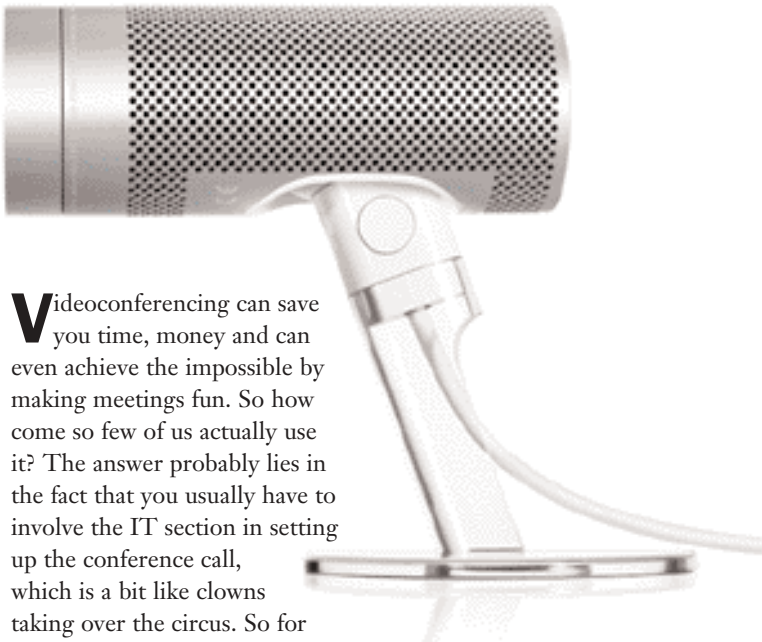
Voice-recognition software is another innovation that has never quite reached its full potential. Although each new generation of products achieves greater levels of first-time accuracy, the under-performing earlier versions have made it hard to convince technophobes to give it a try. Solicitor Quentin Crivon may be able to change your mind. Crivon,

Quentin Crivon

principal of the Dublin law firm O'Hagan Ward, has set up a company, Voice Activation Promotions Ltd (VAP), to provide voice-recognition (VR) training and a variety of legal templates to the solicitors' profession. He believes that his fast-track training programme will allow you to start dictating to your PC immediately. Something of an evangelist for the concept of voice recognition, Crivon argues that you can make serious reductions in time and secretarial costs through the proper use of VR. All you need, he says, is an off-the-shelf VR package, a good micro-phone and a decent PC (Crivon himself uses software that retails for around €170 and believes it is more than adequate). In addition to the training session, VAP can provide you with a series of templates and precedents (including power of attorney, companies office forms, wills, conveyancing precedents and court documents such as civil bills, summonses and writs) specifically designed for voice-recognition dictation. 'Give me two hours and I'll have you up and running straightaway', promises Crivon. 'If you're prepared to put an extra two or three hours into it, you'll be flying!'

The training programme costs €600 and the precedent templates up to €700. Contact VAP Ltd on 01 676 4496, e-mail: crivon@indigo.ie.

Perfect vision



Videoconferencing can save you time, money and can even achieve the impossible by making meetings fun. So how come so few of us actually use it? The answer probably lies in the fact that you usually have to involve the IT section in setting up the conference call, which is a bit like clowns taking over the circus. So for those who hate the smell of greasepaint, the new iSight from Apple may be just the ticket. iSight is a state-of-the-art webcam that sits on your PC and allows you to videoconference with friends and colleagues – which is pretty much what every other PC video camera allows you to do. The difference is that Apple's new product includes a noise-suppressing microphone that filters out extraneous background sounds and delivers crystal clear audio (you can also mute it if you want to hold a private conversation). Its autofocus feature should also ensure a crisp, sharp picture when you sit behind it. But perhaps its main selling feature is its unique three-part lens that allows it to collect more light than most other webcams. The result is that you should look good, whether you're in a bright sunny office or in a dimly lit hotel room.

The iSight costs €169 and is available from computer outlets and from www.apple.ie.

Just put it on my bill

Sometimes the hardest thing about work is getting paid for it. If you're too tired and emotional to produce a fee note after a long day's 'networking', you can let *time@work* worry about it for you. This new piece of software from PSA Consulting claims to be 'a powerful, flexible time-recording solution designed to maximise billing, provide management information and keep administrative time and costs to a minimum'. Better still, it can be customised to suit the needs of individual firms or practices.

time@work automates the billing process, produces timely, accurate billing, removes unbilled activity, reduces discounting and billing queries, helps control cashflow and improves personnel allocation. What more could you ask for? If it covered your bar bill too, you'd be in software heaven. time@work *costs from €300 to €1,000 per user, depending on requirements, and is available exclusively in Ireland through PSA Consulting Ltd. For a product demonstration, call 01 6286107, e-mail info@psac.ie or visit www.psac.ie.*

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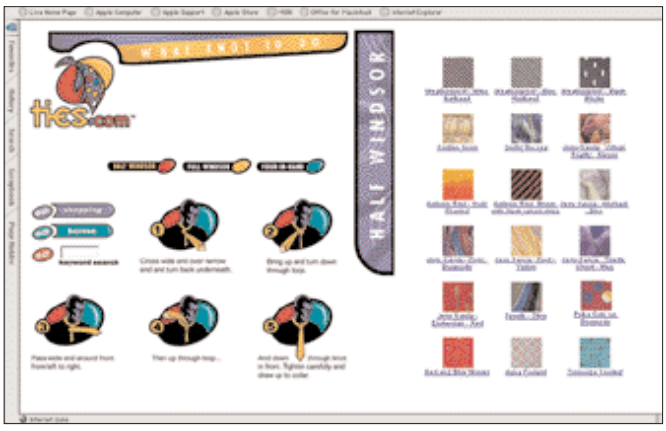
Sites to see

Book sharing (*www.bookcrossing.com*) This book-lovers' community is a friendly place. You register with the site, then you read a book, register it, label it with a unique ID number, then 'release' it for someone else to read. This means that you give it to a friend or leave it in some public place and tell the 'community' where it is so someone can go hunting for it. Keep an eye out for monkeys wearing trench coats.

Mahon Tribunal (*www.flood-tribunal.ie*) Now called the Mahon Tribunal, the site for this planning inquiry still bears the name of its original chair, Mr Justice Feargus Flood. As it's been running since the Ark, this will remind you of the original terms of reference, decisions and rulings, reports and statements, to the daily transcripts of the public sittings. So just how many times has Liam Lawler been inside?

Wines (*www.vino.com*) This is for oenophiles: reams of reviews both of low-cost and luxury vintages, and information by region on vineyards and cuisine. The news section discusses such things as the US boycott of French wines. You can learn how to savour wine, choose wine glasses and how to wash them, so you can identify the flavours of the wine not the washing-up liquid.



Ties (*www.ties.com*) Get good value out of your opposable digits: wear a tie. *Ties.com* offers a lot of ties, from the snappy to the kitsch. You can buy them or just look at them on-screen. They even managed to pull together a section on tie news. (Did you know the Taliban banned ties in 2001?) The site teaches you how to tie the knot, in easy steps, with diagrams.

The same old tulips

History has a lot to teach us, particularly when it comes to economies making the same old mistakes, writes David Killen

For many investors, three negative years in terms of equity market returns may have left little appetite for equities. However, a glance back at history provides several examples of investor hysteria that resulted in boom-bust situations. A review of such events provides evidence that, in most cases, markets managed to recover in a sustainable way, and that investors who remained focused and avoided getting caught up in much of the hype (Warren Buffet is one example) often stand to gain from such situations.

It is interesting that, over the course of history, groups – and indeed, entire nations – have often engaged in a collective mania, which, more often than not, had little or no sound basis and resulted in financial distress and even ruin. One of the earliest examples is the Dutch 'tulipmania' of 1637. In 1637, the Dutch had a thriving market economy. During this period, it became fashionable among the aristocracy to spend large amounts of money collecting rare tulip bulbs. Speculation quickly began to force prices higher, and it wasn't long before most of the nation was involved in trading bulbs. By 1637, prices were doubling daily. The Dutch government attempted to intervene in an effort to stop the price rising. But the intervention led to concern over the rationale for the high prices and a crash followed. Tulip prices never recovered, which was hardly surprising since they have little or no intrinsic value.

The great crash of 1929, which resulted in three years of negative market returns, was famed for bringing the great depression of the 1930s. The beginning of the 1929 crash started back in the post-World War I boom, from 1922 onwards. Industrial production doubled between 1921 and 1928, living standards rose significantly, and unemployment fell to record lows. In 1925, the US lowered interest rates to just 3.5%, resulting in an influx of money entering the stock market, which drove prices higher. Many investors began to gear up their holdings and by 1928 the Dow Jones was rising rapidly. The Federal Reserve became concerned about the level of margin trading (where investors use newly acquired shares as collateral for loans to buy even more shares).

Black days

In an effort to reduce the speculation, it raised interest rates in January 1929 and warned about the dangers inherent in speculative trading in February. Subsequent months saw increased volatility and almost 13 million shares were traded on 24 October. On 29 October – Black Thursday – almost 15 million shares were up for sale. From its peak of 381, the Dow Jones fell to a low of just 41 in 1932, a fall of almost 90%. However, from 1933 to 1937, it rose 288%.

More recently, there have been several stock market crashes. Black Monday of 1987 is one example. The US had slashed taxes without cutting spending; in fact, defence spending was well up. As a result, the US developed a huge trade deficit, prompting world leaders to try to 'talk down the dollar' in 1985. During 1986 and the first nine months of 1987, the dollar fell 20%, but the trade deficit remained $13 billion a month. Despite this, US stocks surged for the first half of 1987, rising 39%. Bond yields soared from 7.4% to 9.6% as the US economy strengthened, the dollar sank and the trade deficit remained high.

Bang for the buck

In September 1987, the Federal Reserve tightened rates, which was interpreted as an effort to 'prop up the dollar', while treasury secretary James Baker was pressing foreign governments – Germany and Japan – to stimulate their economies to boost global demand for US exports. But Germany was more concerned with inflationary pressures. It raised rates in mid-October, infuriating the US, which responded by raising rates again. On Monday morning, 19 October, investors woke to a market that had fallen 9.5% in the previous week. But with the US, Germany and Japan all pulling in different directions, the global financial system was in disarray and the Dow Jones crashed 22.6% that day. Stocks fell by one-third in just six trading sessions. Although such huge losses were experienced, the crash had little effect compared to 1929. Stocks rose 12% in 1988 and 27% in 1989.

Davy STOCKBROKERS

Killen: The technology crash of 2000 was preceded by a mantra of 'this time it's different'

The technology crash of 2000 was preceded and driven by a mantra of 'this time it's different', in an effort to justify the ratings ascribed to many NASDAQ-listed stocks. However, in the same way that previous manias ended, there could only be one outcome following such spectacular gains. With constant calls for capital and little (or, indeed, no) returns from start-up companies, the NASDAQ, having peaked at 5000 in March 2000, fell by 60% in one year. Markets reeled from the losses, and for only the second time in history we have experienced three years of negative market returns.

However, investors can take lessons from such events. If something seems too good to be true, the line that 'this time it's different' is unlikely to be true. History does tell us that equities can provide the best long-term returns (see graph), but contingent on this is a well-diversified portfolio and the ability to endure short-term losses. G

David Killen is a portfolio manager with Davy Stockbrokers.

Report of Law Society Council meeting held on 11 July 2003

Judge Angela Condon

On behalf of the Council, the president extended congratulations to Angela Condon, Council member, who had recently been appointed to the District Court bench and who, consequently, was resigning from the Council. Pursuant to the bye-laws, the Council approved the co-option of John Dillon-Leetch to the Council for the balance of the term for which Ms Condon had been elected.

Council elections 2003

Pursuant to the bye-laws, the Council set Monday 22 September as the final date for receipt of nominations for the Council elections 2003 and Thursday 30 October as the close of poll date.

Motion: referral scheme for counselling and guidance

The following motion was notified for debate at the meeting on 5 September 2003:

'That this Council approves the establishment of a referral scheme to provide counselling and guidance for solicitors at risk from occupational stress or similar health problems'.

Proposed: Gerard F Griffin
Seconded: John O'Connor

Implementation of the *Second money-laundering directive*

The Council had a lengthy discussion regarding the regulations signed on 10 June 2003 by the minister for justice, equality and law reform designating solicitors for the purposes of the *Second money-laundering directive*, with effect from 15 September 2003. Concerns were expressed regarding several aspects of the draft regulations, particularly in relation to discretions contained in the directive that had not been transposed into the regulations. It was agreed that these matters should be raised with the minister as a matter of urgency.

Personal Injuries Assessment Board

The Council considered the heads of the *Personal Injuries Assessment Board Bill, 2003*, and the heads of the *Civil Liability and Courts Bill, 2003*, published by the government recently. Ward McEllin reported that the society had identified serious flaws in both proposals and intended to engage in a comprehensive series of meetings with public representatives in the weeks leading up to and during the consideration of the legislation by the Oireachtas. Stuart Gilhooly noted that the society's task force also intended to make a comprehensive submission in relation to the *Civil Liability and Courts Bill*.

The director general reported on a meeting with the cabinet sub-committee on the reduction of insurance costs, at which it had been stated that the PIAB would operate as an inquisitorial system and there would be no need for lawyers or other advisors for claimants. This was a move away from the previous recommendation that claimants should be entitled to representation and no good reasons had been given for this fundamental change. It appeared that the prevailing mood was to regard the person who caused the accident as the victim and this mood was becoming more manifestly expressed.

He noted also that, on the following Wednesday, the Law Society had been invited to attend before the Joint Oireachtas Committee on Enterprise and Small Business.

Donald Binchy noted that even the long title to the *PIAB Bill* was begrudging in its terms, by referring to 'claimants' involvement in *allegedly* negligent accidents'. Eamon O'Brien said that if any changes were being introduced to the current system, the society should seek assurances that there would be a corresponding reduction in premiums. He noted that, even with the high level of fatal accidents in Ireland, an EU directive designed to protect passengers in motor vehicles had still not been implemented by the state and he urged that the society should call on the state to meet its international and European obligations to reduce the number of accidents.

Competition Authority study of the professions

The Council discussed an exchange of correspondence between the director general and Alan Gray, chief executive of Indecon, relating to the claim made by Mr Gray at the launch of the Indecon report for the Competition Authority that the level of cost savings to consumers of professional services if the Indecon recommendations were introduced in Ireland would be approximately 30%. The basis for this claim had been examined for the society by Europe Economics, who had concluded that 'nothing in Indecon's letter would justify a conclusion of this sort; nor does any of the other material of which we are aware relating to this investigation suggest an effect of such an order of magnitude'.

Solicitors' undertakings to the VHI

James McCourt reported on a meeting with the VHI, at which there had been a very frank exchange of views but no progress on the matter of undertakings, despite several efforts by the society to resolve matters and find some common ground. The society had suggested a variety of alternatives to the VHI, none of which were acceptable to it. He did not see any point in further round-table discussions with the VHI, given its current intractable views.

Ward McEllin noted that, at the meeting with the cabinet sub-committee on reduction of insurance costs, the tánaiste had reacted very strongly on hearing that the VHI was urging injured members to issue proceedings for compensation.

Reciprocity with California State Bar

The Council approved a reciprocal arrangement with the State Bar of California which would make California-qualified attorneys eligible for admission to the roll of solicitors in Ireland on foot of passing the qualified lawyer's transfer test, with matching requirements for Irish solicitors seeking admission in California.

Human Rights Commissions

The Council approved a submission to the Joint Committee of the Irish and Northern Irish Human Rights Commissions on a charter of rights. G

Land Registry Online Services Update

A range of enhancements and improvements have recently been added to our online services and the following is a summary of what is currently available.

- A free service to EAS users is available which allows applications to be tracked using folio number, application number or applicant name.
- All existing folios and filed plan maps for counties Dublin, Galway, Mayo, Sligo, Clare, Roscommon, Kildare, Wicklow, Meath, Westmeath, Louth, Cavan, Monaghan, Leitrim and Longford are now available in electronic format. These folios can be viewed online and a plain copy printed. Progress on the computerising of the remaining counties is well underway and by the end of next year all folios and filed plans for the entire country will be available.
- The complete names index for the counties listed above is also available electronically. EAS account holders can conduct online searches of the names index and view these documents from the comfort and convenience of their office.
- Applications for certified copy folios and filed plans for all counties can be submitted on-line. Certified copies of electronically available folios and filed plans (see current list of counties above) will be issued in colour through a new and improved service and will be posted to all applicants. It is not possible to collect these by hand.

At present more than 5,500 users are registered for the EAS and over 2,000 electronic transactions are being undertaken each day.

The following additional services are also available.

