Law Society Gazette

Regulars

Cover Story

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NATIONWIDE

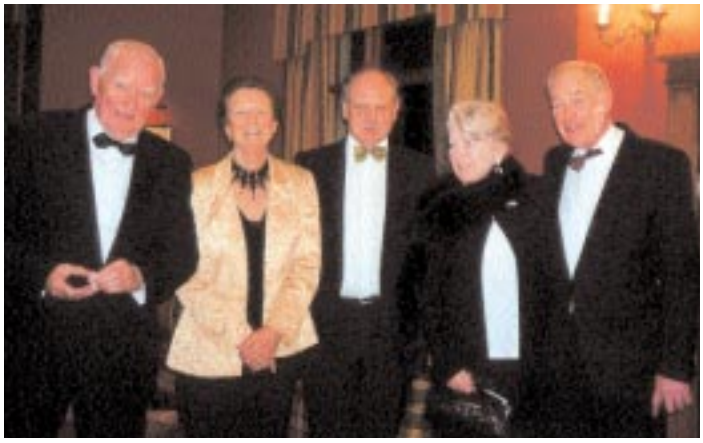
News from around the country

DUBLIN

Some solicitors are using conveyancing as a 'loss-leader' to try to get other business into their practices, Dublin solicitor Mark Ronayne suggested at a Dublin Solicitors' Bar Association (DSBA) meeting in late March. But it doesn't work, he advised. Solicitors had a duty, not just to clients and to colleagues, but also to themselves, to work efficiently and to make a profit. We should not be coy about having to make a profit, he said. Conveyancing had become extremely complicated, especially the ancillary aspects of planning, family home, tax and such. Yet fees were falling to such an extent that it was impossible to see how some solicitors could even read the titles they were buying for the fees they were quoting. He was speaking on the theme of *Quick and easy conveyancing*, a title which he accepted some blame for and which, of course, was not accurate.

At the same meeting, Michael Treacy of the Land Registry told the 200 solicitors present that he could not understand why Dublin solicitors had the lowest take-up rate in the country of the Land Registry's electronic services. The eForm 17 was the first toe in the water. We may be moving to complete electronic conveyancing from contract to post-registration. What does the future hold for conveyancers? New Zealand may give a clue. There, you can register your client's new title directly. But you must keep the documents of title for ten years and the authorities can call to check at any time – much like self-assessment with the Revenue Commissioners here. Conveyancing, of all things, may yet become paperless.

The DSBA has hosted a number of dinners recently. On 11 March, the association's president, John O'Connor, and the DSBA Council hosted a dinner for 12 Dublin Circuit Court judges in the Kildare Street and University Club. It also hosted a dinner for District Court judges on 31 March. On 23 March, it held a dinner for 40 young solicitors, in conjunction with Allied Irish Banks. The special guests included the chairman of Allied Irish Banks Dermot Gleeson SC, Law Society president Gerard Griffin, Mr Justice Peter Kelly of the High Court and Brian Sheridan, AIB's law agent.



Half a century

The Kildare Solicitors' Bar Association recently held a dinner in honour of two of its members, Brian Price and Brendan O'Flynn, who have been practising solicitors for more than 50 years. Pictured are *(from left)* Brian Price, Marlene O'Flynn, association president Peter Flanagan, Nuala Price and Brendan O'Flynn

DONEGAL

The profession will have to work with the Personal Injuries Assessment Board, even though it may not like it or believe that it best serves the interests of the public, the chairman of the Donegal Bar Association Niall Sheridan told the recent annual dinner of the association. Solicitors would continue to have the best interests of their clients at heart and would work with the new system where they were allowed to do so. Law Society president Gerry Griffin and director general Ken Murphy also spoke about the PIAB, which has generated huge controversy both within and outside the profession. The president emphasised that there would be an information 'roadshow' for the profession around the country, and that the Law Society would be there for the profession.

LIMERICK

As in Donegal and in the other bar associations around the country, the Limerick Bar Association is concerned about the implications, both for the public and for the profession, of the new PIAB. The association's honorary secretary, Jane O'Connor of Sweeney McGanns, said that they had held various meetings over recent months. A recent meeting in Blackhall Place, attended by the presidents, secretaries and PROs of the country's bar associations, had helped them to come to grips with the new regime and with the role of the Law Society.

LOUTH

Drogheda lawyers are still without a proper courthouse, eight years after the 'short-term' solution of using a bingo hall. Gerald Daly, president of the Drogheda Solicitors' Association, has labelled the situation a national disgrace. Daly led a walkout of more than 30 solicitors from the temporary court last October (see November *Gazette*, page 5), but since then the situation has not improved. 'The bingo hall is stifling in summer and freezing in winter', said Daly. 'There are no consulting room facilities and the acoustics are so bad that most of the people in the court have no idea what's going on at any given time'. He continued: 'It appears that the administration of justice in Drogheda is a very low priority both politically and financially'.

ROSCOMMON

Roscommon's popular District Court clerk, Aiden Cashin, has retired after more than 30 years in the job. He had earlier worked in Cork. 'He was an example of what a District Court clerk should be. He was both efficient and always available to take solicitors' telephone calls', according to Brian O'Connor, the honorary secretary of the Roscommon Solicitors' Bar Association. 'That means a lot to us down here', he said. The departure of Mr Cashin coincides with the transfer of their District Court judge Mary Fahy to Galway, which has left them without a District Court judge in District 4, which covers tracts of Roscommon, Mayo and Leitrim. This meant that that solicitors and their clients did not know until immediately before a court hearing who the sitting judge would be. This was not satisfactory.

It was important to both the community and the solicitors' profession that a permanent judge be appointed without further delay.

Tribunals 'a disaster for the legal profession'

'The greatest disaster ever to befall the legal profession in Ireland has been the tribunals of inquiry. A handful of lawyers have made a great deal of money but the whole profession has paid the price in public cynicism and false impressions about what average lawyers' earnings are', Law Society director general Ken Murphy said in a recent radio interview.

He was responding to renewed complaints about the cost to the taxpayer of lawyers' involvement in tribunals. The minister for finance Charlie McCreevy had said in the Dáil that 'a senior counsel in one of the tribunals earns more in three-and-a-half days than an old-age pensioner gets in a year'.

Although he noted that this, and most other such criticism, was directed at barristers rather than solicitors, Murphy recognised that there was 'collateral damage' for the solicitors' profession also. Many members of the public do not distinguish between the two branches of the profession on this issue.

Murphy pointed out that there was nothing new in what minister McCreevy was saying.

Ken Murphy: 'a better and more cost-effective way to run tribunals needs to be found'

'The cost of tribunals of inquiry has been an issue from the commencement of the Beef Tribunal in 1991. Indeed, for some people, the issue of the level of legal cost is the single biggest issue in the tribunals. But we in the Law Society have long said that a better and more cost-effective way to run tribunals needs to be found in the public interest'.

Although minister McCreevy has so far failed to produce any specific reform proposals, the society believes there is a great deal of sense in the measures recommended in the 350-page Law Reform Commission consultation paper on tribunals of inquiries, first published in March 2003.

Murphy pointed out that even the Bar Council representatives had in the past questioned the over-reliance on senior counsel for tribunal work. 'A senior counsel's special skill is likely to be in cross-examination, although, of course, many solicitors have considerable skill in this area as well', said Murphy. However, much of the behind-the-scenes work of tribunals involves the methodical examination of documents and the tracing of payments, for which work the use of senior counsel is a misallocation of resources.

Also the target of much sensible criticism in the Law Reform Commission report is the retention of counsel, often for periods of years, on the basis of a daily fee as would apply in a court case. The commission notes that 'counsel's income depends upon an aggregate of "sunny days" (when he is paid) and "rainy days" (when he is not). Against this background, tribunals of inquiry offer the climatologically impossible scenarios of, often, three or four years of continuous sunny days'.

'Clearly, a contract with a different basis for remuneration would make more sense', said Murphy.

Personal Injuries Assessment Board update

It is to be hoped that the Personal Injuries Assessment Board will be more efficient in its operation than it has been in its establishment, *writes Ken Murphy*.

Originally promised to be open for business on 1 January 2004, that date has slipped repeatedly. In the March *Gazette*, we quoted the-then most up-to-date prediction, from tánaiste Mary Harney, that 1 May would be the commencement date. It is clear now that even this was over-ambitious and the most recent official statement, that of minister of state Frank Fahey, answering questions in the Dáil on behalf of the tánaiste, is that 'it is expected that PIAB will deal with cases from June onwards'. However, a department official has informally indicated to the society that 1 May remains the target date for commencement.

Solicitors who have instructions from their clients to institute proceedings in the courts, rather than wait for PIAB, should now issue those proceedings without delay. Section 6 of the *Personal Injuries Assessment Board Act, 2003* provides that nothing in the act affects proceedings brought before its commencement.

RETIREMENT TRUST SCHEME
Unit prices: 1 March 2004
Managed fund: 438.484c
All-equity fund: 104.292c
Cash fund: 254.128c
Long bond fund: 113.273c

CONSULTATION FORUM ON DATA PROTECTION

The data protection commissioner is convening an informal consultation forum with solicitors in private practice to receive feedback on any issues of data protection that are causing concern or difficulty with clients, and to offer clarification on aspects of data protection. The venue is the Office of the Data Protection Commissioner, Block 6, the Irish Life Centre, Lower Abbey Street, Dublin 1. Solicitors who would like to participate should register at *www.iia.ie* no later than Wednesday 28 April.