Electronic lodgement of applications for registration – Form 17. Practitioners using this on-line facility will receive the dealing number in advance of lodgement. There are several additional benefits to using the on-line Form 17, including:

- Fees are automatically calculated by the system
- The name of the registered owner is verified and interactively displayed by the system, once the folio number is keyed in
- In many instances, the system will be able to alert the practitioner as to whether or not a Land Certificate exists for the folio
- The option to have the Land Certificate retained by the Land Registry to your order, or to the order of another party, referred to below, is available
- Once completed the form can simply be printed down and a copy retained on your file with the dealing number endorsed

Many practitioners are already seeing these benefits and more than 1,200 dealings are now being lodged electronically each month

Safe storage of Land Certificates

Safe storage of land certificates is a problem for the legal profession and financial institutions. In addition to the risk of loss and misplacement of land certificates, there are also storage and maintenance overheads and handling costs. An initiative, recently launched by the Land Registry enables you to avoid these risks and costs. Rather than having a new paper land certificate issued for the first time or an existing land certificate re-issued on completion of a dealing, it is possible to have the land certificate stored in the Land Registry on your behalf. No fee is payable for this service (other than the standard fee payable if a new land certificate is requisitioned for the first time). Should the paper land certificate be subsequently required, it will be issued at no additional fee.

This initiative has received the endorsement of the Irish Mortgage Council who have urged their members to avail of the service.

Our re-designed website at www.landregistry.ie is now operational and provides a rich source for information and recent developments. The website also contains the Land Registry's Practice Directions and a link to the Registration of Title Act, the Land Registration Rules and fees orders.

We urge you to fully avail of these services in order to allow us to further improve our service to you.

Land Registry
Registry of Deeds

Practice notes

SECURITY ISSUES IN RELATION TO COMPUTERS, E-MAIL AND COMPUTER SERVICING

A solicitor practising outside Dublin was recently contacted urgently by a person unknown to him in Houston, Texas. This person gave him the astonishing news that a large volume of the solicitor's correspondence had appeared on this person's system. It included incoming correspondence with clients and counsel. The person in Houston had sufficient details to be able to ask for the principal of the firm by name. The solicitor had been in e-mail contact with a person in the Houston area.

This true story highlights the fact that while the benefits of electronic communication are clear, the risks to client confidentiality in its use must also be recognised and steps taken to ensure that appropriate safeguards are in place.

Safeguards must be put in place at all stages of work relating to the processing, storage and transmission of any client information or data.

Firewall systems provide an electronic barrier to prevent access from outside sources to computer and e-mail systems. Both firewall systems and anti-virus systems are recommended.

Encryption or password protection should be considered for specified information or data which is classed as highly confidential. Encryption systems encode information to protect it from interference in transit and to enable the recipient to ensure it is coming from an authorised source.

Specific confidentiality risks arise when access must be given to individuals, other than staff, to carry out maintenance, upgrades or servicing of hardware and software in an office. Measures to safeguard and secure client information and data in these circumstances should be taken.

Confidential agreements should be sought from service providers.

For more detailed guidance and further information in relation to confidentiality agreements with maintenance providers, visit the Guidance and Ethics Committee page on the Law Society website at *www.lawsociety.ie*.

Guidance and Ethics Committee
Technology Committee

STAYING PROCEEDINGS IN AN ARBITRATION

Section 18 of the *Arbitration (International Commercial) Act, 1998* amended section 5 of the *Arbitration Act, 1980* insofar as it applies to small claims. It provides that nothing in section 5 of the 1980 act shall prevent any party to an arbitration agreement from bringing civil proceedings under the small claims procedure of the District Court as provided by the rules of court.

Section 5 of the 1980 act, when invoked by a party, obliges a court to stay court proceedings initiated by any party to an arbitration agreement, in respect of any matter agreed to be referred to arbitration, unless the court is satisfied 'that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred'.

The small claims procedure in the District Court deals with consumer claims where the award sought does not exceed €1,269 (formerly £1,000).

Arbitration Committee

CODE OF PRACTICE FOR FAMILY LAW

Practitioners are reminded of the *Code of practice for family law in Ireland* contained in appendix IV of the current *Guide to professional conduct* and are encouraged to read it. The code encourages a conciliatory approach in family law cases (as does the legislation) rather than an adversarial and aggressive one and seeks to ensure that the client knows about other available services such as mediation and counselling. The right of the client to apply for legal aid should also be made clear at an early stage.

The attention of practitioners is also drawn to part IV of the *Children Act, 1997* which amends the *Guardianship of Infants Act, 1964* and provides that a solicitor acting for an applicant or a respondent in any applications under section 6(A) (appointing non-marital fathers as guardians), section 11 (application for directions on welfare), or section 11(B) (applications by relatives for access) must file and serve a certificate stating that they have advised the applicant or respondent (as the case may be) of the possibility of engaging in counselling about the custody of a child and, where appropriate, the benefits of effecting settlement or agreement on issues affecting the welfare of a child.

This statutory responsibility applies in the District Court in respect of stand-alone applications in relation to children. The provision will be complied with in the context of applications for judicial separation and divorce by filing the certificates currently required under the *Judicial Separation and Family Law Reform Act* and the *Family Law Act (Divorce), 1996*.

It is essential that clients are reminded at an early stage in the case that they will have to work co-operatively with the other parent for the long-term benefit and welfare of the children.

Family Law and Civil Legal Aid Committee

LEGISLATION UPDATE: 20 MAY – 15 AUGUST 2003

ACTS PASSED

Arts Act, 2003
Number: 24/2003
Contents note: Updates the existing arts legislation. Repeals the *Arts Act, 1951* and the *Arts Act, 1973*; continues in being An Chomhairle Ealaíon (the Arts Council); confers certain functions in relation to the arts on the minister for arts, heritage, gaeltacht and the islands and provides for related matters
Date enacted: 8/7/2003
Commencement date: Commencement order/s to be made (per section 1(2) of the act)

Criminal Justice (Illicit Traffic by Sea) Act, 2003
Number: 18/2003
Contents note: Gives effect to the *Council of Europe agreement on illicit traffic by sea* implementing article 17 of the *United Nations convention against illicit traffic in narcotic drugs and psychotropic substances* (the *Vienna convention*), done at Strasbourg on 31/1/1995. Amends the *Criminal Justice Act, 1994* and provides for related matters
Date enacted: 23/6/2003
Commencement date: Commencement order/s to be made (per s29(2) of the act)

Criminal Justice (Public Order) Act, 2003
Number: 16/2003
Contents note: Enables persons convicted of an offence under certain provisions of the *Criminal Justice (Public Order) Act, 1994* to be excluded from entering licensed premises or premises (including a stall or vehicle) used for the sale of food or from areas in the vicinity of those premises; provides for the closure of such premises at a specified time or for a specified period where necessary in the interests of the prevention of disorder or excessive noise arising in relation to those premises and provides for related matters
Date enacted: 28/5/2003
Commencement date: 28/6/2003 (per s1(7) of the act)

Digital Hub Development Agency Act, 2003
Number: 23/2003
Contents note: Establishes the Digital Hub Development Agency, under the auspices of the minister for public enterprise; defines its functions; dissolves Digital Media Development Limited; amends the *Communications Regulation Act, 2002* and provides for related matters
Date enacted: 8/7/2003
Commencement date: 8/7/2003. 21/7/2003 appointed as the establishment day for the purposes of the act (per SI 303/2003)

European Convention on Human Rights Act, 2003
Number: 20/2003
Contents note: Enables further effect to be given, subject to the constitution, to certain provisions of the *Convention for the protection of human rights and fundamental freedoms* done at Rome on 4/11/1950 and certain protocols thereto; amends the *Human Rights Commission Act, 2000* and provides for related matters
Date enacted: 30/6/2003
Commencement date: Commencement order to be made for a commencement date not later than 30/12/2003 (per s9 of the act)

Fisheries (Amendment) Act, 2003
Number: 21/2003
Contents Note: Gives effect to the United Nations agreement on the implementation of the provisions of the *UN convention on the law of the sea* of 10/12/1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks; establishes an independent statutory appeals process for sea-fishing boat licensing; amends the *Fisheries Acts, 1959 to 2001* and the *Merchant Shipping (Certification of Seamen) Act, 1979* and provides for related matters
Date enacted: 1/7/2003
Commencement date: 1/7/2003

Garda Síochána (Police Co-operation) Act, 2003
Number: 19/2003
Contents note: Gives effect to articles 1 and 2 of the *Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland on Police Co-operation*, signed in Belfast on 29/4/2002. Articles 1 and 2 of the agreement provide for: i) members of each police service to be eligible to apply for certain posts in the other police service, and ii) a programme for members of each police service to be seconded with full police powers to the other police service for periods not exceeding three years
Date enacted: 24/6/2003
Commencement date: Commencement order to be made (per s9(5) of the act)

Houses of the Oireachtas Commission Act, 2003
Number: 28/2003
Contents note: Establishes the Houses of the Oireachtas Commission to oversee and control the funding and organisation of the Office of the Houses of the Oireachtas; provides for the funding, functions and composition of the commission; provides for the position of secretary general of the Office of the Houses of the Oireachtas, and provides for related matters
Date enacted: 14/7/2003
Commencement date: 1/1/2004 for all sections except s4(8) (per ss1(2) and 3(1) of the act). Section 4(8) shall not come into operation until a resolution of Dáil and/or Seanad Éireann is passed specifying the commencement date for s4(8) (per s3(2) of the act)

Immigration Act, 2003
Number: 26/2003
Contents note: Makes provision in relation to the control of entry into the state of non-nationals by placing on carriers bringing persons to the state obligations regarding the compliance of their passengers with immigration requirements on arrival. Also makes certain amendments to the *Refugee Act, 1996*
Date enacted: 14/7/2003
Commencement date: Commencement order/s to be made (per s13(2) of the act): 11/8/2003 for section 8 (exchange of information) (per SI 363/2003)

Industrial Development (Science Foundation Ireland) Act, 2003
Number: 30/2003
Contents note: Provides for the establishment of Science Foundation Ireland as an agency of Forfás. The main function of the foundation is to promote and develop world-class research capability in strategic areas of scientific endeavour that concern economic and social benefit and long-term competitiveness. These areas include information and communications technologies and biotechnology. Amends the *Industrial Development Acts, 1986 to 1998* and the *Shannon Free Airport Development Company (Amendment) Act, 1986* mainly in relation to grants and financial limits
Date enacted: 14/7/2003
Commencement date: Commencement order/s to be made (per s1(4) of the act): 25/7/2003 for all sections, other than ss19, 20 and 21 (per SI 325/2003); 25/7/2003 appointed as the establishment day for the purposes of the act (per SI 326/2003)

Intoxicating Liquor Act, 2003
Number: 31/2003
Contents note: Amends and extends the *Licensing Acts, 1833 to 2003*, the *Registration of Clubs Acts, 1904 to 2003* and

the *Equal Status Act, 2000* in order to respond to certain recommendations of the Commission on Liquor Licensing set out in the *Report on admission and service in licensed premises* (December 2002) and the final report (April 2003), and to concerns outlined in the *Interim report of the strategic task force on alcohol* (May 2002). These proposals relate to combating drunkenness and disorderly conduct as well as underage and binge drinking
Date enacted: 14/7/2003
Commencement date: 18/8/2003 for all sections of the act, except the following sections which will come into operation on 29/9/2003: a) ss10, 14, 15, 16(b)(ii) and 19; b) s23 (insofar as it relates to s19 of the act and to s34A of the *Intoxicating Liquor Act, 1988*); c) s25 (insofar as it inserts s15(3) of the *Equal Status Act, 2000*)

Licensing of Indoor Events Act, 2003
Number: 15/2003
Contents note: Provides for the licensing of indoor events; amends the *Fire Services Act, 1981* and provides for related matters
Date enacted: 26/5/2003
Commencement date: Commencement order/s to be made (per s1(3) of the act)

Local Government (No 2) Act, 2003
Number: 17/2003
Contents note: Amends the *Local Government Act, 2001* to end the dual local authority/parliamentary membership from the next local elections in 2004; repeals chapter 3 of part 5 (ss39 to 43) of the *Local Government Act, 2001* which provides for the introduction of direct elections of city and county cathaoirligh from 2004 onwards; amends s97 of the *Planning and Development Act, 2000* and provides for related matters
Date enacted: 2/6/2003
Commencement date: 2/6/2003

Official Languages Act, 2003
Number: 32/2003
Contents note: Promotes equality of status for, and equal rights and privileges as to the use of, Irish and English as the official languages of the state, in particular with respect to their use in parliamentary proceedings, in acts of the Oireachtas, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of public bodies; sets out the powers and functions of such bodies with respect to the official languages of the state; establishes the Office of the Official Languages Commissioner to monitor compliance with the act and provides for related matters
Date enacted: 14/7/2003
Commencement date: Commencement order/s to be made bringing the act into operation not later than three years after the passing of the act (per s1(2) of the act)

Opticians (Amendment) Act, 2003
Number: 22/2003
Contents note: Amends the *Opticians Act, 1956* to deregulate the sale of ready-made spectacles, to re-title ophthalmic opticians as optometrists, to make further provision in relation to the registration of optometrists and dispensing opticians, to update monetary penalties and to remove the absolute prohibition on treatment and prescription or administration of drugs by optometrists
Date enacted: 3/7/2003
Commencement date: Commencement order/s to be made (per s13 of the act): 31/7/2003 for all sections of the act, other than s12 (per SI 350/2003)

Protection of Employees (Fixed-Term Work) Act, 2003
Number: 29/2003
Contents note: Provides for the implementation of directive 1999/70/EC concerning the *Framework agreement on fixed-term work* concluded by ETUC, UNICE and CEEP. Amends the *Employment Agency Act, 1971*, the *Organisation of Working Time Act, 1997* and the *Protection of Employees (Part-Time Work) Act, 2001* and provides for related matters
Date enacted: 14/7/2003
Commencement date: 14/7/2003

Protection of the Environment Act, 2003
Number: 27/2003
Contents note: Implements directive 96/61/EC on integrated pollution prevention and control (the *IPPC directive*). Amends the *Environmental Protection Agency Act, 1992*, the *Waste Management Act, 1996* and the *Litter Pollution Act, 1997* and provides for related matters
Date enacted: 14/7/2003
Commencement date: Commencement order/s to be made (per s2 of the act)

Taxi Regulation Act, 2003
Number: 25/2003
Contents note: Provides for the establishment of the Commission for Taxi Regulation and the Advisory Council to the Commission for Taxi Regulation. Amends the *Road Traffic Act, 2002*
Date enacted: 8/7/2003
Commencement date: 8/7/2003 for part 1 and part 5; commencement order/s to be made for part 3 (small public service vehicle regulation) (ss33 to 52 incl) (per s33 of the act); establishment day order for the Commission for Taxi Regulation (part 2 of the act) to be made (per s5 of the act); appointed day order for the Advisory Council to the Commission for Taxi Regulation (part 4 of the act) to be made (per s53 of the act)

SELECTED STATUTORY INSTRUMENTS

Business Names Regulations 2003
Number: SI 188/2003
Contents note: Disapply filing fees where a change of address of the principal place of business of a registered business name is notified electronically to the registrar of business names
Commencement date: 13/5/2003

Central Bank and Financial Services Authority of Ireland Act, 2003 *(Commencement of Certain Provisions) (No 2) Order 2003*
Number: SI 218/2003
Contents note: Appoints 4/6/2003 as the date on which s14 (insofar as it relates to s19(2) to (5) of the *Central Bank Act, 1942*) of the *Central Bank and Financial Services Authority of Ireland Act, 2003* comes into operation

Civil Defence Act, 2002 *(Commencement and Establishment Day) Order 2003*
Number: 186/2003
Contents note: Appoints 7/5/2003 as the commencement date for all provisions of the act not previously in operation; appoints 7/5/2003 as the establishment day for the purposes of the act

Companies (Fees) Order 2003
Number: SI 187/2003
Contents note: Amends the *Companies (Fees) Order 2001* (SI 477/2001) as amended to provide for the disapplication of filing fees where certain specified documents are filed electronically with the registrar of companies
Commencement date: 13/5/2003

Companies (Forms) Order 2003
Number: SI 189/2003
Contents note: Amends the form prescribed for the purposes of s125 of the *Companies Act, 1963* by introducing a new form B1. This form updates the form to be completed when furnishing an annual return to the registrar of companies. Provides that the form B1 previously in use (set out in the first schedule) may continue to be used to deliver an annual return to the registrar of companies until 31/12/2003, and

that with effect from 1/1/2004, only the version of the form B1 set out in the second schedule may be completed when furnishing an annual return to the registrar of companies
Commencement date: 13/5/2003

Company Law Enforcement Act, 2001 *(Winding-up and Insolvency Provisions) (Commencement) Order 2003*
Number: SI 217/2003
Contents note: Appoints 1/6/2003 as the commencement date for s56 of the *Company Law Enforcement Act, 2001* in so far as it relates to liquidators who were appointed to insolvent companies on or after 1/1/2000 and before 1/7/2001, where in respect of the company to which the liquidator was appointed an order has not been made under s249(1) of the *Companies Act, 1963* or where the meetings required under s273(1) of the *Companies Act, 1963* have not been held

Criminal Justice Act, 1994 *(Section 32) Regulations 2003*
Number: SI 242/2003
Contents note: Prescribe certain persons and bodies, as specified in directive 2001/97/EC amending directive 91/308/EEC on prevention of the use of the financial system for money laundering, to be designated bodies for the purposes of s32 of the *Criminal Justice Act, 1994*. The list of designated persons or bodies includes solicitors, when participating in any of the activities set out in article 2a(5) of directive 91/308/EEC as inserted by directive 2001/97/EEC. Provide that the disclosure of information requirements of s57 of the *Criminal Justice Act, 1994* will not apply to accountants, auditors, solicitors or tax advisors with regard to information they receive from or in relation to a client in certain circumstances
Commencement date: 15/9/2003