PRISONS HQ MOVES WEST

Justice minister Michael McDowell has announced that the site for the new Prison Service headquarters in Longford has been selected and the terms agreed for its transfer to state ownership. He said that plans for the building have already been finalised and that the best estimate for its completion was around the end of October 2006. Initial plans to transfer 129 staff to Longford under the government's decentralisation programme have been revised upwards by about 30 to include other elements of prison management.

LRC CONSIDERS DNA DATABASE

The Law Reform Commission published its *Consultation paper on the establishment of a DNA database* on 24 March, in response to a request from the attorney general. Among other things, the report provisionally recommends that the DNA profiles of convicts or suspects in serious crime may be retained indefinitely on the database.

FOUR NATIONS CONFERENCE

The Young Solicitors Group will hold a conference on management challenges that face today's lawyers on 14-15 May in the Newcastle Gateshead Hilton in Newcastle-upon-Tyne. Organised by the YSG, in conjunction with the Law Management section of the Law Society of England and Wales, the conference promises to be an excellent networking opportunity, bringing together young solicitors from Ireland, Northern Ireland, England and Wales. Registration fees for the conference and gala dinner range to a maximum of €225 plus VAT. Send your details to LMStevens@lawsociety.org.uk or visit *www.ysg.org* for more information.

CORRECTION

The article on internet marketing in the January/February issue of the *Gazette* (*Caught in the web*, p38) was written by Sinead Morgan, solicitor, who works within Dell Financial Services, which is a separate legal entity to Dell and its finance and legal departments.

Campaign for debt reform

Ireland is in the minority of European states that have failed to develop a modern, humane debt settlement regime, *writes Alma Clissmann*. The Money Advice and Budgeting Service (MABS) and the Irish Bankers' Federation agreed at a conference held by FLAC last month that most debtors who cannot meet their obligations get into this position because of illness, unemployment, family breakdown or addiction and not through deliberate abuse of the credit and collection system.

The conference was held to discuss the findings of FLAC's report on the legal debt collection system called *An end based on means*. There was consensus that most people in the situation 'would pay if they could' and that the current legal remedies have self-defeating shortcomings. For instance, there is no means of resolving debts that the debtor has no prospect of ever being able to pay, and the court system 'petrifies' debtors who cannot repay so they tend to ignore the debt while interest and costs mount. Further, it was accepted that committal of the debtor and execution on his goods by the sheriff as the ultimate enforcement of payment is Dickensian, ineffectual and costly in social terms, as well as doing nothing for the debtor, the creditor or the state.

Peter Ward BL addressing the recent FLAC conference

Chairman of the national executive council of MABS, Tom Keating, said: 'Many clients that we see suffer as a result of aggressive debt collection procedures. The fear of public shaming in open court also adds to the distress of the debt. Many clients are not aware of how the legal system works, and some make rash offers of repayment which may involve borrowing from other sources, thus making the situation worse'.

The Irish government has already indicated its interest in legislation that deals with non-payment of fines, but retreated from an earlier position that included consumer debt. However, failing to deal with consumer debt at the same time would be a missed opportunity.

ONE TO WATCH: NEW LEGISLATION

***Civil Liability and Courts Bill, 2004*, part 2 – civil liability**

At time of writing, the bill is before the Seanad and is expected to pass all stages in both houses of the Oireachtas shortly, so that it will be in place when the PIAB is commissioned. The reforms in part 2, which apply to personal injuries actions, represent a major cultural change for the way personal injury litigation will be conducted. The objective is to achieve a tighter management of cases and speedier resolutions, with more openness and less opportunity for 'trial by ambush'. The ultimate aim, of course, is to reduce the costs of dispute resolution and discourage fraudulent cases. Please note that this commentary relates to the bill as initiated, which may, of course, be amended before it is enacted:

- The limitation period is reduced from three years to one year
- A letter of claim must be sent within two months of the alleged cause of action or date of knowledge. Failure to do so can result in cost penalties and negative inferences
- The court has a duty to ensure the trial takes place in a reasonable time and can enforce rules of court by awarding costs against a delaying party. Extensions to time limits will only be allowed by agreement or for good reason
- A new 'personal injuries summons' must contain particulars of all items of special damage, the wrongful acts complained of, the circumstances of the wrong, and all instances of negligence. The court may deal with non-compliance by dismissing or suspending the action, penalising with costs or drawing inferences. These courses of action remain open to the court to enforce other requirements also
- A plaintiff may be required to supply further information, including details of any previous personal injury claims and any injuries or medical treatment that may have a bearing. Documentation from the Revenue Commissioners and the Department of Social and Family Affairs relating to income may also be required by the defendant
- A defence must clarify what items need not be proved and what do require proof, and the grounds for defending the claim. The same information as is required for the personal injuries summons is also required for the defence
- All pleadings must contain full and detailed particulars and must be lodged in the appropriate court
- Both parties are required to swear affidavits verifying the contents of any pleadings or further information requested. False and misleading statements in such affidavits give rise to an offence
- At the request of either party at any time before trial, the court may direct a mediation conference, to be chaired by a mediator who may be an agreed person or a mediator appointed by the court (who may be a

Society to host colleagues from accession states

Very special events will be hosted in Dublin by the Law Society of Ireland from 29 April to 2 May 2004, *writes Ken Murphy*. They will celebrate the historic accession to the European Union on 1 May 2004 of the ten new member states.

Major celebrations, with the participation of the heads of government of all 25 EU member states, will be taking place in Dublin on the dates in question. Irish people generally are proud that this remarkable development in the history of Europe is taking place under the Irish presidency of the EU.

President McAleese: meeting lawyers from accession states

To mark this unique event, the Law Society has invited the presidents of the law societies in each of the ten accession countries to a series of business meetings and social events designed to express, on behalf of Irish solicitors, our welcome and friendship for the lawyers in all ten new member states of the EU.

Acceptances have been received from all ten.

One of the high points of the weekend will be a visit to Áras an Uachtaráin, which is being graciously hosted by President Mary McAleese.

On the home run

The Calcutta run is an annual charity 10k fun run organised by solicitors to raise funds for both Fr Peter McVerry's Arrupe society, which battles homelessness in Dublin, and GOAL, on behalf of homeless children in Calcutta. This year, it takes place on Saturday 29 May. The run is open to everyone – from the serious runner to the slow walker. It starts and finishes at Blackhall Place, taking a route through the Phoenix Park and is followed by a barbecue, music and drinks. Over 1,300 runners/walkers took part last year, raising over €190,000 for homeless children in Dublin and Calcutta. This year, the organisers hope to hit €200,000 – which would mean that the event had raised €1 million over the years since it began – but that depends on you! For more information on how to participate in this year's run, contact your local Calcutta Run representative, visit the website *www.calcuttarun.com*, e-mail run@calcuttarun.com or tel: 01 269 2851.

Support Services Task Force

The task force reviewing support services for solicitors invites submissions from solicitors, trainee solicitors and other interested parties on this important topic. The task force will be reviewing existing services, those for use by all solicitors and those targeted at solicitors experiencing problems in practice, those provided by the Law Society and other services that are available. Other services may also be recommended. Submissions should be sent to the secretary, Support Services Task Force, Law Society of Ireland, Blackhall Place, Dublin 7, or by e-mail to a.collins@lawsociety.ie, no later than 30 April 2004.

barrister or solicitor of at least five years' standing or someone nominated by a prescribed body). What goes on in the mediation conference remains confidential and is excluded from evidence if the mediation does not achieve a settlement. The chairperson is required to make a report to the court on any reasons the mediation did not take place (if this was the case) or on whether or not a settlement was reached, and, if so, the terms. If a party does not attend, he may be penalised with all or some of the costs of the action

- After a prescribed date, the plaintiff must serve a notice in writing setting out an acceptable settlement. Within a time period after the prescribed date, the defendant may counter-offer or indicate that no offer will be made. These settlement offers will not be made known to the judge until after his decision is arrived at, but will be influential in helping the judge to decide where the costs of the action should fall
- The court may direct a preliminary hearing to decide what issues are in dispute
- The court may direct evidence to be given by affidavit, subject to the right of cross-examination
- The court may appoint an 'approved person' to investigate and give expert evidence, with whom the parties are required to co-operate
- On an appeal, the Supreme Court may invite submissions from persons it considers appropriate in relation to any matter concerning liability or damages of exceptional public importance, if the action belongs to a class of causes of action in which these matters arise
- Giving false or misleading evidence is an offence, as is giving false instructions to a solicitor or expert
- If the plaintiff or a witness makes a fraudulent claim, the court shall dismiss the action, unless to do so would result in injustice being done. This provision will apply to pending as well as new cases initiated under the act
- Collateral benefits received by the plaintiff from the defendant in the form of charitable donations may be deducted from an eventual award if the defendant specifies in advance that the donations are being made on that basis
- Income that has not been notified or returned to the Revenue Commissioners shall be disregarded by the court in assessing damages, unless to do so would give rise to injustice. This provision will not apply to pending cases
- The penalties for offences are: a) on summary conviction, a fine of up to €3,000 and/or imprisonment up to 12 months; b) on conviction on indictment, a fine of up to €100,000 and/or imprisonment up to ten years. G

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

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Children and the welfare principle

Alma Clissmann reports on developments in relation to the practical application of the *European convention on human rights*

Since January, people of any age, including children, are entitled to challenge existing law or decisions made by organs of state on the ground that the law or decision ignores their rights under the convention. In *Sutherland v United Kingdom* ([1997] 24 EHRR CD 22), using article 8 (right to private and family life) with article 14 (anti-discrimination on ground of age), the applicant secured a decision holding that the respect for the private life of gay adolescents required that they should have freedom equivalent to their heterosexual contemporaries. This resulted in the UK *Sexual Offences (Amendment) Act 2000*, which reduced the age of consent for homosexual activity from 18 to 16.