Data Protection (Amendment) Act, 2003 *(Commencement) Order 2003*
Number: SI 207/2003
Contents note: Appoints 1/7/2003 as the commencement date for the *Data Protection (Amendment) Act, 2003*, other than: a) s5(d) insofar as it inserts subsection (13) of s4 of the *Data Protection Act, 1988*; b) s16; and c) s22 insofar as it repeals the third schedule to the *Data Protection Act, 1988*

District Court* (Taxes Consolidation Act, 1997) *(Amendment) Rules 2003
Number: 283/2003
Contents note: Substitute a new rule 2(7) in order 38 of the *District Court Rules 1997* (SI 93/1997); delete rule 2(8) in order 38 and renumber rule 2(9) as rule 2(8); substitute new forms 38.12 and 38.13 in schedule B to the *District Court Rules 1997*
Commencement date: 24/7/2003

European Communities (Random Roadside Vehicle Inspection) Regulations 2003
Number: 227/2003
Contents note: Implement directive 2000/30/EEC on random roadside vehicle inspections of commercial vehicles weighing over 3.5 tonnes, mini-buses, other buses and coaches over one year old by an Garda Síochána or persons appointed by the minister for transport to assist the gardaí in carrying out inspections or to carry out inspections in their own right
Commencement date: 6/6/2003

European Communities (Recognition of Qualifications in Pharmacy) (Amendment) Regulations 2003
Number: 352/2003
Contents note: List the qualifications in pharmacy that are recognised for the purpose of free movement within the European Community
Commencement date: 24/7/2003

European Communities (Recognition of Qualifications in Veterinary Medicine) Regulations 2003
Number: 288/2003
Contents note: Implement directive 2001/19/EC by extending the circumstances under which the Veterinary Council of Ireland is obliged to recognise or consider qualifications as a veterinary surgeon gained outside Ireland. Revoke and consolidate the *European Communities (Recognition of Qualifications in Veterinary Medicine) Regulations 1980 to 1994*
Commencement date: 1/7/2003

European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003
Number: SI 211/2003
Contents note: Implement directive 85/611/EEC as amended by directive 88/220/EEC and directive 95/26/EC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). Amend and consolidate all previous statutory instruments governing UCITS
Commencement date: 29/5/2003

European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2003
Number: SI 212/2003
Contents note: Implement directive 2001/108/EC (*Product directive*) which amends directive 85/611/EEC as amended by directive 88/220/EEC and directive 95/26/EC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). Amend SI 211/2113 to give effect to the *Product directive* which expands the product range for UCITS
Commencement date: 29/5/2003

Family Support Agency Act, 2001 *(Establishment Day) Order 2003*
Number: 181/2003
Contents note: Appoints 6/5/2003 as the establishment day for the Family Support Agency

Finance Act, 2003 *(Commencement of certain provisions of Chapter 2 of Part 2) Order 2003*
Number: 244/2003
Contents note: Appoints 1/6/2003 as the commencement date for ss107, 108, 109 and 110 of the *Finance Act, 2003* (provisions relating to gaming licences)

Finance Act, 2003 *(Section 111) (Commencement) Order 2003*
Number: 173/2003
Contents note: Appoints 1/5/2003 as the commencement date for section 111 of the *Finance Act 2003* (time limits on assessment of betting duty payable)

Freedom of Information Act, 1997 *(Fees) Regulations 2003*
Number: 264/2003
Contents note: Prescribe amounts of fees for the purposes of ss47 and 34(1)(c) of the *Freedom of Information Act, 1997* in respect of requests made under s7 of that act for non-personal information and in respect of certain applications for review of decisions of public bodies under ss14 and 34
Commencement date: 7/7/2003

Freedom of Information Act, 1997 *(Section 17(6)) Regulations 2003*
Number: 265/2003
Contents note: Prescribe certain classes of individuals who may apply under s17 of the *Freedom of Information Act, 1997* for amendment of records containing certain incorrect, incomplete or misleading information having regard to relevant circumstances and to guidelines published by the minister for finance
Commencement date: 7/7/2003

Freedom of Information Act, 1997 *(Section 18(5A)) Regulations 2003*
Number: 266/2003
Contents note: Prescribe certain classes of individuals who may apply under s18 of the *Freedom of Information Act, 1997* for information regarding acts of public bodies having regard to relevant circumstances and to guidelines published by the minister for finance
Commencement date: 7/7/2003

Marine Casualty Investigation Board (Establishment Day) Order 2003
Number: SI 125/2003
Contents note: Appoints 25/3/2003 as the establishment day for the Marine Casualty Investigation Board under s7 of the *Merchant Shipping (Investigation of Marine Casualties) Act, 2000*

National Minimum Wage Act, 2000 *(National Minimum Hourly Rate of Pay) Order 2003*
Number: 250/2003
Contents note: Sets the national minimum hourly rate of pay on and from 1/2/2004 at €7

National Tourism Development Authority Act, 2003 *(Establishment Day) Order 2003*
Number: SI 204/2003
Contents note: Appoints 28/5/2003 as the establishment day for the purposes of the *National Tourism Development Authority Act, 2003*

Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 2003
Number: SI 197/2003
Contents Note: Prescribe revised forms and certificates to be used in connection with the submission of claims under section 6 of the *Protection of Employees (Employers' Insolvency) Acts, 1984 to 2003*
Commencement date: 25/5/2003

Road Traffic Act, 1961 *(Section 103) (Offences) Regulations 2003*
Number: 322/2003
Contents note: Provide that the fixed-charge system be applied to the driver of a mechanically-propelled vehicle in respect of specified safety belt offences. Also prescribe the form of the notices and documents to be used where a member of An Garda Síochána alleges that a speeding offence or a safety belt offence has been committed, the amounts which a person who is liable to be prosecuted may pay as an alternative to the institution of a prosecution for the offence/s and details of the penalty points that will be endorsed on the driver's entry in the licence record following payment of a fixed charge or on conviction of the offence/s
Commencement date: 25/8/2003

Road Traffic Act, 2002 *(Commencement) Order 2003*
Number: SI 214/2003
Contents note: Appoints 1/6/2003 as the commencement date for the relevant provisions of the act relating to penalty points for the offence of using a vehicle without insurance or guarantee – see SI for full details

Road Traffic Act, 2002 *(Commencement) (No 2) Order 2003*
Number: 321/2003
Contents note: Appoints 25/8/2003 as the commencement date for the relevant provisions of the act relating to penalty points for the offence of not wearing a safety belt or permitting a person under 17 years of age to occupy a front seat or a rear seat when not wearing a safety belt or appropriate child restraint – see SI for full details

Social Welfare (Miscellaneous Provisions) Act, 2002 *(Section 12) (Commencement) Order 2003*
Number: SI 209/2003
Contents note: Appoints 27/5/2003 as the commencement date for s12 of the *Social Welfare (Miscellaneous Provisions) Act, 2002*. Section 12 provides for an amendment to the definition of 'transaction' contained in s223 of the *Social Welfare (Consolidation) Act, 1993* in relation to personal public service (PPS) numbers to clarify its use by agencies in relation to public service business

Social Welfare (Miscellaneous Provisions) Act, 2003 *(Sections 13 and 15) (Commencement) Order 2003*
Number: SI 210/2003
Contents note: Appoints 27/5/2003 as the commencement date for ss13 and 15 of the *Social Welfare (Miscellaneous Provisions) Act, 2003*. Section 13 provides that, with effect from the commencement date, rent supplement under the supplementary welfare allowance scheme shall be payable only where a person is lawfully in the state. It also provides that rent supplement shall not be payable where a person has made an application for asylum and such application is awaiting final decision by the minister for justice, equality and law reform. Section 15 provides that the authority of the health boards to pay rent supplement in cases of urgency is not affected by the provisions of s13.

Prepared by the Law Society Library

Personal injury judgment

Tort – employer liability – personal injury – possible brain damage – proceedings issued against defendant – statement of claim delivered – solicitors for defendant seeking to have plaintiff medically examined 'on the usual terms' – refusal of plaintiff to consent to allowing his medical advisers to consult with the defendant's medical advisers – motion seeking a stay of proceedings until such time as the plaintiff consented to allowing his medical advisers to consult with the defendant's medical advisers – High Court hearing on the matter – appeal to the Supreme Court – determination of Supreme Court that the proceedings be stayed until such time as the plaintiff consents to the defendant's medical advisers consulting with his medical advisers

CASE

***Michael McGrory v Electricity Supply Board*, High Court, judgment of Johnson J delivered on 13 January 2002; Supreme Court (Keane CJ, Murray and Hardiman JJ), judgment of the court delivered by Keane CJ on 24 July 2003.**

THE FACTS

Michael McGrory claimed damages for personal injuries which he alleged he sustained as a result of the negligence, breach of duty and breach of statutory duty of the ESB while he was in their employment on 29 November 1997. It was alleged on his behalf that what was described as an 'adjustable base and head jack' came free from a rope and struck him on the head on that occasion. It was claimed that an MRI examination revealed brain damage that would be permanent.

The plenary summons was issued on 16 February 2001 and a statement of claim was delivered on 16 July 2001. On 12 July 2001, the solicitors for the ESB wrote to the solicitors for McGrory stating that they wished to have McGrory examined by a consultant neurosurgeon, Christopher Pidgeon. They also asked for the name and address of McGrory's surgeon, with whom Pidgeon would consult. The solicitors confirmed that the ESB would be responsible for the cost of the examination and any necessary expenses that McGrory might incur in attending. McGrory's solicitors replied on 26 July confirming that they had no objection to their client being medically examined by one of their experts, but stating that they did not have his instructions to consent to the ESB's doctor and his doctor discussing the case.

The ESB's solicitors wrote again on 19 October 2001 stating that the solicitors understood that Mr McGrory had been under the care of Dr Norman Delanty, a consultant neurologist, and Dr Veronica O'Keane, a consultant psychiatrist. They asked for confirmation that Pidgeon could consult with Dr Delanty and Dr O'Keane 'on the usual terms'. McGrory's solicitors replied on 15 November reiterating their refusal to consent and adding that an exchange of medical reports could take place in the normal way once the pleadings had closed.

On 11 January 2002, the ESB's solicitors wrote stating that unless McGrory's solicitors confirmed by return that Pidgeon could consult with Dr Delanty and Jack Philips in relation to the accident, a motion would be brought seeking an order compelling McGrory's consent to a joint medical examination.

Thereafter, nothing seems to have happened until 21 November 2002, when the solicitors for the ESB brought a notice of motion seeking an order staying the proceedings until such time as McGrory consented to allowing his medical advisers to consult with the ESB's medical advisers. In the affidavit grounding that application, the solicitors exhibited a letter from Pidgeon dated 5 November 2002 in which he wrote: 'As I believe there are significant functional factors in play in this case and as I have not had any access to x-rays and test results, I require a joint consultation with Dr Norman Delanty'.

In a further affidavit sworn on 11 February 2003, the solicitors for the ESB exhibited a document prepared by the Litigation Committee of the Law Society, which stated (among other things):

'*1) By custom and practice and, as a result of an agreement between the Law Society and the Irish Medical Organisation (IMO), what had came to be known as the usual terms on which the plaintiff in a personal injury case, through their solicitors, consents to a medical examination taking place by a doctor on behalf of the defendant, have come to be formulated as follows …*

'*2) The plaintiff's doctor will attend at the medical examination by the doctor on behalf of the defendant, which will take place at the consulting rooms of whichever doctor is agreed between them. This is one of the terms that are more honoured in the breach than the observance. The usual procedure now is that the doctors communicate by telephone and the plaintiff's doctor furnishes his notes to the defendant's doctor to enable the latter to prepare his medical report following his examination of the plaintiff*'.

The ESB's solicitors had also written on 11 January 2003 asking that discovery be made on a voluntary basis of McGrory's medical records prior to and subsequent to the date of this alleged accident, that is, 19 October 1999.

The ESB's solicitors stated that McGrory's solicitors had not consented to making voluntary discovery of the documents in question.

JUDGMENT OF THE HIGH COURT

The ESB's notice of motion was heard in the High Court before Johnson J on 13 January 2002. In an *ex tempore* judgment, the trial judge refused the relief sought in the motion, indicating that no authority had been cited to him permitting him to make such an order. He said that, in due course, following the exchange of medical reports, the ESB would be allowed as much time as it required to have McGrory properly assessed. From that judgment and order, the ESB appealed to the Supreme Court.

JUDGMENT OF THE SUPREME COURT

The Supreme Court (Keane CJ, Murray and Hardiman JJ) heard the appeal from the High Court and Keane CJ delivered the judgment of the court on 24 July 2003. The chief justice set out the facts, which are referred to above. He noted that no defence had, as of that time, been delivered by the ESB.

The parties were agreed, according to the chief justice, that while the practice of plaintiffs in personal injury actions being examined by a doctor on behalf of the defendant, sometimes, although not invariably, with the plaintiff's doctor present, was of long standing, there were no rules of court dealing with the matter nor any authorities in this jurisdiction as to the precise legal status of the practice. A number of relevant decisions of courts in England and Wales and Northern Ireland were, however, referred to by counsel, and the chief justice considered these cases.

In *Ross v Tower Upholstery Ltd* ([1962] NI 3), the plaintiff declined to undergo a medical examination in a breach of contract case in which his medical condition was in issue. The Northern Ireland Court of Appeal said that it was satisfied that the court had jurisdiction to stay the action by virtue of the provisions of section 27 of the *Judicature (Ireland) Act 1877*, which enabled the High Court and the Court of Appeal to stay proceedings in any cause or matter if necessary for the purpose of justice.

The chief justice referred to a decision of the English Court of Appeal in *Edmeades v Thames Board* ([1969] 2 QB 68), where a similar view was taken. That was a case in which after the plaintiff had been examined by a doctor on behalf of the defendants, a new complaint was advanced on behalf of the plaintiff, that is, that he suffered from osteoarthritis. The defendants wished at that stage to have the plaintiff examined by a specialist who could deal with the osteoarthritis aspect and suggested the names of six doctors from which the plaintiff could make a choice. The plaintiff's solicitors, however, refused to agree to any examination being conducted other than by the original doctor for the defendants. The Court of Appeal reversed the decision of the High Court judge that there was no jurisdiction to order a stay on an order to compel a plaintiff to submit to a medical examination. Lord Denning's reasoning was quoted by Chief Justice Keane:

'This court has ample jurisdiction to grant a stay whenever it is just and reasonable so to do. It can, therefore, order a stay if the conduct of the plaintiff in refusing a reasonable request is such as to prevent a just determination of the cause. The question in this case is simply whether the request was reasonable or not.

'I think that the request of the defendants was perfectly reasonable. They were faced with a new allegation which had not been made in the statement of claim, an allegation of osteoarthritis. The defendants ought in all reason to have an opportunity of considering it and being advised upon it. They would need it in order to assess the amount to pay into court so as to dispose of the whole matter without coming to trial'.

Dunne v British Coal Corporation ([1993] ICR 601) was also referred to by the chief justice. In *Dunne*, the defendants, who were the plaintiff's employers, wished to have him medically examined and said that their medical examiner wished to examine the plaintiff's hospital records, the plaintiff's general practitioner's notes and the defendant's own medical officer's notes to determine whether there had been any pre-existing problems. The plaintiff consented to discovery of medical records relating to his neck, injuries to which were the subject of the action, but refused to agree to anything more extensive. The Court of Appeal was of the view that, where the plaintiff unreasonably withheld his consent to the production of relevant medical records to the defendants' medical advisers, the court had jurisdiction to grant a stay. Stuart-Smith LJ said that if these documents were not produced before the trial, he had no doubt that the defendants could issue a subpoena *duces tecum* for their production at the trial and that there was no reason why they should not be produced at an earlier stage. He referred to the following observations of Lord Mackay of Clashfern in *O'Sullivan v Herdmans Ltd* ([1987] 1 WLR 1047) (quoted by Keane CJ):

'The interests of justice are … served by the promotion of settlements rather than the prolongation of litigation and by the possibility of early, complete preparation for both parties to a trial rather than by obliging one party to delay its full preparation until after the trial has actually started'.

Keane CJ then considered the issue as to whether a party to the proceedings can prevent another party from interviewing an expert witness whom he has retained as an adviser. Keane CJ stated that this was considered by the English Court of Appeal in *Harmony Shipping Co v Saudi Europe* ([1979] 1 WLR 1381). An issue arose in that case as to the authenticity of a particular document. A handwriting expert retained by the plaintiffs with a view to establishing the authenticity of the document gave them certain advice and then, not realising it was the same case, advised the defendants. The expert having informed the defendants, on discovering his mistake, that he could no longer act in the matter on their behalf, they decided to subpoena him to give evidence on their behalf. The plaintiff then issued proceedings against both the expert and the defendants seeking an injunction restraining the defendants in the main proceedings from consulting with the expert or calling him as a witness. Lord Denning MR upheld the decision of the trial judge that such an injunction should not be granted, and his 'trenchant observations' were quoted by the chief justice:

'So far as witnesses of fact are concerned, the law is as plain as can be. There is no property in a witness. The reason is because the court has a right to every man's evidence. Its primary duty is to ascertain the truth. Neither one side nor the other can debar the court from ascertaining the truth either by seeing a witness beforehand or by purchasing his evidence or by making communication to him. In no way can one side prohibit the other side from seeing a witness of fact, from getting the

facts from him and from calling him to give evidence or from issuing him with a subpoena'.

Lord Denning went on to say in the *Harmony Shipping Co* case that, while many communications between a solicitor and an expert witness would be protected by legal professional privilege, subject to that qualification an expert witness fell into the same position as a witness of fact.

The question as to whether the principle of medical confidentiality requires a different approach was considered in the Canadian case of *Hay v University of Alberta* ([1991] 2 Med LR 204). Keane CJ quoted Picard J in that case:

'I find that the right of the patient to confidentiality ceases when he puts his health in issue by claiming damages in a lawsuit; the raison d'être *for confidentiality is gone. The right to confidentiality is then eclipsed by the right of those who face the action to know the basis of the claim being advanced. The patient cannot use confidentiality to preclude the normal operation of the legal process and the adversary system. While many possible evils such as tampering with a witness's evidence can be postulated, I believe a physician may be less vulnerable to this than other witnesses and that few, if any, in the legal profession would stoop to such tactics'.*

That passage was cited with approval in an English decision of *AB & Ors v John Wyeth & Brothers* ([1996] 7 Med LR 300). Keane CJ stated that a similar approach was adopted by Buckley J in another English case, *Shaw v Skeet Aung Sooriakunaran* ([1996] 7 Med LR). That was a medical negligence action in which the defendants wished to interview the plaintiff's treating doctors following the disclosure of hospital records. The plaintiff's solicitors were prepared to release the treating doctors from their duty of confidentiality, but sought to impose a condition, namely, that the plaintiff's solicitors be present during the interviewing process. In the course of his judgment, Buckley J said that a plaintiff who sought to bring an action but, by his own conduct, prevented material evidence being obtained by the other side and placed before the court was impeding the process of law. He added:

'So one sees that in the personal injury cases that for some time now that courts have either stayed or threatened to stay proceedings if, for example, the plaintiff refuses to be medically examined or to give consent to hospitals or doctors to disclose otherwise confidential matters'.

In Keane CJ's view, those principles that have been adopted by courts in other common-law jurisdictions should also be adopted in Ireland. He stated that the plaintiff who sues for damages for personal injuries by implication necessarily waives the right of privacy, which he would otherwise enjoy in relation to his medical condition. The law must be in a position to ensure that he does not unfairly and unreasonably impede the defendant in the preparation of his defence by refusing to consent to a medical examination. Similarly, the court must be able to ensure that the defendant has access to any relevant medical records and to obtain from the treating doctors any information they may have relevant to the plaintiff's medical condition, although the plaintiff cannot be required to disclose medical reports in respect of which he is entitled to claim legal professional privilege.

In this case, the chief justice stated that the fact that it would be possible for the defendants to obtain the x-ray and test results which Mr Pidgeon wished to see by means of the process of discovery did not entitle the plaintiff to withhold them from the defendant at this stage. And he added: 'There is no room today in properly conducted litigation for an approach which denies one side access to relevant material which in any event will be available at a later stage of the proceedings'. That was the view taken in the authorities in other jurisdictions to which the chief justice had already referred and he had no doubt that it accorded with fairness and common sense.

Keane CJ stated that the right of the defendant in an action where the plaintiff claims damages for personal injuries to have the plaintiff medically examined, to have access to his medical records and to interview his treating doctors is not dependent on the pleadings having been closed. In such proceedings, damages are always in issue, unless the parties at some stage come to an agreement on *quantum*. A medical examination can thus be sought at any stage and it is indeed not unknown for potential defendants to seek such an examination before any proceedings are actually instituted. Once proceedings have been instituted, such an examination and full access to the plaintiff's medical records and interviews with his medical advisers are of assistance in enabling the defendants to form a view as to the amount of damages which the plaintiff is likely to recover and of any lodgement which they should prudently make in court with their defence.

Whether or not liability is a

live issue in a case, stated the chief justice, making such material available to the defendant at an early stage of the litigation, instead of withholding it until the action itself, when it will have to be produced, can only facilitate the earlier settlements of actions.

The chief justice stated that he had no doubts that the courts enjoy an inherent jurisdiction to stay proceedings where justice so requires and that it should be exercised in cases where the plaintiff refuses to submit to a medical examination or to disclose his medical records to the defendant or to permit the defendant to interview his treating doctors.

The Supreme Court allowed the appeal and substituted for the order of the High Court an order staying the proceedings until such time as McGrory consented to the ESB's medical adviser consulting with his medical advisers. G

This judgment was summarised by solicitor Dr Eamonn Hall.

Personal injury case note

Employer's liability – negligence – personal injuries – post-traumatic stress disorder – future loss of earnings – review of evidence on appeal – damages – adjustment of award

CASE

***John Ledwith v Bus Átha Cliath/Dublin Bus*, unreported, Supreme Court, 24 June 2003. The judgment of the court was delivered *ex tempore* by Chief Justice Ronan Keane.**

THE FACTS

This was an appeal from the judgment of Ms Justice Finlay Geoghegan of 28 February 2003, when she awarded the total sum of €426,186 to the plaintiff in damages arising from the post-traumatic stress disorder he suffered following an assault while working as a bus conductor employed by the defendant on the 67A route from Maynooth on 28 April 1990.

The chief justice said that the plaintiff's account in evidence at the trial was essentially that two people had boarded the bus with bottles and in an intoxicated state. When the plaintiff challenged them and told them they could not carry the bottles on the bus, the two persons became physically and verbally abusive towards him.

The chief justice said that there was a conflict of evidence as between the plaintiff and the driver, James Finn, which conflict the trial judge had not been able to reconcile. Preferring the evidence of the plaintiff, which, notwithstanding some embellishment in giving his evidence (which the trial judge did not specify), was more credible than that of the driver, she observed:

1) Not only was the plaintiff's evidence contrary to the driver's account, but that Garda McNamara had corroborated the plaintiff's account, and
2) Driver Finn had agreed with the trial judge that he had not been asked to recall the events until the days just prior to the trial, some 13 years after the assault.

And while the trial judge concluded that driver Finn, then retired from Dublin Bus, was doing his best to recollect the events of 13 years previously, he had acknowledged in evidence that his memory was not as good as that of the plaintiff. The chief justice held that the trial judge preferred the plaintiff's version of events and the court was satisfied that she was entitled to find as she had done.

The chief justice noted that the defendant had not argued in any way that, notwithstanding the trial judge preferring the plaintiff's account, the defendant employer's actions in instructing the bus crew to move off the terminus with the threatening passengers on board when he would have the gardaí meet the crew en route, as recounted by the plaintiff, did not constitute negligence. The fact was that the defendant did not make any issue of this during the trial.

The chief justice further noted that the bus controller of the day, inspector Collins, did not give evidence at the trial and while there was no onus on the defendant to call inspector Collins to give evidence, equally the plaintiff was entitled to rely on the evidence he had given and the defendant was entitled to rely on the driver's evidence but, in not calling the inspector, the defendant took a risk that the trial judge would prefer the plaintiff's evidence.

Accordingly, the chief justice found that the appeal on liability must fail.

With regard to the award of damages, the chief justice noted that there was no doubt that the trial judge's approach to her assessment of damages was on the basis that the physical injuries were of a minor nature and she noted that the extent of the plaintiff's physical injuries was a laceration of his lip. It is clear that if that had been the extent of the plaintiff's injuries, the award of damages could not stand.

The chief justice found that the real gist of the trial judge's assessment of damages was that the plaintiff had suffered a severe form of post-traumatic stress disorder which set in shortly after the assault, and this was confirmed both by the plaintiff's evidence and by the medical evidence offered by the plaintiff's GP and his two psychiatrists, who all confirmed the catastrophic psychiatric effects of the assault on the plaintiff's ability to work.

The chief justice noted that the medical evidence at trial had been to the effect that it would have been impossible for the plaintiff to return to work as a bus conductor and, while his doctors accepted that things might have been better for him had he pursued some other type of work, his failure to work was referable to the psychiatric consequences of his post-traumatic stress disorder and not because he simply did not wish to work.

The chief justice noted that the evidence given by the psychiatrists was unchallenged by the defendant and while the psychiatrists were cross-examined on the consequences of what were relatively minor

physical injuries, no alternative psychiatric opinion was adduced. The fact was that the plaintiff could not get to first base and the trial judge was satisfied that as the plaintiff had suffered post-traumatic stress disorder, it was this that prevented him from getting back to work either now or in the future.

The chief justice noted that the trial judge, in assessing the plaintiff's loss of earnings, while she accepted psychiatric illness, was of the view that it would have been reasonable for the plaintiff to have made some effort to get back to some form of employment and she felt she should make a finding that he would have been able to earn, for one period 40% of the salary of a bus conductor and for a subsequent period 50% and that therefore the plaintiff was entitled to 60% of his loss of earnings claimed for that first period and 50% of his loss claim for the subsequent period. She assessed his past loss of earnings at €170,000 and his future loss of earnings at €150,300.

The chief justice noted finally that the trial judge's findings were based on the differential between his wages if he had mitigated his loss and what he would have earned as a bus conductor. The chief justice further held that the trial judge was entitled to find that the plaintiff should recover his loss of pension entitlement from age 65 at €15,886 and that the general damages of €80,000 to date of trial and €10,000 into the future were reasonable giving a total award of €426,186.

The chief justice noted that the defendant had challenged this figure as being excessive in principle and should be adjusted.

The chief justice noted that from one point of view it was a very generous award for the plaintiff and it was no doubt contributed to by the fact that there was a prodigious delay in bringing the case on for hearing and that it might have been reasonable for this trial to be heard even two years after the assault and the court could speculate in vain as to what the award might have been had the trial occurred within two years of the assault and that, undoubtedly, the delay in bringing the case to trial had inflated the ultimate award.

Notwithstanding that, the court was satisfied that the trial judge was entitled to make the award that she had made and that, while generous, there was no basis on which the court could set aside the findings of the trial judge and the court would therefore dismiss the appeal against *quantum* also.

The court affirmed the order[1] of the trial judge and confirmed the order for interest on the balance in the terms of the usual order and awarded costs of the appeal to the plaintiff.

McGuinness and McCracken JJ concurred.

***Counsel for the plaintiff/respondent**: Jack Fitzgerald SC with Paddy McCarthy SC and John Aylmer BL, instructed by Eugene F Collins.*

***Counsel for the defendant/appellant**: John Phelan SC with Michael Byrne BL, instructed by Michael Carroll, CIE Solicitors' Office.*

Footnote

1 At the conclusion of the trial, counsel for the defendant applied for a stay, which was granted subject to payment by the defendant to the plaintiff within 28 days of perfection of the order the sum of €250,000 on account of damages pending final determination of the appeal. The defendant subsequently applied to the Supreme Court by motion on notice to vary or set aside the terms of the stay. The motion coming on for hearing on 16 May 2003, the court reduced the payment on account of damages to €100,000 on the defendant's undertaking to lodge books of appeal on or before 28 May 2003, whereupon the court directed an early hearing of the appeal so as not to unduly prejudice the plaintiff. G

This case note was prepared by solicitor William Aylmer.

LITIGATION UPDATE

The High Court ([1996] 155 JR)

Between Giles J Kennedy carrying on practice under the style of Giles J Kennedy and Company (applicant) and the Law Society of Ireland & Ors (respondents)

On 30 July 2003, Mr Justice Kearns delivered judgment in the above matter which had been referred back to the High Court from the Supreme Court. This was to consider whether, having regard to an *ultra vires* exercise of statutory powers by the Law Society, *vis* the investigation of the possibility of spurious claims in the course of a *Solicitors' accounts regulations* inspection, the applicant had an entitlement to claim damages. Mr Justice Kearns held that the applicant's claim for damages could not succeed. The full text of the judgment may be accessed in the members' area of the Law Society website under *Current news*.

First Law Update

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Compiled by Karen Holmes for FirstLaw

CHILDREN AND YOUNG PERSONS

Child abduction

Application for return of children to jurisdiction of habitual residence – general rule that children to be returned to country of habitual residence from where they had been wrongfully removed – exception to general rule where grave risk of harm to children should they be returned – whether children would be exposed to grave risk of harm if returned to country of habitual residence – whether High Court erred in finding that case came within an exception to general rule – Convention on the Civil Aspects of International Child Abduction, *article 13*

The applicant and respondent had been married and living in the United Kingdom prior to the respondent leaving that jurisdiction and, without the consent or knowledge of the applicant, removing the children of the marriage to Ireland. One of those children suffered from autism. The High Court, on application to it by the applicant, refused to order the return of the children to the country of their habitual residence on the ground that article 13 of the *Hague convention* applied to the situation of the children, namely, that there was a grave risk of harm to them should they be returned on the basis that if one of the children, who was autistic, were returned, he would not have his autistic needs satisfied in England as quickly as he would in Ireland. The applicant appealed against that order on the ground that the trial judge had erred in finding that the child's development would be compromised by his return to the jurisdiction of the courts of England and Wales and that compromise would constitute the type of physical or psychological harm which is contemplated by article 13 of the *Hague convention*.

The Supreme Court (Denham J; Geoghegan and McCracken JJ concurring) allowed the appeal and ordered the return of the children to England, holding that an underlying principle of the *Hague convention* is that issues of the child's welfare and of custody and access should be determined in the jurisdiction of the child's habitual residence. The grave risk exception arising under article 13 was one that should be strictly applied in the narrow context in which it arises and did not arise on the facts of this case. Accordingly, while commencing to hear the application as an application under the *Hague convention*, the trial judge fell into error and proceeded to conduct a hearing more akin to a custody hearing when he began comparing the health facilities available to the child in England and Ireland when addressing the issue of his welfare.

Obiter dictum: it would be desirable, in the interests of expedition in child abduction cases, to have a practice that once a motion of appeal is lodged in the Supreme Court office in a child abduction case the appeal should be automatically listed for mention in the next Friday's motion list.

***M(E)* ex parte *v* *M(J)*, Supreme Court, 9/7/2003** [FL7668]

CRIMINAL

Appeal, arrest, conviction

Applicant 1): evidence – identification – reliability – application to withdraw charges – principles to be applied – function of jury – assessment of identification evidence – whether jury entitled to decide on reliability of identification evidence – charge to jury – whether adequate in relation to visual identification evidence – identification parade – conduct of parade alleged to be unfair – whether for jury to determine whether conduct of parade breached fair procedures

Applicant 2): arrest for scheduled offence – validity – whether valid arrest dependent on formal proof of arresting officer's suspicion at time of arrest that accused had committed scheduled offence – whether court can infer requisite suspicion from fact of arrest – Offences Against the State Act, 1939, *section 30*

The first applicant was convicted by a jury in the Circuit Criminal Court and submitted that the charges against him ought to have been withdrawn from the jury on the basis that the identification evidence against him was tenuous and inconsistent. In the alternative, he submitted that the trial judge, when directing the jury, summarised identification evidence in such a way that would lead a jury to draw inferences which they were not entitled to draw. The second applicant was convicted by the Circuit Criminal Court following his arrest pursuant to section 30 of the *Offences Against the State Act, 1939* which allows an officer to arrest a person without warrant if they have a suspicion that that person is guilty of, or about to commit, a scheduled offence. The second applicant submitted that the trial judge was not entitled to draw an inference that the arresting officer had a genuine suspicion at the time of the arrest that the accused had committed a scheduled offence and that his arrest was valid thereby as section 30 required formal proof in specific terms of the existence of the suspicion of the arresting officer. In the alternative, he argued that the conduct of the identification parade in which he was identified by the victim was unfair and prejudicial.

In delivering the judgment of the court, McCracken J:

1) Ordered a retrial of the first applicant, holding that in considering an application to withdraw charges from a jury, the correct principles to be followed were those set out in R *v* *Galbraith* (73 LRAppR 124). There was evidence supporting the identification of the first applicant to make it a matter for the jury to determine the question of whether there was a reasonable doubt about the credibility of the identification evidence and the trial judge had been correct in not withdrawing the case from the jury. When directing a jury, there was an onus on a trial judge to draw to the jury's attention the dangers of relying on visual identification evidence and it was incumbent upon him to give equal weight to the inconsistencies in the prosecution evidence as he did to factors that tended to support that evidence, and

2) Declared that the second applicant's arrest was valid and dismissed his appeal, holding that the drawing of inferences was an essential ingredient in many criminal prosecutions and the prosecution was entitled to satisfy the court by inferences from undisputed evidence of fact that the requisite suspicion existed in the mind of the arresting officer that the accused had committed a scheduled offence at the time of the

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All monies received by the Society are expended within the Republic of Ireland.

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arrest and that the trial judge was entitled to draw the inferences which he drew. He also held that it was a matter for the jury to determine whether the conduct of the identification parades was fair.