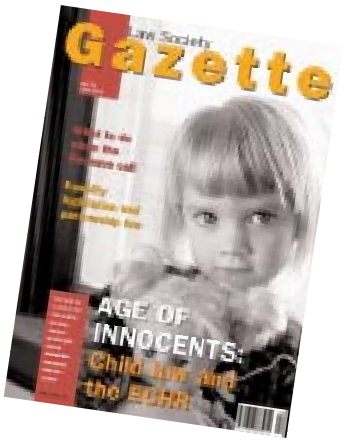
The welfare principle

The existing principle in Irish law that, in decisions concerning a child, the welfare of the child should have paramount importance, has been accommodated by the European Court of Human Rights (ECtHR) through a flexible interpretation of article 8(2): 'for the protection of health or morals, or for the protection of the rights and freedoms of others'. The general consensus on the welfare principle among the member states of the Council of Europe has made this possible. The court has stressed the wide margin of appreciation in assessing how necessary it is to take a child into care, bearing in mind the need to strike a fair balance between the parents' rights and those of the child. The leading case is *Johansen v Norway* ([1996] 23 EHRR 33), in which the court stressed the crucial importance attached, in the balancing exercise, 'to the best interests of the child, which, depending on their nature and seriousness, may override those of the parent. In particular … the parent cannot be entitled under article 8 to have such measures taken as would harm the child's health and development'.

The welfare principle applies in both public and private law cases. See also *Scott v United Kingdom* ([2000] 1 FLR 958) – freeing order for adoption of child of alcoholic mother; *K and T v Finland* ([2001] 2 FLR 707) – five-year-old son and infant daughter removed from care of schizophrenic mother and her partner and placed in foster care, without proper efforts by the authorities to support and reunite the family; *L v Finland* ([2000] 2 FLR 118 at 118) – two children taken into care on mother's mental illness, with restricted access by parents and no access by grandparents, who unsettled the children.

While the welfare principle and this interpretation of article 8 can achieve the same results, courts must now ensure that parents' and children's rights are balanced against each other, and any infringement must be proportionate to its legitimate aim. The ECtHR has also been receptive to the argument that children's rights to be consulted as to their wishes, as is required by the UN *Convention on the rights of the child*, must be respected. In *L v Finland*, the ECtHR held that the best interests of two girls, aged 14 and eight, justified the state welfare agency restricting their father's access to them, in view of their reluctance to see him and evidence suggesting sexual abuse by him their grandfather.

In *Hokkanen v Finland* ([1994] 19 EHRR 139), a 12-year-old



girl lived with her maternal grandparents, and her father sought custody. The ECtHR held that his right to a family life with his daughter was not absolute, given her own wish to remain with her grandparents. The court advised that in interpreting article 8 and balancing the rights of individuals, domestic courts should consider 'the rights and freedoms of all concerned … and more particularly the best interests of the child and his or her rights under article 8'.

Best interests of the child

To summarise, a court may make an order restricting parents' rights in order to serve the best interests of the child, provided that a fair balance is achieved between the competing interests of all concerned, both parents have been fully and fairly involved in the decision-making process, and the restriction is proportionate to its legitimate aim.

Relying purely on the best interests of the child may not be sufficient if the rights of others are not taken into the equation and balanced, and consideration given to whether infringement of parents' rights is proportionate to the child's immediate needs. In *Elsholz v Germany* ([2000] 2 FLR 119), the ECtHR implied criticism of the domestic court for assuming that because a denial of access to the father appeared to be in the best interests of the child, it justified the claimant's loss of family life.

It can also be argued that by seeing the concerns of children in terms of welfare and the technical requirements of article 8(2), children's own rights under article 8 are being left undeveloped. We are used to thinking of rights being balanced by responsibilities. For example, in *X v Netherlands* ([1974) app no 6753/74 [1975-76] 1-3 DR 118), the conflict between a 14-year-old girl's right to family privacy and her parents' right to run their household as they pleased was resolved in favour of the parents, in order to protect her health and morals. They had the financial and management burden of running a family, and if their daughter wished to leave, she would not be in a position to supply this for herself. However, this is to ignore the quality of human rights, which are there to protect against serious violations and which require the resources of the contracting state to be available to protect people, including children, against serious and painful abuses.