***People (DPP) v O'Toole*, Court of Criminal Appeal, 26/5/2003** [FL7502]

Appeal, sentencing

Sentence – appeal – observations on sentencing – approach to be adopted – factors to be considered – evidence – whether sentence for assault causing bodily injury should always be less than for manslaughter – whether sentence excessive

The applicant was sentenced to eight-and-a-half years' imprisonment by the Circuit Criminal Court on a plea of guilty to a charge of assault causing serious bodily harm, which injuries left the victim permanently crippled. He applied for leave to appeal against the severity of that sentence, arguing that if death instead of injury had resulted from the assault the sentence imposed for manslaughter would not have been any higher and that, in principle, a sentence for the reckless causing of bodily injury must always be lower than a sentence imposed on the same facts where death rather than injury results.

Delivering the judgment of the court, Geoghegan J refused leave to appeal, holding that the sentencing judge should consider the case in its totality when imposing sentence. The court could find no error of principle in the sentence imposed by the trial judge, taking, as she did, all mitigating factors in the evidence presented to the court, a balanced view of the accused's previous convictions and the consequences of the offence into consideration.

Obiter dictum: the sentence appropriate to serious bodily injury may not in all circumstances be less than the sentence which would have been appropriate for manslaughter if death had resulted from the same crime.

***People (DPP) v Osborne*, Court of Criminal Appeal, 29/5/2003** [FL7503]

Case stated, road traffic

Road traffic offences – onus of proof – forwarding of certificate by medical bureau – whether medical bureau complied with statutory obligations – Road Traffic Act, 1961 – Road Traffic Act, 1994

The accused had been arrested pursuant to section 49 of the *Road Traffic Act, 1961* as amended, on the suspicion of being incapable of having proper control of a motor vehicle due to the consumption of an intoxicant. No doctor was available at a nearby Garda station (Bailieboro) and the accused was taken to another Garda station (Kells), where a sample was taken. The garda in charge of the case brought the sample from the Kells Garda station to the Bailieboro Garda station and sent it to the Medical Bureau of Road Safety from there. Thereafter, the medical bureau forwarded the certificate of the analysis to Kells Garda station which was then forwarded to Bailieboro Garda station. It was submitted by counsel for the accused that the medical bureau had not complied with its statutory obligations under section 19(3) of the *Road Traffic Act, 1994* in that the certificate of analysis was not forwarded to the Garda station from where the sample was sent. The District Court judge submitted a case stated for the opinion of the High Court as to whether the relevant provisions of the *Road Traffic Act, 1994* had been complied with.

In answering the case stated, Ó Caoimh J held as follows. It was clear that the relevant Garda station for the purposes of the act was the station where the sample was taken. The certificate had been sent to the station where the sample was taken in accordance with the act. In addition, the forwarding of the sample was not a necessary ingredient of proof as a certificate of analysis was in itself sufficient evidence under section 21(3) of the *Road Traffic Act, 1994*.

***DPP v Mulvany*, High Court, Mr Justice Ó Caoimh, 15/7/2002** [FL7526]

Delay, detention, extradition

Lapse of time – destruction of evidence – whether extradition of plaintiff would be unjust – whether unreasonable delay in seeking extradition – whether plaintiff could obtain fair trial – Extradition Act, 1965

The plaintiff had been living in England and in 1989 was charged with having committed the offence of unlawfully causing grievous bodily harm. The plaintiff left the jurisdiction shortly afterwards and returned to Ireland. Some time later, the victim of the alleged assault died of his injuries. The plaintiff was eventually arrested in Ireland in 1999 on foot of a warrant issued by the English authorities. The plaintiff brought an application pursuant to section 50(2) of the *Extradition Act, 1965*, claiming that by reason of the lapse of time and other exceptional circumstances it would be unjust to order his extradition. In addition, a television programme had been broadcast about the death of the victim and the plaintiff complained that this was prejudicial to his trial. In addition, it was claimed that the plaintiff's file had since been destroyed by his solicitor and that he would not be able to reconstitute his file. There appeared to be some discrepancies in the evidence tendered by the English police and that of An Garda Síochána in relation to the efforts made in trying to locate the plaintiff.

Ó Caoimh J refused the relief sought. Although there had been a significant lapse of time in seeking the extradition since the date of the alleged offence, the plaintiff had contributed to this delay by absconding. There had been a breakdown in communications between members of the respective police forces although this did not amount to an exceptional circumstance within the meaning of section 50(2) of the *Extradition Act, 1965*. The plaintiff's solicitor had indicated that he would be able to reconstruct the essential elements of the plaintiff's file. In the circumstances, it could not be said that the plaintiff could not have a fair trial if the extradition were to proceed and the relief sought by the plaintiff would be refused.

***Coleman v O'Toole*, High Court, Mr Justice Ó Caoimh, 10/4/2002** [FL7594]

District Court, fair procedures

Judicial review – practice and procedure – District Court – book of evidence – fair procedures – conduct of preliminary examination – whether applicant should have been discharged – whether District Court judge acted within jurisdiction – Criminal Procedure Act, 1967

The applicant had appeared before the District Court on drugs-related offences. While conducting the preliminary examination, a submission was made on behalf of the applicant to the District Court judge that the book of evidence was incomplete as it did not contain a relevant search warrant. It was submitted that there was insufficient evidence upon which to send the applicant forward for trial. In response, the District Court judge struck out the charges on the basis the book of evidence was inadequate but did not discharge the applicant. Judicial review proceedings were initiated by the applicant seeking an order of *certiorari*, contending that the finding of the District Court judge should have been that the evidence disclosed in the book of evidence was not adequate to send the applicant forward for trial and the applicant should have been discharged. The respondents submitted that although there had been a finding that the book of evidence was incomplete, this was not a finding on the adequacy of the evidence to send the accused forward for trial.

Finlay Geoghegan J dismissed the application, holding that if during the course of a preliminary examination a District Court judge formed the view that there had not been substantial compliance with the *Criminal Procedure Act, 1967*, then he has no jurisdiction to proceed any further with the preliminary examination and the correct order was to strike out the charges. It was clear that the District Court judge had not addressed the issue of whether there was sufficient evidence upon which to send the applicant forward for trial, and the order made by the District Court judge had been made within jurisdiction.

***Doyle v DPP*, High Court, Miss Justice Finlay Geoghegan, 12/12/2002** [FL7667]

Evidence, judicial review

Prohibition – whether applicant could obtain fair trial – identification evidence of gardaí – whether obligation to offer applicant opportunity to carry out forensic examination – Road Traffic Act, 1961, *section 112* – Criminal Damage Act, 1991, *section 2*

The applicant sought an order of prohibition preventing his trial for road traffic and criminal damage charges. He contended that he could not get a fair trial because he had wrongfully been deprived of the opportunity of examining the car involved with a view to obtaining fingerprint evidence.

In refusing the application, Finlay Geoghegan J held that where gardaí arrested and charged a person whom they considered they had seen in a stolen car and such person gave no indication that he was not the person in the car, and the owner of the car was seeking its immediate return, it did not appear to be 'necessary and practicable' to preserve the car for a further 50 hours and to obtain finger print evidence.

***Connolly v DPP*, High Court, Miss Justice Finlay Geoghegan, 15/5/2003** [FL7603]

FAMILY LAW

Disability, wards of court

Wardship proceedings – disability – ward of court – financial assistance – obligations of health board to provide care – statutory interpretation – provision of out-patient services – whether health board in breach of its statutory duty – Health Act, 1970 – Health (Amendment) (No 3) Act, 1996

The applicant had brought proceedings on behalf of her brother (PK, a ward of court), seeking declarations that the Northern Area Health Board had failed in its obligations to provide the necessary support for the maintenance of PK under sections 56, 60 and 61 of the *Health Act, 1970*. In the High Court, Finnegan P held that the health board had failed to satisfy the applicant's entitlement under the 1970 act. The health board appealed to the Supreme Court, arguing that the relevant provisions of the 1970 act did not give rise to individually-enforceable statutory rights but imposed general obligations only and that the services already provided under the 1970 act were adequate, appropriate and reasonable. In addition, it was claimed that the president of the High Court had erred in the findings in relation to the provision of out-patient services by the health board.

The Supreme Court (McGuinness J delivering judgment, Keane CJ, Denham J, Murray J and McCracken J agreeing) allowed the appeal. In interpreting the relevant provisions of the 1970 act, it was clear that the obligations of the health board to provide certain services in a 'home' referred to an institutional home and not an individual's home and the president had erred in this regard. The health board was not obliged to provide for the ward of court the equivalent care and maintenance service both medical and practical that he would receive as an in-patient in a hospital.

***K(C) v Northern Area Health Board and Others*, Supreme Court, 29/5/2003** [FL7622]

Judicial separation, taxation

Judicial separation – revenue liability – capital gains tax – terms of settlement – contractual terms – litigation – solicitors – property – Family Law (Divorce) Act, 1996 – Family Law Act, 1995

The applicant and respondent initiated judicial separation proceedings and these proceedings were settled. As part of the settlement, it was agreed that the family home would be sold. A subsequent dispute arose as to who was responsible for the discharge of capital gains tax (CGT) liability. In addition, there were also issues relating to arrears of income tax and pension entitlements. The respondent husband had discharged 50% of the CGT liability and claimed that this was the sum total of his liability. The respondent contended that he understood that when he was legally separated he would be singly assessed. The applicant wife gave evidence that she believed that she was to get a certain sum from the sale of the family home and that her husband would be responsible for any extras, which she believed included CGT.

Mr Justice Murphy made the following order. There had been no clear express agreement by the respondent that he would discharge all the CGT following the sale of the family home. The liability for CGT lies upon those who make the gain. To decide that the respondent should pay all of the CGT would oblige the respondent to accept a significantly lower proportion of the net proceeds of the sale of the premises after tax. There was nothing in the negotiations or in the settlement which would suggest this. The applicant must accordingly bear the liability and surcharge, if any. Further orders were also made in relation to income tax and pension issues.

***M(M) v M(J)*, High Court, 14/5/2003** [FL7682]

MEDICAL NEGLIGENCE

Liability

Medical negligence – liability – personal injuries – whether defendants negligent – consent – res ipsa loquitur – *expert evidence*

The plaintiff underwent surgery to replace an arthritic hip, after which operation it was discovered that she had a dropped foot. She claimed that it was caused by the negligence of the defendants in or about the execution of the operation or in the course of post-operative monitoring. She also claimed that the defendants were negligent in failing to warn her of the risk involved in the operation and that it was a matter of *res ipsa loquitur*. It was agreed by all the parties that the plaintiff's disability had been caused by damage to the perineal nerve of which there was a very small possibility from the operation in question.

Johnson J dismissed the plaintiff's claim, holding that the operation was essential to the health of the plaintiff and, on the balance of probabilities, whether or not she had been informed of the danger she would have undergone the operation. Given the dispute as to how the injury to the plaintiff occurred, her claim that the correct procedures had not been followed during or after the operation was not proved on the balance of probabilities. As to the plaintiff's claim that the matter was *res ipsa loquitur*, there was clear evidence that damage of the sort she suffered could occur in cases of hip replacement with no negligence.

***Callaghan v Gleeson and Lavelle*, High Court, Mr Justice Johnson, 19/7/2002** [FL7554] G

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Eurlegal

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

Parellel imports: the *Bayer Adalat* case

On 22 May 2003, advocate general Antonio Tizzano, delivered his opinion in the *Bayer Adalat* case,[1] currently before the European Court of Justice (ECJ) on appeal from the Court of First Instance (CFI). The commission is appealing a ruling by the CFI[2] to overturn its decision to fine Bayer in 1996 for infringing article 81 of the *EC treaty*. Central to the case is the question of whether a supply policy unilaterally imposed by a manufacturer on its wholesalers can constitute an 'agreement' for the purposes of competition law.

In many EU member states, the price of pharmaceuticals is fixed by national health authorities, resulting in significant differences in the price of particular products from one member state to another. For this reason, the price of Adalat – a cardiovascular drug produced by Bayer – was almost 40% lower in France and Spain than in the UK.

French and Spanish wholesalers took advantage of the price differences by ordering large quantities of Adalat from Bayer and exporting it to the UK. As a result, Bayer's UK sales of Adalat dropped by almost half between 1989 and 1993. To stem the decline in sales, Bayer changed its supply policy and its French and Spanish subsidiaries reduced supplies of Adalat to wholesalers established in France and Spain. By supplying wholesalers in these member states with only enough Adalat to meet their contractual obligations, Bayer hoped to put a stop to parallel exports to the UK.

The commission concluded that Bayer had agreed with its Spanish and French wholesalers to eliminate parallel trade and fined Bayer for violating article 81(1) of the *EC treaty* (decision 96/478/EC).

Conclusion of the advocate general

Article 81 prohibits agreements or concerted practices between undertakings that may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the EU. In the context of competition law, the meaning of 'agreement' has been interpreted very widely to include informal agreements and practices that have been imposed by one party and tacitly accepted by another. In this case, the commission alleged that by continuing to trade with Bayer after it had changed its supply terms the French and Spanish wholesalers had acquiesced with Bayer to eliminate parallel trade.

The commission had relied on previous cases where manufacturers imposed terms restricting parallel trade to support its view that there had been an 'agreement' between Bayer and the wholesalers.[3] In particular, it argued that the wholesalers had acquiesced with Bayer because (as a result of limited supplies) they effectively stopped parallel trading, thereby giving effect to Bayer's policy.

Supporting the judgment of the CFI, the advocate general rejected this argument. In the previous cases cited by the commission, the subjective element that characterises an agreement, namely a 'concurrence of wills', had been found to exist. However, the CFI held that the commission had ignored this point in its decision against Bayer. Although the wholesalers continued to trade with Bayer, there was no evidence that they acquiesced with Bayer to reduce parallel trade. On the contrary, the wholesalers had devised alternative systems to acquire additional supplies of Adalat so that they could continue parallel exports of the drug to the UK. In the circumstances, the advocate general concluded that there could not be an agreement between Bayer and the wholesalers.

Looking forward

The ECJ is guided by the opinion of the advocate general but is not bound by it. Given that the advocate general has endorsed the conclusion of the CFI, however, it is expected that the ECJ will follow his opinion in this case.

This is a blow to the commission's efforts to protect the parallel trade of pharmaceutical products in the European Economic Area (EEA) on competition grounds. Crucially, the CFI held that: 'provided he does so without abusing a dominant position, and there is no concurrence of wills between him and his wholesalers, a manufacturer may adopt the supply policy which he considers necessary, even if, by the very nature of its aim, for example, to hinder parallel imports, the implementation of that policy may entail restrictions on competition and affect trade between member states'.

The commission regards parallel trade as an essential feature of the internal market and thus can be expected to use other avenues of attack to ensure that the parallel trade of pharmaceutical products continues in the EEA. For example, the commission has stated that it will now adopt a position on the compatibility of so-called 'stock management schemes' with article 81(1) by December this year. Under these schemes, wholesalers are supplied with product on the basis of a forecast of how much product they will need to satisfy demand in their respective territories. While these schemes allow manufacturers to reduce inventory levels of products, they also have the effect of reducing parallel trade.

The first 'stock management scheme' was notified to the commission by Merck Sharp & Dohme in 1996[4] and since then many pharmaceutical manufacturers have implemented similar schemes or a hybrid between these and the Bayer Adalat scheme in a bid to reduce parallel trade of their products. The commission has received many complaints from wholesalers about 'stock management schemes' but has considered it necessary to await the outcome of the *Bayer Adalat* case before taking a position in relation to them.

The commission is also considering its options under article 82 of the *EC treaty*, which prohibits the abuse of a domi-

nant position. The commission is currently examining the feasibility of taking action against pharmaceutical manufacturers under article 82 and is considering issues of market definition and abuse of dominance.

In addition, an increase in commercial litigation on competition grounds is expected in the wake of the decentralised enforcement of articles 81 and 82 from May 2004.[5] Thus, wholesalers may in the future be more willing to challenge the commercial practices of manufacturers before national courts.

The final judgment of the ECJ in the Bayer Adalat case is still awaited. If the ECJ follows the opinion of the advocate general, it will be an important victory for pharmaceutical manufacturers, for whom parallel trade is a key issue. However, regardless of the outcome of this case the parallel trade of pharmaceutical products will remain topical for some time to come.

Footnotes

1 Joined cases C-2/01 P and C-3/01 P, *Bayer AG (supported by European Federation of Pharmaceutical Industries' Associations) v Commission (supported by Bundesverband der Arzneimittel-Importeure EV)*.
2 Case T-41/96, *Bayer AG v Commission of the European Communities* ([2000] ECR II-3383).
3 Case C-277/87 *Sandoz* (ECR I-45), case 107/82 *AEG* ([1983] ECR 3151), cases 25 and 26/84 *Ford* ([1985] ECR 2725), and case C-70/93 *BMW* ([1995] ECR I-3439).
4 Case IV/35.928/F3, notified on 1 March 1996.
5 Council regulation (EC) no 1/2003 on the implementation of the rules on competition laid down in articles 81 and 82 of the treaty ([2003] OJ L1/1). G

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Recent developments in European law

ASYLUM

The council adopted a directive providing for minimum standards for the reception of asylum-seekers on 27 January. It establishes minimum reception conditions for non-EU nationals and their families who seek asylum in an EU member state. Member states must provide information about organisations providing legal assistance, access to education for children and healthcare.