I am indebted to Jane Fortin for the use of information in her book Children's rights and the developing law *(second ed, 2003), LexisNexis UK.* G

Alma Clissmann is the Law Society's parliamentary and law reform executive. The society hopes to report regularly on developments in the application of the ECHR Act, 2003. *Please send any citations of the act in pleadings or judgments to a.clissmann@lawsociety.ie.*

Calculating the real cost of m

Increased litigation against doctors is down to poor hospital management and not 'ambulance-chasing' solicitors, writes Marie O'Connor

In January, two High Court awards were made for brain damage sustained during childbirth; one for €4.14 million against the North Western Health Board (Letterkenny General Hospital) and the other, in an oxytocin-driven birth, for €1.5 million against the National Maternity Hospital in Dublin.

Syntocinon, a synthetic of the naturally occurring hormone oxytocin, is used routinely in Irish labour wards to induce or speed up labour. Oxytocin has previously featured in multi-million euro awards against Irish obstetricians: it is associated in the medical literature with infant brain damage and death during labour. Maternal deaths and brain damage have also been reported in connection with its use. Department of Health figures show that Irish death rates around the time of birth are the worst in the European Union.

Irish obstetricians can expect to be sued twice every three years, according to Finbarr Fitzpatrick, secretary general of the Irish Hospital Consultants' Association (IHCA). In a recent letter to the *Irish Examiner* – the contents of which also appeared in the opinion pages of *The Irish Times* – Fitzpatrick took issue with a statement by Law Society director general Ken Murphy that 14,000 people are injured or killed in Irish hospitals every year as a result of preventable medical errors. This statement, first made on RTÉ's *PrimeTime* and later accepted by the minister for health and children, subsequently gave rise to considerable debate within the medical profession as to the meaning of 'error'.

But let us return to Fitzpatrick's argument. Citing the Medical Protection Society (MPS), he claimed that Ireland had the highest level of litigation in Europe, second only to the United States in the 'world league'. (This perception appears to have originated in a press release actually issued by the Medical Defence Union (MDU) circa January 1991, announcing yet another hike in members' subscriptions.) In the view of the IHCA, 'compensation culture', fanned by 'ambulance-chasing' solicitors, is largely to blame for Ireland's allegedly high rates of 'litigiousness'.

Irish obstetricians 'can expect to be sued twice every three years'

Myth of the 'compo culture'

However, only a tiny proportion of justifiable negligence claims are currently being brought against doctors: official records show that 70% of claims notified to the MDU and MPS do not proceed beyond disclosure of medical records. The RTÉ programme established that, while 25,000 'adverse incidents' had occurred in Irish hospitals over the previous 18 months, only 620 claims had been lodged. Therefore, for every 50 incidents, there had been only one claim. Speaking on RTÉ radio on 18 February 2002, Ann O'Driscoll, claims manager at St Paul's hospital, maintained that there was no evidence of a 'compo' culture, only evidence of 'substandard care' and 'non-communication with doctors'. In ten years' assessment, she said, there had only been two vexatious claims.

In his letter, Fitzpatrick enumerated the possible causes of litigation against doctors, including the inexactitude of medicine as a science, human and 'systems failures' and poor technology. 'It is stretching the truth to claim that a particular number of patients are "injured" because of preventable medical errors', he said. Citing the high levels of emergency hospital admissions (70%) and the pressure (on consultants) to discharge patients, he pointed out that doctors are not infallible: 'Mistakes, some of which can be fatal for patients, do occur'.

So, what kind of mistakes, fatal or otherwise, lead to doctors being sued? A 1998 report entitled *Providing good standards of care in obstetrics and gynaecology*, published by the Institute of Obstetricians and Gynaecologists (IOG), provides us with some of the answers. It may also inform the debate on 'error'.

Scrubbing up

In 1995, the IOG formed a sub-committee to study the causes of litigation, based on a study of negligence claims from 1985 to 1993 submitted to the MPS. The IOG report revealed that two of the most common operations in Ireland, caesarean section and hysterectomy, are both leading causes of litigation. In the twin speciality of obstetrics and gynaecology, a relatively small number of complications accounted for the vast majority of claims. Over 85% of all claims in obstetrics, for example, fall into just seven categories, disproving the myth that 'compo' culture is to blame. What is loosely termed 'hypoxic' (or oxygen-related) brain damage in newborn babies and death accounted for 38% of all claims, while birth trauma to the baby (such as Eerb's palsy or brain trauma) or the mother accounted for a further 13%. The severity of the injuries cited, as well as their homogeneity, was striking. Damage to the mother, for example, excluding damage to the perineum, included rupture of the womb and bladder injuries.

Caesarean complications accounted for 7% of complaints, and these mostly related to life-threatening haemorrhage (needing hysterectomy), wound infection and injury to the

edical negligence

urinary tract. One-in-12 complaints related to damage to the pelvic floor following a tear or episiotomy. Episiotomy is a form of birth surgery, often done routinely and without adequate medical reason.

As many as 6% of complaints related to retention of the afterbirth, a potentially serious complication that good professional care should prevent, and similarly retention of 'foreign bodies'. Foreign bodies most frequently featuring in litigation were swabs or broken needles, but other items such as bits of a catheter or drain, stitches, or even surgical instruments have been found in patients' bodies and have given rise to claims.

Hysterectomy, mainly of the abdominal variety, accounted for 34% of all gynaecological claims. The institute expressed 'concern' at the high incidence of damage to the urinary tract during hysterectomy. Most gynaecological procedures, the IOG points out, are not life saving, yet 'these procedures can have fatal consequences'. Even investigation procedures that have become routine, such as laparoscopy – a keyhole procedure that accounted for 6% of gynaecological claims – can have 'tragic consequences', the institute observed.

Doctor in the house?

Does the 'common' contract, as the consultants' contract with the state is known, also play a part in medical litigation? One-third of contracts issued by the state permit off-site private practice, a phenomenon that inevitably leads to off-site consultants. This increases the risk that medical procedures may be performed by non-consultant or junior hospital doctors that are less than fully trained to carry them out. Junior medical staff, the IOG text infers, work on occasion without proper supervision, attending difficult births such as breeches and twins in the absence of consultant obstetricians for whom they are required to deputise. Medical culture also gives rise to litigation in other ways. Poor communication is widely cited as a major reason for litigation: the MDU has actually advised that, in the event of a serious complication or mishap, the consultant in charge should tell the patient what happened, apologising if necessary: 'Saying sorry does not constitute an admission of legal liability'.

Medical procedures carried out without the patient's informed consent also feature increasingly. With several hundred symphysiotomy cases in the pipeline, such claims are set to rise. New technologies also play a part. Diathermy burns, for example, accounted for a small number of claims. More insidiously, new technologies give rise to specific training difficulties in areas such as microsurgery. Keyhole procedures are associated with rising levels of claims in Britain, where poor outcomes have been shown to be linked to doctors less than fully trained and experienced in the new technologies that they use.

Operation payout

What does medical malpractice and negligence actually cost? Over the past five years, the MDU claims to have paid out €44.5 million in compensation and legal costs on behalf of a relatively small number of consultant obstetricians in Ireland. A total of 18 cases were involved, according to the MDU, and in each claim over €1 million was paid out in settlement. The largest payout since 1999 was €5.3 million. Six cases cost more than €3 million each.

Meanwhile, the Irish taxpayer has paid €30 million annually in medical insurance bills. In an article in *Medicine weekly*, MDU professional services director, Dr Christine Tomkins, observed that these figures show the crisis facing Irish obstetricians today. Since 1997, the MDU has apparently received €25 million in subscription fees from its obstetrician members: 'We have already spent €62 million in paying claims on their behalf and we have estimated known and incurred liabilities of €130 million'. The MDU message is, or has been, that the Department of Health and the taxpayers of Ireland should now take responsibility for what Tomkins called 'historic claims', that is, pick up the tab for unpaid claims made prior to March 2001, for which liability is known to have been incurred. Taxpayers will probably take quite a different view: the consultancy group Mercer has estimated these outstanding claims to be in the region of €400 million.

Meanwhile, with the current round of talks deadlocked between the MDU and the department, the indemnity row remains unresolved. One of the IHCA's demands is state cover for off-site private practice. If granted, this will fan the flames of further litigation more surely than any high-speed car chases involving solicitors and emergency medical technicians. G

Marie O'Connor is a research sociologist, author and health correspondent.

VOX POP

Has public confidence in An Garda Síochána diminished in light of recent scandals and controversies?

'The serious allegations, if found to have substance, will create difficulties for juries in convicting on uncorroborated garda evidence. There is also a perception that it is difficult for garda officers to do their job efficiently while also engaged in other business. Perhaps they should be paid more and restricted from all double-jobbing. I'm disturbed that in recent high-profile arrests, the media seem to be forewarned'. *Stephen Lanigan O'Keefe SC*

'I have no reason to believe so, but behavioural standards in society generally have dropped and people perhaps look to the gardaí – maybe unjustly – to rectify matters. An assurance that the garda complaints board be seen as more effectual would be useful'. *Henry Blake, partner, John P Redmond & Co*

'Public confidence in An Garda Síochána was reduced by the *Reclaim the streets* protest, where the gardaí present failed to name colleagues involved in the assault when asked to do so by the garda complaints authority'. *Mary Irvine SC*

'Yes, especially given its duties in relation to ensuring implementation of the law. To be seen flouting its responsibilities certainly damages public confidence, and rightly so – if one can't trust the gardaí to obey the law, who can one trust?' *Dr Laura Halpin*

Is there something offbeat ab

Reform of An Garda Síochána seems to be on its way, but, like our transport and health systems, only after the crisis point has been reached and passed, writes Pat Igoe