COMPETITION

Case T-319/99 *FENIN (Federación Nacional de Empresas de Instrumentación Cientifica, Médica, Técina y Dental) v Commission*, 4 March 2003. FENIN is an association of companies that market medical goods and equipment in Spain. The bodies that run Spain's health system (SNS bodies) purchase medical goods and equipment for use in hospitals from FENIN. The average delay in paying for these goods is 300 days, but FENIN is unable to pressurise these bodies to pay more quickly as it argues that they enjoy a dominant position. FENIN argued that this dominant position was being abused. The Court of First Instance held that an undertaking is a body that carries on an economic activity. The business of offering goods or services for sale in a particular market, rather than making purchases, characterises an activity as an economic activity. It is the nature of the use to which the goods are put after being purchased that determines whether a purchase is made as part of an economic activity. Thus, when a body purchases goods that are not used for an economic activity, it is not acting as an undertaking, even if it wields considerable economic power. Bodies whose functions are purely social, which are founded on the principle of solidarity and have no profit motive, are not undertakings. The Spanish purchasers of medical goods operate on the principle of solidarity as they are funded by social security contributions and offer free services to their members, the general public. Thus, the SNS bodies cannot be regarded as undertakings.

FREEDOM TO PROVIDE SERVICES

Case C-131/01 *Commission of the European Communities v Italian Republic*, 13 February 2003. Patent agents providing services in Italy were required to have a residence or place of business in Italy and be enrolled on the Italian register of patent agents. The commission challenged the legal provisions requiring this. It argued that these provisions were incompatible with the EC rules on free movement set out in articles 49 to 52 of the treaty. The requirement of enrolment and to have a place of business or residence in Italy for the provision of services, even where the provision of services is sporadic or piecemeal, is excessive. It argued that these requirements were disproportionate and were not justified by any overriding reason in the public interest. Italy argued that filing a patent was not an activity that can be considered as an occasional service. Filing and registering a patent is followed by examination of the invention and the whole process extends over a long period. Italy also argued that compulsory registration was in the public interest. The European Court of Justice (ECJ) held that while the representative activity of a patent agency may extend over a period of time, such activity does not necessarily involve a stable and continuous participation in the economic life of the host state. Such participation is the criterion separating establishment from the provision of services. The ECJ also pointed out that clients could instruct an agent to carry out a single step or action in the registration and examination process. The requirement of registration on the Italian register is a restriction to the provision of these services. The ECJ in earlier decisions has ruled that restrictions liable to impede, prohibit or render less advantageous the provision of services from another state should be removed, even if they apply to national providers of the service and those from other states alike. The court held that the restriction was in the public interest but went beyond what was necessary to attain the protection of the public. Less restrictive measures could have been used. It made a similar finding in respect of the residence requirement.

Case C-388/01 *Commission of the European Communities v Italian Republic*, 16 January 2003. The commission argued that the Italian government was giving preferential admission rates to its own nationals aged over 60 or 45 years to museums and thus was discriminating against nationals of other member states. The ECJ upheld this argument. It held that the EC prohibits all forms of discrimination against nationals of other member states. The Italian government had advanced economic arguments linking the preferential rate to the contribution

these individuals made to state funding through the payment of taxes in Italy. The ECJ said that it could not accept these arguments and that there was no direct link between the preferential rates and the payment of taxes. Thus, Italy had infringed EC law principles of the free movement of services and non-discrimination.

FREE MOVEMENT OF GOODS

Cases C-12/00 and 14/00 *Commission v Spain and Italy*, 16 January 2003. Chocolate manufactured in Denmark, Ireland, Portugal, Sweden, Finland and the United Kingdom contains the minimum content of cocoa butter required by a 1973 directive but contains up to 5% in weight of other vegetable fats. This is often sold in those states as 'milk chocolate'. Spain and Italy prohibit these products being marketed as 'chocolate', instead requiring them to be sold as 'chocolate substitutes'. The commission brought proceedings against Spain and Italy, arguing that their chocolate legislation restricted the free movement of goods. Spain and Italy argued that their legislation was justified by the need for consumer protection. The ECJ held that the 1973 directive allowed member states to maintain national rules authorising or prohibiting the addition of vegetable fats other than cocoa butter to products manufactured within their territory. However, member states cannot impose conditions that are contrary to the principle of the free movement of goods. The requirement to alter the sales names of the products to 'chocolate substitutes' may result in additional packaging costs and may adversely affect how customers perceive these products. This would lead to restrictions on the free movement of goods. The court held that these restrictions were not justified in the public interest. The 1973 directive gave the characteristic element of chocolate, the presence of a certain minimum cocoa and cocoa butter content. The addition of vegetable fats does not substantially alter the nature of these products. Appropriate labelling noting the presence of the vegetable fats would be sufficient to ensure that consumers are informed and thus protected, therefore the Spanish and Italian rules are disproportionate and contrary to the principle of the free movement of goods.

Case C-325/00 *Commission of the European Communities v Federal Republic of Germany*, 5 November 2002. Germany established a body to promote and market German agricultural products in Germany and also in other markets. This body awarded a quality mark. Products awarded this mark could use the label *Quality label for produce made in Germany*. The commission informed the German government that it regarded this label as a breach of the article 28 provision on free movement of goods. The German government contested this and the commission then commenced enforcement proceedings. The ECJ held that the scheme has restrictive effects on the free movement of goods between member states. The scheme was established to promote the distribution of agricultural and food products made in Germany. The advertising of it underlined the German origin of these prod-

ucts and may encourage consumers to purchase products with this label rather than imported products. The optional character of the label does not mean that it ceases to be an unjustified obstacle to trade if it promotes or is likely to promote the marketing of the product concerned as compared with products that do not benefit from its use. The court rejected an argument that this scheme could be defended as a geographic indication of origin. The current scheme defined the area of provenance as Germany and applied to all agricultural and food products meeting certain quality requirements. This scheme could not be considered as a geographic indication of origin.

GENDER DISCRIMINATION

Case C-186/01 *Alexander Dory v Federal Republic of Germany*, 11 March 2003. In Germany, military service is compulsory only for men. Mr Dory argued that the German law on military service is contrary to EC law. He argued that there were no objective reasons justifying the exemption of women from the requirement. The German requirement is inconsistent with previous decisions of the ECJ holding that women were entitled to join the army. Compulsory military service delays the access of men to employment and vocational training. The ECJ held that matters concerning the military were not excluded from the application of EC law. It is for the court to determine whether measures taken by member states are in the interests of public security or public defence and whether they are appropriate and necessary to achieve that aim. However, the ECJ held that EC law does not govern the member states' choice of military organisation for the defence of their territory or of their essential interests. Germany's decision to ensure its defence in part by compulsory military service is such a choice of military organisation to which EC law is not applicable. The adverse consequences for access to employment of young men cannot compel Germany to extend the obligation of military service to women or to abolish compulsory military service. That would encroach on the powers of the member states.

LEGAL AID

In January 2003, the council adopted a directive on legal aid for cross-border disputes. The directive will apply in civil and commercial cross-border cases. Revenue, customs, administrative and defamation cases are excluded from the scope of the directive. A cross-border dispute is defined as one where the party applying for legal aid is domiciled or habitually resident in a member state other than the member state of jurisdiction. Legal aid is to be available in the form of pre-litigation advice, legal assistance and representation in court. The directive came into force on 31 January 2003. Member states have until 30 November 2004 to implement the directive except for article 3(2)(a), which concerns the giving of pre-litigation advice. This provision is to be implemented by 30 May 2006.

LITIGATION

Brussels convention

Case C-271/00 *Gemeente Steenbergen v Luc Baten*, 14 November 2002. A Belgian court granted a divorce to a Mr Baten and a Ms Kil. In their settlement agreement, they set out that Mr Baten would pay maintenance for their child but no other maintenance would be paid. Ms Kil then moved with her child to the municipality of Steenbergen in the Netherlands. They received a social assistance allowance from the local authority. The authority then sought to recover the amounts paid from Mr Baten. A Dutch court ordered him to pay this amount. A Belgian court declared the judgment to be enforceable in Belgium. He appealed against this declaration. The matter was referred to the ECJ. It considered whether the phrase 'civil matters' in article 1 covered a claim of this nature. In previous cases, the court has held that it does not include actions between a public authority and a private person where the authority is acting in the exercise of its public powers. The Dutch civil code provides that social assistance allowances are recoverable from a person liable for maintenance (under Dutch law). The legal situation of the public body seeking to recover the maintenance payments is comparable to an individual who, having paid another's debt, is subrogated to the rights of the original creditor or to the situation of a person who suffers loss as the result of an act or omission of a third person and seeks reparation from that person. Dutch law provides that an agreement between spouses to preclude or limit maintenance does not preclude recovery from one of the parties and is without prejudice to determination of the amounts to be recovered. The ECJ considered that this rule put the public body in a situation that derogates from the ordinary law. This is all the more so as the rule enabled the public body to disregard an agreement approved by a judicial decision. In these circumstances, the public body is no longer acting under rules of civil law but under a prerogative of its own, specifically conferred on it by the legislature. The court held that the social security exception in article 1 of the convention does not include an ordinary action where a public body seeks to recover sums paid by it to the divorced spouse and child of that person.

Lugano convention

Insured Financial Structures Ltd v Elektrocieplownia Tychy SA ([2002] EWCA Civ 110 English Court of Appeal). Insured Financial Structures (IFS) is an English company which entered into a contract with Elektrocieplownia Tychy SA (ETS), a Polish-owned company, in 2000. IFC was to provide corporate financial advice to ETS in relation to the financing of electricity-generating plants in Poland. The contract contained the following jurisdiction clause: 'Each party agrees to the non-exclusive jurisdiction of the courts (of Poland) in connection with any disputes arising out of this agreement'. ETS failed to pay and in 2001 terminated the contract. IFS took legal proceedings in the English courts. ETS argued that the English courts did not have jurisdiction as the clause in the contract took effect as an exclusive jurisdiction clause and thus under article 17(1) of the *Lugano convention* the action could only be heard in Poland.

The court looked to previous decisions of the English courts. In *Kurz v Stella Musical Veranstaltungs GmbH* ([1992] Ch 196), Hoffman J had held that article 17 of the *Brussels convention* did not operate to convert a non-exclusive jurisdiction clause into an exclusive one. He held that before litigation commenced, the potential courts with jurisdiction are those pointed to by other provisions of the convention as well as the court referred to in the non-exclusive jurisdiction clause. When proceedings commence, the court in question has exclusive jurisdiction to hear the case. The Court of Appeal adopted the same approach. Hale LJ indicated that once it was accepted that more than one court could possess jurisdiction prior to commencement of proceedings and that there was nothing preventing the parties from agreeing that the courts of two or more states could possess non-exclusive jurisdiction, the real issue was the correct interpretation of the agreement. The court held that the parties had intended to allow, but not to require, either of them to commence proceedings in Poland. G

Midland's Solicitors' Association
Law Society director general Ken Murphy and president Geraldine Clarke (*front row, centre*) attended the AGM of the Midland Solicitors' Association in the Bloomfield House Hotel, Mullingar, in July

What's up Jesse?
Five professional practice course II students (pictured here) took part in the Jessup moot court competition in Washington DC earlier this year. Pictured are (*from left*): Caoimhe Daly, Gráinne Finn, Colm Fahy, Niamh Counihan and Aideen Ryan

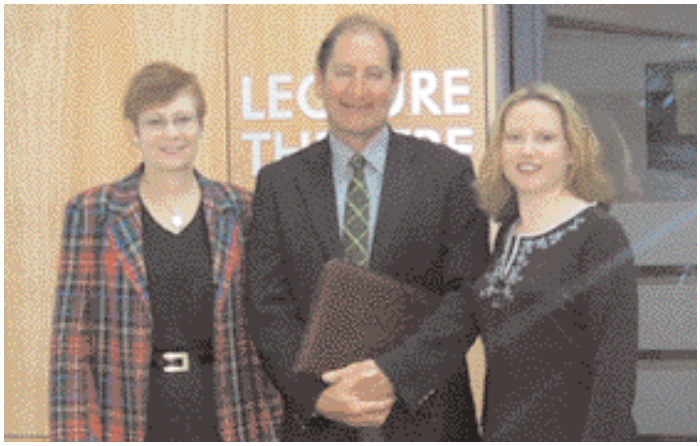
Catching the red eye
Pictured at the recent CPD seminar on drunk driving offences are (*from left*): Claire Loftus, chief prosecutor at the office of the DPP, Mark de Blacam SC, and Barbara Joyce, continuing professional development co-ordinator. The next seminar will be held in Galway on 2 October 2003

Rocky mountain high
When Douglas Sadlier and Gareth Murphy applied for the Law Society's national negotiation competition in October, they didn't expect it would take them halfway around the world. The national competition was organised by Antoinette Moriarty of the Law Society, assisted by Selena Chaffey and Jane Moffat. Forty teams of two (all trainees on the professional practice course) took part in the first round. Each team was assigned a client, on whose behalf they negotiated against another team. A typical subject was a service contract, with one team representing the employer and the other the employee. Sadlier and Murphy were selected as national champions to represent Ireland at the international finals in Calgary, Canada. They went and they won. They are greatly indebted to the Law Society, and to their firms, Justin Sadlier Solicitors, Galway and Arthur Cox, Solicitors, Dublin, for their support. The competition winners are pictured here in stetsons: (*left to right*) Gareth Murphy and Douglas Sadlier. Antoinette Murphy is left of the trophy, and Anne-Marie Cotter to its right

First citizen solicitor
Cork solicitor Colm Burke was recently elected Lord Mayor of Cork city (Picture: Billy MacGill)

Potting the pink

Arthur B Tomkins celebrated his 103rd birthday and 75th year on the register of patents on 9 July 2003. He is pictured here (on the right) with members of Tomkins & Co managing partner Christina Gates and former Tomkins employee and 1997 snooker world champion Ken Doherty. Tomkins established the patent and trademark firm in 1930



Bacon and eggs

Blackhall Place recently hosted a breakfast briefing on alternative dispute resolution, which was attended by practitioners and professional practice course students. In the photo are (*from left*): Jane Moffat, course co-ordinator, Brian Currin, negotiator, mediator and attorney in South Africa, and Lindsay Bond, CPD executive

Championship whites

The Irish team came second in the eighth European lawyers' tennis tournament, held in Dublin from 26 to 30 May. In the photo are (*from left*): team members Donough Shaffrey, Jerry Sheehan, John Mark Downey and Noel Sheridan

Easy commerce

The conferring ceremony for the diploma in e-commerce was held in Blackhall Place in June. Pictured here with conferees are (*front row, right from centre*): Minister for Communication, Marine and Natural Resources, Dermot Ahern, Law Society president Geraldine Clarke, director general, Ken Murphy, and Stuart Gilhooly, vice-chair of the Education Committee

Bulls' eye

Dublin law firm O'Rourke Reid held a reception at its offices in Pepper Canister House, Dublin, to welcome the South African delegation to the Special Olympics, and to present a cheque for over €20,000, which the firm raised to sponsor the team. In the photo (*from left*) are: Melanie Verwoerd, South African ambassador to Ireland; Finbar Cahill, patron of the 2003 world summer games; Graham Duggan, senior associate of O'Rourke Reid; and John Reid, managing partner

We all sue together

The Law Reform Commission (LRC) launched a consultation paper on multi-party litigation (class actions) on 29 July. Pictured at the launch are (*from left*): Mr Justice Declan Budd, president of the LRC; Michael McDowell, minister for justice, equality and law reform; and commissioner Marian Shanley. Submissions to the paper are invited from the public before 31 October 2003

You want these

Joanne Griffin, partner, and Kevin O'Brien, managing partner, Kilroy Solicitors, are pictured at the launch of the firm's new CDROM on corporate compliance, which is part of a new series of *Briefings for business* to help their clients

Law Society of Ireland

The Law Society is the educational, representative and regulatory body for 8,600 solicitors in the State.

The regulation of the solicitors' profession, is at the core of the Society's mission.

Due to the pending retirement of the current Director, MERC Partners has been retained to assist the Society in this recruitment.

DIRECTOR OF REGULATION

The person appointed, a member of the Society's senior management team, will be responsible for leading and managing a group of 36 executives and other staff charged with regulation (including financial regulation) and for the strategic development of the function. Performance of the statutory functions of Registrar of Solicitors, which include maintenance of the Roll of Solicitors; issuance of practising certificates; and bringing applications on behalf of the Society to the High Court and the Disciplinary Tribunal will be integral elements of the role.

Candidates will be solicitors, barristers, accountants or other professionals with an understanding of the ethos of a profession and professional regulation. They will be able to demonstrate a track record of effective motivation of teams and management of complex tasks. An understanding of financial accounting principles and experience in dealing with fair procedures and court applications would be a distinct advantage. Integrity, good communication and interpersonal skills and strong personal authority will be characteristics of the person appointed.

Remuneration will be attractive and will be commensurate with experience.

Please write, enclosing a curriculum vitae and quoting reference number 66201 to:

Brian G. Ward, MERC Partners, 11/12 Richview Office Park, Clonskeagh, Dublin 14, Ireland.
Tel: 01 2830144, Fax: 01 2830550, Email: postmaster@merc.ie

ESCA Executive Selection Consultancies Association

www.merc.ie

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Europäisches Patentamt | European Patent Office | Office européen des brevets

The European Patent Organisation, an intergovernmental organisation based in Munich, is in charge of the worldwide patent-granting regional patent system. An outstanding example of successful cooperation among European countries, the Organisation currently numbers 27 member states and is also expanding further in this region.

As executive body of the European Patent Office, it has to stand out as a modern international public service organisation. As the patent granting authority for Europe with a strong global orientation, it received 139 333 patent applications in 2002. Its reasonable support innovation, competitiveness and economic growth for the benefit of the citizens of Europe. With a budget of well over EUR 1 000 million and with a staff complement of over 3 350 at its headquarters in Munich and branches in The Hague, Berlin and Vienna, the Office is one of the largest international authorities in Europe.

Member states: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Portugal, Romania, Spain, Slovakia, Slovenia, Sweden, Switzerland, Turkey, United Kingdom

Future member states: Latvia, Lithuania, Poland

The post of

Lawyer (Grade A1/4)

(Legal Research Service of the Boards of Appeal)

is to be filled in Munich.

Under the European Patent Convention, the EPO Boards of Appeal have final-instance jurisdiction over the grant of European patents.

Main duties:

- Responsible for analysing and documenting the case law of the Boards of Appeal, as well as the national case law of the Contracting States in patent-related matters.
- Contributing to the publication of decisions of the Boards of Appeal in case law reports and electronic information systems.
- Researching and writing reports and studies for the Boards of Appeal and the Vice-President with regard to general legal issues, in particular relating to comparative procedural and substantive patent law issues; participating in working parties and consultative bodies, as well as, liaising with international organisations.

Minimum qualifications:

- Candidates must have a university degree in law and be professionally qualified lawyers; Thorough knowledge or considerable professional experience in the field of industrial property, in particular, patent law; Candidates must be fluent in at least one of the EPO official languages (English, German and French) and have a good knowledge of the other two.
- The EPO is offering remuneration appropriate to an international organisation (including expatriation and various family allowances), attractive conditions of employment and job security.
- Candidates must be a national of one of the present or future Contracting States of the European Patent Organisation The competition will be on the basis of qualifications, interviews and tests.

To apply, please send an application form (available on written request or to be downloaded from our website at www.european-patent-office.org) with a comprehensive CV and other evidence of formal qualifications or experience and quoting reference number INT/EXT/2723 to:
European Patent Office, Principal Director Personnel, Erhardtstr. 27, D-80298 Munich, Fax: +49 89 2399 2705

Closing date for applications: 30th September 2003

LOST LAND CERTIFICATES

Registration of Title Act, 1964
An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.
(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin
(Published 5 September 2003)

Regd owner: Comhlucht Suicre Eireann Teoranta, St Stephen's Green House, Dublin; folio: 3798; **Co Carlow**

Regd owner: Carmel McDonnell (deceased); folio: 8160; lands: Chapelstown and barony of Carlow; **Co Carlow**

Regd owner: Colm Kelly, Drumgill, Cootehill; folio: 740R; lands: Corragarry; **Co Cavan**

Regd owner: Francis Lynch; folio: 11873F; lands: townland of Liscannor and barony of Corcomroe; **Co Clare**

Regd owner: Patrick O'Dwyer (deceased); folio: 13383F; lands: townland of (1) Caher (Power), (2) Caher (Rice), (3) Swan Island (being an island off the townland of Caher (Rice), (4) a jetty off the townland of Caher (Rice) and barony of (1), (2), (3) and (4) Tulla Upper; area: 110.738 hectares; **Co Clare**

Regd owner: John Naughton and Denis Naughton; folio: 29899; lands: townland of Ballyvally and barony of Tulla Lower; area: 0.7157 hectares; **Co Clare**

Regd owner: Thomas F O'Sullivan; folio: 27223; lands: a plot of ground being part of the townland of Ballinvuskig and barony of Cork and County of Cork; **Co Cork**

Regd owner: Patrick Bassett; folio: 20190F; lands: a plot of ground being part of the townland of Sarsfieldcourt and barony of Barrymore and County of Cork; **Co Cork**

Regd owner: Imelda Casby; folio: 171L; lands: a plot of ground known as 6 St Christopher's Walk, Montenotte Park situate on the west side of St Christopher's Walk in the parish of Saint Anne's Shandon and City of Cork; **Co Cork**

Regd owner: Anthony Cashell; folio: 29853F; lands: a plot of ground being part of the townland of Carrignashinny and barony of Imokilly and County of Cork; **Co Cork**

Regd owner: County Council of the County of Cork; folio 30069F; lands: a plot of ground being part of the townland of Carriagaline Middle and barony of Kerrycurrihy and County of Cork; **Co Cork**

Regd owner: Elizabeth and James Foley; folio: 520L; lands: a plot of ground being part of the townland of Ballyphehane and barony of Cork and County of Cork; **Co Cork**

Regd owner: Stephen McDevitt; folio: 87806F; lands: a plot of ground being part of the townland of Desert and barony of Carbery East (east division) in the County of Cork; **Co Cork**

Regd owner: Ellen Hickey; folio: 90154F; lands: a plot of ground situate in Upper Mill Lane in the parish of Millstreet and in the non-municipal town of Millstreet and County of Cork; **Co Cork**

Regd owner: Margaret Dilworth (nee Kelleher); folio: 17711F; lands: a plot of ground being part of the townland of Knocknabehy and barony of Barretts and County of Cork; **Co Cork**

Regd owner: Michael Conway and Bridget Conway; folio: 14034F; lands: a plot of ground being part of the townland of Ballincollig and barony of Muskerry East and County of Cork; **Co Cork**

Regd owner: Charles Cronin and Noreen Cronin; folio: 74291F; lands: a plot of ground being part of the townland of Coolroe and barony of Muskerry East and County of Cork; **Co Cork**

Regd owner: Eileen Kavanagh; folio: 18759F; lands; a plot of ground being part of the townland of Gurteen and barony of Duhallow and County of Cork; **Co Cork**

Regd owner: Dermot Cusack (deceased); folio: 25658; lands; a plot of ground being part of the townland of Monkstown and barony of Kerrycurrihy and County of Cork; **Co Cork**

Regd owner: Anton Carroll, 8 The Summit, Howth, Co Dublin; folio: 14554F; lands: Mageragallan; area: 0.14164 hectares; **Co Donegal**

Regd owner: John Brendan McGready, Mullanbuoys, Inver, Co Donegal; Folio: 12127; lands: Drumbaran; area: 2.883 hectares; **Co Donegal**

Regd owner: Charles and Laura McLaughlin, The Green, Convoy, Co Donegal; folio: 33021F; lands: Kiltole; area: 0.713 hectares; **Co Donegal**

Regd owner: Mairead Burns; folio: DN30632F; lands: property situate in the townland of Coolmine and barony of Castleknock; **Co Dublin**

Regd owner: Gerard Byrne and Susan Byrne; folio: DN99952F; lands: property situate in the townland of Kellystown and barony of Castleknock; **Co Dublin**

Regd owner: Irish Biscuits Limited; folio: DN71372L; lands: property situate in the townland of Robinhood and barony of Uppercross plan 17A; **Co Dublin**

Regd owner: Brendan Keating and Philomena Delahunty; folio: DN48393L; lands: a plot of ground known as 12 Woodvale Drive, Clonsilla situate in the townland of Hartstown and barony of Castleknock shown as plan 130; **Co Dublin**

Regd owner: Michael Kerslake; folio: DN32560L; lands: property situate in the townland of Rush and barony of Balrothery East; **Co Dublin**

Regd owner: John McNamee and Carol McHugh; folio: DN70904F; lands: property situate on the east side of Montrosedrive in the parish of Coolock and district of Coolock West; **Co Dublin**

Regd owner: Ian McShane and Clare McShane; folio: DN15710F; lands: property situate in the townland of Pelletstown and barony of Castleknock plan 21, property situate in the townland of Cabragh and barony of Castleknock plan 588, property situate in the townland of Cabragh and barony of Castleknock plan 1c; **Co Dublin**

Regd owner: Ronald and Rosaleen Mitchell; folio: DN19928L; lands: property situate in the townland of Tallaght and barony of Uppercross situate to the north of the Blessington to Tallaght Road; **Co Dublin**

Regd owner: George Murray; folio: DN55010F; lands: property situate to the south of Lindsay Road in the parish of St George and district of Glasnevin; **Co Dublin**

Regd owner: Charles Moore and Anna Marie Reynolds; folio: DN136298F; lands: property known as 14 Charnwood Gardens, Clonsilla, situate in the townland of Clonsilla and barony of Castleknock; **Co Dublin**

Regd owner: Noel Cassidy and Maureen Cassidy; folio: DN44203L; lands: property situate in the townland of Corduff and barony of Castleknock; **Co Dublin**

Regd owner: Bridget P O'Reilly and Thomas R O'Reilly; folio: DN8549L; lands: a plot of ground shown as 22 Sutton Downs situate in the townland of Kilbarrack Lower and barony of Coolock; **Co Dublin**

Regd owner: Christopher Rowe; folio: DN7450; lands: property situate in the townland of Burrow and barony of Nethercross; **Co Dublin**

Regd owner: Christopher Rowe; folio: DN7668; lands: property situate in the townland of Burrow and barony of Nethercross; **Co Dublin**

Regd owner: Catherine Swift; folio: DN3549L; lands: property known as No 59 Mourne Road situate on the south side of the said road in the parish and district of Crumlin; **Co Dublin**

Regd owner: Joseph O'Connor and Doris O'Connor; folio: DN434f; lands: property situate in the townland of Kinsaley and barony of Coolock; **Co Dublin**

Regd owner: James Watkins; folio: DN16694; lands: property situate in the townland of Boherboy and barony of Newcastle plan 9, property situate in the townland of Slade and barony of Newcastle plan 40; **Co Dublin**

Regd owner: Mary Coneys; folio: 19511; lands: townland of (1) Keerhaunmore (2) Leaghcarrick and barony of (1) & (2) Ballynahinch; area: (1) 9.6365 hectares, (2) 2.8808 hectares; **Co Galway**

Regd owner: Vincent Feeney (deceased), Grange East, Turloughmore, Athenry, Co Galway; folio: 19908F; lands: a plot of ground being part of the townland of Grange East and barony of Clare and County of Galway; area: 0.494 acres; **Co Galway**

Regd owner: Anthea Langdon; folio: 48458F; lands: townland of Carrownacregg East and barony of Tiaquin; area: 0.154 hectares; **Co Galway**

Regd owner: Fintan Maher and Miriam Maher; folio: 38548F; lands: townland of Ballymoneen West and barony of Galway; **Co Galway**

Regd owner: Rita and Gerard Meally; folio: 20063F; lands: townland of Murroogh and barony of Galway; **Co Galway**

Regd owner: Michael Owens, Thomas Owens and Paul Owens; folio: 11005F; lands: townland of Castlegar (part of) and barony of Galway; area: 0.1659 hectares; **Co Galway**

Regd owner: Michael Conway; folio: 4054F; lands: townland of Dawros More and barony of Ballynahinch; area: 0.3616 hectares; **Co Galway**

Regd owner: Peter Walshe; folio: 22283F; lands: townland (1) & (2) Glennicmurrin and barony of (1) and (2) Moycullen; area: (1) 5.8072 hectares, (2) 267.9988 hectares; **Co Galway**

Regd owner: Daniel J and Elizabeth O'Donovan; folio: 32911; lands: townland of Avenue and barony of Magunihy; **Co Kerry**

Regd owner: Charles Horgan; folio: 55; lands: townland of Gortamullin and barony of Dunkerron South; **Co Kerry**

Regd owner: Erika Kretzer; folio: 34734; lands: townland of Dromavranka and barony of Magunihy; **Co Kerry**

Regd owner: St Brendan's Trust; folio: 1871F; lands: townland of Maghygreenane and barony of Iveragh; **Co Kerry**

Regd owner: Daniel J Lenihan; folio: 31394F; lands: townland of Straffan Demesne and barony of North Salt; **Co Kildare**

Regd owner: Freddy and Mary Devaney; folio: 31404F; lands: townland of Straffan Demesne and barony of North Salt; **Co Kildare**

Regd owner: William (orse Henry) and Patricia Graham; folio: 3362F; lands: townland of Greenfield and barony of North Salt; **Co Kildare**

Regd owner: Margaret Dempsey; folio: 12928; lands: townland of Kildare and barony of Offaly East; **Co Kildare**

Regd owner: Charles O'Neill; folio: 456; lands: townland of Richardstown and barony of Ikeathy and Oughteray; **Co Kildare**

Regd owner: Paul and Imelda Gaynor; folio: 4067; lands: townland of Curryhills and barony of Clane; **Co Kildare**

Regd owner: Michael Murphy; folio: 7805F; lands: Jerpoint Church and barony of Knocktopher; **Co Kilkenny**

Regd owner: Patrick O'Dwyer; folio: 510L; lands: Cotterellsbooly and barony of Knocktopher; **Co Kilkenny**

Regd owner: Liam Hernon and Una O'Keeffe; folio: 16441F; lands: Cragmore and barony of Connello Lower; **Co Limerick**

Regd owner: Joseph Enright; folio: 11533; lands townland of Ballingowan and barony of Glenquin; **Co Limerick**

Regd owner: Thomas Hogan; folio: 6655R; lands: townland of Doon South and barony of Coonagh; **Co Limerick**

Regd owner: Margo McInerney; folio: 2104L; lands: St. Patrick's parish, **Limerick City**

Regd owner: Richard Gleeson; folio: 1125L; lands: townland of Singland and parish of St. Patrick's; **Limerick City**

Regd owner: Conor Walsh; folio: 23357F; lands: townland of Shannabooly and barony of North Liberties; **Co Limerick**

Regd owner: Elizabeth Welch; folio: 26789; lands: townland of Kilbane and barony of Clanwilliam; **Co Limerick**

Regd owner: Evelyn Kiernan, Kilnatruhan, Killoe; folio: 3519F; lands: Killeenatruan and Knockloughlin; area: (1) 8.044 acres, (2) 146.687 acres; **Co Longford**

Regd owner: Ursula Belton, Colehill House, Colehill, Longford; folio: 3325F; lands: Drumanure, Colehill and Colehill; area: 5.121 hectares, 21.861 hectares, and 9.050 hectares; **Co Longford**

Regd owner: Suzanne Leonard and Kneale Dyas, 135 Cedarfield, Drogheda, Co Louth; folio: 16957F; land: Rathmullan; **Co Louth**

Regd owner: Kathleen McBride, Castlebellingham, Co Louth; folio: 1942; lands: Castlebellingham; area: 6.1841 hectares; **Co Louth**

Regd owner: Thomas Duffy; folio: 15834; lands: townland of Sheean and barony of Burrishoole; area: 16.2307 hectares; **Co Mayo**

Regd owner: Patrick Carey; folio: 15795; lands: (1) townland of Skehavaud and (2) Ballindine and barony of (1) and (2) Clanmorris; area: (1) 5 acres 3 roods 15 perches and (2) 3 roods 8 perches; **Co Mayo**

Regd owner: Michael Halligan; folio: 14545; lands: townland of (1) and (2) Balloor, (3) Lismakirka or Milebush and barony of (1), (2) and (3) Carra; area: (1) 14 acres, 1 rood, 36 perches, (2) 14 acres, 0 roods, 19 perches, (3) 0 acres, 3 roods, 6 perches; **Co Mayo**

Regd owner: Oliver Kelleher; folio: 10852F; lands: townland of Claggan and barony of Carra; area: 0.1238 hectares; **Co Mayo**

Regd owner: Martha McGinn, Dooega, Achill, Co Mayo; folio: 25104; lands: Dooega and barony of Burrishoole; area: (1) 4 acres 1rood 16 perches, (2) 2727 acres 3 roods 5 perches, (3) 7a 0r 16p; **Co Mayo**

Regd owner: Mary Anne Regan; folio: 5982F; lands: Killunagher and barony of Costello; **Co Mayo**

Regd owner: Anthony Battersby, Coolfore, Ashbourne, Co Meath; folio: 27220; lands: Coolfore; area: 7.4235 hectares; **Co Meath**

Regd owner: James McGarrell, Cullintraduff, Co Monaghan; folio: 20485; lands: Beagh; area: 4.7449 hectares; **Co Monaghan**

Regd owner: John Kelly (deceased) and Eileen Kelly; folio: 27475; lands: townland of Mount Talbot and barony of Athlone North; area: 0.3642 hectares; **Co Roscommon**

Regd owner: James F Curley; folio: 16842; lands: townland of Derrynasee and barony of Athlone; area: 300,900 hectares; **Co Roscommon**

Regd owner: Patrick Gildea; folio: 9813F; lands: townland of Derryherk and barony of Boyle; area: (1) 6.39310 hectares, (2) 3.3710 hectares, (3) 5.2150 hectares; **Co Roscommon**

Regd owner: Bernard Duignan, Curries, Carrick-on-Shannon, Roscommon; folio: 11007; lands: Corry East and barony of Roscommon; area: 11.6675 hectares; **Co Roscommon**

Regd owner: Dominic McLoughlin; folio: 10101F; lands: townland (1) and (2) Doonally and barony of (1) and (2) Carbury; area: (1) 0.157 hectares and (2) 0.098 hectares; **Co Sligo**

Regd owner: Eileen Scully; folio: 14388; lands: townland of Stoneparks and barony of Corran; area: 14 perches; **Co Sligo**

Regd owner: Tipperary Town Council; folio: 26685; lands: townland of Scalaheen and barony of Clanwilliam; **Co Tipperary**

Regd owner: John Dooley, folio: 6F; lands: a plot of ground being part of the townland of Mayfield or Rocketcastle and barony of Upperthird and county of Waterford; **Co Waterford**

Regd owner: Caroline O'Shea; folio: 10141F; lands: a plot of ground situate to the west side of the Old Waterford Road in the town of Tramore being part of the townland of Crobally Upper and barony of Middlethird and County of Waterford; **Co Waterford**

Regd owner: Brendan and Elizabeth Barry; folio: 15689F; lands: Forth Commons and barony of Forth; **Co Wexford**

Regd owner: Patrick Condron; folio: 3982F; lands: Ballinamorragh and barony of Shelmaliere East; **Co Wexford**

Regd owner: Philip Kennedy; folio: 12105; lands: Shelbaggan and barony of Shelbourne; **Co Wexford**

Regd owner: Richard Rochford; folio: 11442F; lands: Cleristown and barony of Bargy; **Co Wexford**

Regd owner: William Sinnott (deceased); folio: 19840; lands: Taylorstown and barony of Shelbourne; **Co Wexford**

Regd owner: Mark Deering; folio: 8130; lands: townland of Knockroe and barony of Talbotstown Lower; **Co Wicklow**

Regd owner: John Kelly; folio: 7700; lands: townland of Crehelp and barony of Talbotstown Lower; **Co Wicklow**

WILLS

Breen, Margaret (deceased), late of 12 Lennox Street, Dublin 8. Would any person having knowledge of a will made by the above named deceased who died on 12 July 1978 at BID Meath Hospital, Dublin, please contact C Grogan & Co, 33 Lower Ormond Quay, Dublin 1, tel: 01 872 6066; e-mail: **agrogan@indigo.ie**

Connelly, Sean, (deceased), late of 32 Bayview Rise, Ballybane, Galway and formerly of Strand House, Inis Oirr, Aran Islands. Would any person having knowledge of a will made by the above named deceased who died on 21 June 2003 at University College Hospital, Galway, please contact FM FitzGerald & Co., Solicitors, Kiltartan House, Forster Street, Galway, tel: 091 565601, fax: 091 567488, within 14 days of this publication

Jones, Helen (deceased), late of 5 Adair, Sandymount, Dublin 4, and/or Mullinary, Carrickmacross in the county of Monaghan. Would any person having knowledge of a will made by the above named deceased, please contact Mr Gerard Jones of Gerard Jones & Co; Solicitors, Main Street, Carrickmacross, Co Monaghan, tel: 042 9661822, fax: 042 9661464, e-mail: **gjones@securemail.ie**

Lalor, Peter (deceased), late of Coole, Raheen, Portlaoise, Co Laois. Would any person having any knowledge of a will made by the above named deceased who died on 17 February 1991 in the county of Laois, please contact Rollestons, Solicitors, Church Street, Portlaoise (reference: YB/6121)

McCoy, Mary Bridget (otherwise, Maria), late of Banquet Hill, Kilcommon, Thurles, Co Tipperary, formerly of 9 Fernhurst Gardens, Edgeware in the London Borough of Barnet. Would any person having knowledge of the whereabouts of the original will dated 7 August 1994 for the above named deceased, who died on 20 April 2003, please contact Thornton, Solicitors, 52 O'Connell Street, Limerick, tel: 061 315543, fax: 061 315503

McEntee, Bernard (deceased), late of Bailieborough Road, Shercock, Co Cavan. Would any person having any knowledge of the whereabouts of the original will dated 11 April 1995 of the above named deceased who died on 4 August 2001, please contact Mel C Kilrane & Co, Solicitors, Main Street Bailieborough, Co Cavan, tel: 042 9665329/9665472, fax: 042 9665010

Reilly, Ann Geraldine (deceased), late of 3 Lisnaskea Drive, Ledwidge Hall, Slane, Co Meath and formerly of Portacarron, Oughterard, Co Galway. Would any person having knowledge of a will made by the above named deceased who died on 3 February 2003 at the Mater Private Hospital Dublin, please contact Aidan Stapleton & Company, Solicitors, Parliament Buildings, 38 Parliament Street, Dublin 2, tel: 01 679 7939, fax: 01 679 2494, e-mail: **astapleton@securemail.ie**

Ryan, Gerard (deceased), late of 9, Yellowmeadows Vale, Watery Lane, Clondalkin, Dublin 22. Would any person having knowledge of a will made by the above named deceased who died on 30 June 2002 and whose previous addresses were 24 Eaton Square, Terenure, Dublin 6; 62, Hannaville Park, Terenure, Dublin 6 and Milltown, Clonoulty, Cashel, County Tipperary, please contact Butler Cunningham & Molony, Solicitors, Thurles, County Tipperary, tel: 0504 21857, fax: 0504 23291

Sexton, Ann (deceased), late of 26 Clareville Court, Glasnevin, Dublin 11. Would any person having knowledge of a will made by the above named deceased who died on 7 March 2003 at 26 Clareville Court, Glasnevin, Dublin 11, please contact Rollestons, Solicitors, Church Street, Portlaoise (reference: YB/6209)

Smith, Patrick J (deceased), late of 5 Lavere Terrace, Harolds Cross, Dublin 6W. Would any person having any knowledge of a will executed by Patrick J Smith who died on 13 August 2002, please contact Patrick Duffy, Solicitors, Unit 4, Old Bawn Shopping Centre, Tallaght, Dublin 24

Tobin, Kathleen, late of 29 Archer's Crescent, Kilkenny. Would any person having knowledge of a will made by the above named deceased who died on 16 May 2003, please contact Messrs Reidy & Foley, Solicitors, Parliament House, Parliament Street, Kilkenny, tel: 056 776 5065 or fax: 056 776 3697

EMPLOYMENT

Experienced solicitor in general practice, available for full-time employment. Ten years' post qualified experience. The north-west area preferred. Reply to **Box No 70**

Assistant solicitor with two years-plus PQE required by established practice in Killarney, Co Kerry. Must be able to work as part of a team and on own initiative. Applications with CV (in confidence) to **Box No 71**

Solicitor and counsel sought to present personal injuries case in High Court. Liabilities admitted. **Box No 72**

Nearly-qualified solicitor with four years experience in general practice seeks employment. Seeking experience in criminal litigation. Please reply to: **Box No 73**

Solicitor available for part-time/locum work in Dublin south or city centre. Experienced in family law and conveyancing. Reply to: **Box No 74**

Locum solicitor required for general practice adj. Four Courts; conveyancing/litigation experience. App-lications to Anglesea, Solicitors, 6 Bridge Court, City Gate, Dublin 8 (Ref: KC) email: **infoangleseasolicitors.ie**

Locum solicitor required for general practice in Laois for the period October 2003 to December 2003. The applicant must have conveyancing and family law experience. Replies and CVs to Byrne Casey & Associates (HB), Chartered Accountants, Kyran House, St. Kyran Street, Tullamore, Co Offaly

Probate solicitor with experience required. Attractive salary and good prospects for advancement for the right candidate. Apply with CV to Mrs Maura Barry, Office Manager, Augustus Cullen & Son, Solicitors, 7 Wentworth Place, Wicklow

Recently-qualified solicitor required for busy practice in Dublin. Conveyancing experience essential. Please reply to Ferrys Solicitors, Equity House, 16 Upper Ormond Quay, Dublin 7, tel: 01 677 9408

Solicitor required with knowledge /experience of immigration issues/ law and it's influence relating to tourist travel requirements, please contact 086 3523819

Solicitor with own practising cert seeks locum or part-time vacancy in general practice in Dublin. Computer literate, tel: 01 668 6901

Locum Solicitor required for conveyancing with 1-2 years PQE, end of September 2003 to April 2004, contact Barry FitzGerald of FM FitzGerald & Co, Solicitors, Kiltartan House, Forster Street, Galway, tel: 091 565601, fax: 091 567488, e-mail: **law@fmfitzgerald.com**

Apprentice solicitor available for immediate start. Hardworking, enthusiastic. Over 12 months practical experience in conveyancing and litigation, tel: 087 6302809

Part-time solicitor/cum permanent specialising in probate, conveyancing and litigation required for midland practice. Reply to **Box No 75**

Conveyancing and probate solicitor, very experienced seeks position in Dublin or adjoining counties. Please reply to **Box No 76**

MISCELLANEOUS

Northern Ireland solicitors providing an efficient and comprehensive legal service in all contentious/non-contentious matters. Dublin-based consultations and elsewhere. Fee apportionment. ML White, Solicitors, 43-45 Monaghan Street, Newry, County Down, tel: 080 1693 68144, fax: 080 1693 60966

Northern Ireland agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Offices in Belfast, Newry and Carrickfergus. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry, tel: 080 1693 61616, fax: 080 1693 67712

Northern Ireland solicitors. Will advise and undertake NI-related matters. All areas corporate/private. Agency or full referral of cases as preferred. Consultations in Dublin or elsewhere if required. Fee sharing envisaged. Donnelly Neary & Donnelly, 1 Downshire Road, Newry, Co Down, tel: 080 1693 64611, fax: 080 1693 67000. Contact K J Neary

England & Wales solicitors will provide comprehensive advice and undertake contentious matters. Offices in London, Birmingham, Cambridge and Cardiff. Contact Levenes Solicitors at Ashley House, 235-239 High Road, Wood Green, London 8H, tel: 0044 208817777, fax: 0044 2088896395

Co Tipperary Practice for sale. Great potential. Apply in confidence to: **Box No 77**

Long established legal practice for sale. Fee income approximated. Fully-fitted leasehold offices available. Mixture of conveyancing, probate, and litigation. Suitable for developing a new practice. Contact Messrs Deloitte and Touche, Earlsfort Terrace, Dublin 2

Seven-day ordinary full publican's licence for sale. Price approx: €130,000, tel: 061 411211 or 086 253 0244 or write to Richard R O'Hanrahan, Limerick Law Chambers, 22 High Street, Limerick

Practice for sale, half share partnership in firm in north west. Excellent client base in conveyancing/probate and valuable on-going litigation caseload. Reply to: **Box No 78**

Property at Connaught Street, Kilcock, Co Kildare. Would any person having knowledge of the Peel Scully estate (also known as the Pepper estate) in relation to the payment of ground rent for this property, please contact Kevin O'Gorman & Co., Solicitors, Carlaimar, Main Street, Lucan, Co Dublin, tel: 01 6214092, fax: 01 6217002

TITLE DEEDS

John McAuliffe and Louise McAuliffe both late of No 3 Cleamore Terrace, Kildare, Co Kildare. Any person having knowledge of original title documents relating to No 3 Cleamore Terrace, Kildare, County Kildare the property of the above named deceased persons, please contact O'Sullivan & Hutchinson, Solicitors, Portarlington, Co Laois, tel: 0502 23182, fax: 0502 23984.

Fahey, James (deceased), late of Main Street, Golden, Cashel, Co Tipperary. Would any solicitor holding any deeds to the premises owned by James Fahey at Main Street, Golden, Cashel, Co Tipperary, please contact O'Connor Tormey & Co, Solicitors, Slievenamon Road, Thurles, Co Tipperary, tel: 0504 22231, fax: 0504 22172

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) No 2 Act, 1978*. An Application by Thomas Hickey:
Take notice that any person having any interest in the freehold estate of the following property: 6 Olivemount Terrace, Dundrum Road, Dublin 14 being portion of the premises held under indenture of lease made 4 August 1936 and made between William Joseph Webb one part Teresa Lally other part for the term of five hundred years from 26 March 1936 subject to the yearly rent of £37 (€46.98) and to the covenants and conditions therein contained.

Take notice that Thomas Hickey intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid premises and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of 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 Thomas Hickey intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Dated:23 June 2003
Signed: Frank Friel & Co, Solicitor for the applicant, Bird Avenue, Clonskeagh, Dublin 14

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) No 2 Act, 1978* and in the matter of an application by Rory Finnerty:
Take notice that any person having any interest in the freehold estate of the following property: 20 Sandycove Road, Sandycove, Co Dublin – held under lease dated 5 March 1959 between Reisor Manufacturing & Construction of the one part and Thomas Martin of the other part for the term of 111 years from 1 January 1959 at the yearly rent of £14.00 (now €17.78).

Take notice that the applicant Rory Finnerty intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property and any person asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

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

Dated: 8 July 2003
Signed: Sean Smyth, Solicitor, 36 Elton Park, Sandycove, Co Dublin

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) No 2 Act, 1978* and in the matter of an application by Petrogas Group Ltd
Take notice that any person having an interest in the freehold estate of the following property: Land situate at Conyngham Road, Kilmainham, Dublin 8, held under lease dated 9 August 1842 and made between

William Worthington of the one part and Andrew O'Toole of the other part for the term of 200 years from 1 July 1842 at the yearly rent of £25.00.

Take notice that Petrogas Group Ltd the applicant intends to submit an application to the county registrar in the county of the city of Dublin for the acquisition of the freehold interest together with any intermediate interest in the aforesaid property and any persons asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the undersigned within 21 days from the date of this application.

In default of any such notice not being received by the undersigned solicitors, the said Petrogas Group Ltd intends to proceed with the application before the county registrar in the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion to the aforesaid property are unknown and unascertained.

Dated: 11 August 2003

Signed: McGarr Solicitors, Solicitors for the Applicant, 34/35 Wicklow Street, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) No 2 Act, 1978*. An application by Peter Horrigan

Take notice that any person having any interest in the freehold estate of the following property: 22 Olivemount Grove, Windy Arbour, Dundrum, Dublin 14.

Take notice that Peter Horrigan intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of 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 Peter Horrigan intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Dated: 15 August 2003

Signed: Daly Lynch Crowe & Morris, Solicitors, The Corn Exchange, Burgh Quay, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1967-1987* and in the matter of the *Landlord and Tenant (Ground Rent) Act, 1978* and an application of Charles Street Developments Ltd

Take notice that any person having an interest in the freehold estate of the following property: All that and those the premises at the rear of 29 Mountjoy Square, Dublin.

Take notice that Charles Street Developments Ltd intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of title to the aforementioned premises to the undersigned within 21 days from the date of this notice.

In default of any such notice not being received Charles Street Developments Ltd intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion to the aforesaid property are unknown and unascertained.

Dated: 7 August 2003

Signed: Mark Connellan, Connellan Solicitors, Solicitors for the Applicant, 3 Church Street, Longford

Easy rider

Paul Carroll was appointed managing partner of the Dublin law firm A&L Goodbody in May 2001. A corporate finance specialist, he has advised Irish and international clients on a wide range of transactions. He advises particularly on mergers and acquisitions, both public and private, foreign investment, shipping and general corporate matters. In 2001, he led the Irish legal team advising on the acquisition of Eircom plc by Valentia Telecommunications Ltd. This was one of the largest and most hotly contested takeovers in Irish business history.

'Drop all forms of legal jargon when writing to clients. They hate it, so many lawyers love it and think it's important. It's not'

Which living person do you most admire, and why?
Ellen MacArthur, the fastest woman and youngest person ever to sail around the world non-stop single-handed, and indeed her ilk for their courage in facing dangers few of us could comprehend, let alone face or overcome.

What's the best piece of advice you ever got?
Listen carefully, be positive and enjoy what you're doing. And I would have to add: dropping all forms of legal jargon when writing to clients. They hate it, so many lawyers love it and think it's important. It's not.

Best decision you ever made?
Investing in our IT, finance, training, marketing, and human resources. This brings a set of professional skills that create an efficient and effective infrastructure. In turn, this allows me and our lawyers to do what we are good at – lawyering – and certainly not managing, which has never been a traditional *forte* of lawyers.

Worst decision you ever made?
Not using the time I had in university, with just eight hours of law lectures a week, to do more, especially with languages.

How do you cope with stress?
Having the power of self-forgiveness and a thick neck apparently work quite well, because I do not really feel it. When I start going grey or losing hair, it might be time to give this much-hyped question some thought. Now if I was doing what Ellen MacArthur does, it would be a different story!

Time management tips?
I decided to commute to work by motor bike 12 years ago. Since then, I have saved thousands of hours of wasted time and have been able to enjoy breakfast with Fiona and the children and still be at the desk in good time with a seven-to-ten-minute commute.


Paul Carroll: couldn't even spell 'stressed'

If you could change one aspect of Irish law, what would it be?
I would temper those over-zealous provisions of Irish legislation (mainly corporate), which, though intended to deal with the rogue director, actually end up stifling genuine entrepreneurs from taking risks. This has become particularly relevant in the current post-Enron and tribunal environment, where fear of being second-guessed understandably prompts regulators to continuously look over their shoulder and adopt a hide-bound approach rather than a practical business one.

What car do you drive?
I borrow Fiona's Volvo station wagon only when I have to. Otherwise I am on the bike.

Beer or wine?
Wine is perfectly grand and should be a daily requirement, but a few pints can never be discounted.

Favourite restaurant?
La Mere Zou. It's cheerful and good value.

Pet hate?
Not being able to ride bus lanes on the motorbike or turn left on a red light, similar to the American rule.

David Beckham or DJ Carey?
DJ Carey for following the great tradition of Kilkenny hurlers. G