Since its foundation, An Garda Síochána has rightly prided itself as being 'the community in uniform'. With its members recruited from the homes of Ireland, it is an integral part of the community in every town and village with a garda station. But recent incidents may have caused significant erosion in our confidence in our police force. These include:

- The false confession obtained from the homeless drug addict Dean Lyons for the murders of two psychiatric patients at Grangegorman in Dublin in 1997. Another man, Mark Nash, later confessed in a detailed statement. How was the false confession obtained? We don't know
- The shooting dead of John Carthy at Abbeylara, County Longford, in April 2002; the Barr Tribunal findings are eagerly awaited
- The alleged appalling behaviour of some members of the gardaí in Donegal; the Morris Tribunal findings are eagerly awaited
- The troubling pictures in 2002 of garda batons being used liberally at the *Reclaim the streets* protest in Dublin – just who was out of control?

Then there were various earlier disquieting incidents involving the gardaí, which range from the Sallins mail train robbery and the Kerry babies scandal to many lesser incidents. In the Sallins case, four men were charged and convicted. The only evidence against them were statements that they had allegedly made in custody. Later evidence showed that they could not have been the authors of the statements: so, who was? Again, we'll probably never know. In the Kerry babies case, Mr Justice Kevin Lynch's 1986 report highlighted incomprehensible gaps in garda procedures in the investigation. As one commentator put it, the investigation was met with a 'wall of silence'.

New garda undercover unit hits the streets

At street level, a recent report from the National Crime Council suggested that the gardaí had a different and more aggressive style in certain low-income suburbs of Dublin and were much more likely to be aggressive and hostile in their approach than in more affluent areas. Ironically, 'police-befriending' may be least available where it is most needed.

2004 *Garda bill*

The 2004 *Garda Síochána Bill* seeks to move the relationship between gardaí and the people they serve to a more mature, clear and respectful relationship. The bill is seen as a significant improvement on last year's heads of bill, which was described by minister for justice Michael McDowell as the most significant reform of the police since the foundation of the state. The bill will make its way through the various stages of the Dáil after going through the Seanad where it was, unusually, first introduced. It is hoped that it will be enacted before the Dáil recess in June. Clearly, opposition politicians are waiting to propose amendments at committee stage in the Dáil.

But what is beyond political and public debate is that reform is overdue and that the garda structures are now hugely outdated. The public wants reform, while suspects and accused persons are entitled to it. It is difficult to refute the comment of retired Circuit Court judge Anthony Murphy that the gardaí have lost their way.

The relationship between police and people is critical in any democratic society. It must be based on mutual trust and respect. It contains a delicate balance between people's rights and freedoms, on the one hand, and personal and community security on the other.

The old cliché that only in a police state is the work of the police simple remains true. The former guardians of the Lubyanka were not overly concerned about the finer points in the *Universal declaration on human rights*. Not so here in Ireland … we would have thought. But incidents, including those already noted, raise questions. The fear would be of a culture and ethos where the very guardians of the law play fast and loose with the law. Are our societal values and constitutional protections properly reflected in the attitudes and behaviour of the men and women in uniform?

Labour Party leader Pat Rabbitte referred to the controversial January RTÉ *PrimeTime* programme on the gardaí as exposing 'a shocking picture of systematic abuse'. Few deny that 2004 must be the year of major reform of the force.

Who are the police?

There needs to be greater clarity about whether An Garda Síochána is a police force or a state security force or both. It is currently both, and the new bill does not change this. But policing at ground level and state security must sit uncomfortably with each other.

Surely this is the time to consider whether the gardaí should be a police force and a police force only, and that state security be handled by a separate organisation like Britain's MI5 and MI6. There is a certain conflict and dichotomy between community policing on the one hand and state security on the other.

out An Garda Síochána?

Community policing and the gathering of evidence and such police work should be transparent and abide by clear rules in a society that values individual rights. State security, by definition, involves elements of subterfuge and covertness. Should one organisation be doing both?

University of Limerick criminologist, professor Dermot Walsh, suggested recently that the gardaí had been shielded from scrutiny of their responsibilities to society because of their special role in state security. In a recent *Irish Times* interview, he suggested that the gardaí should not be responsible for state security at all.

For a state which has for decades looked north of the border with some condescension at their political and policing institutions, the Police Service of Northern Ireland has by-passed us. We are now looking with envy at Police Ombudsman Nuala O'Loan and her powers to protect ordinary individuals against the might of the state, as reflected in the gardaí at your front door.

McDowell's 2004 bill has not drawn a chorus of disapproval from opposition spokesmen. This is partly because it addresses a number of the reservations about the 2003 bill. The proposed independent ombudsman commission will have full police powers to investigate wrongdoing by members of the force. The right to investigate and check files and papers without notice, rather than having to give prior notice of calling, will inevitably be seen as important. This is as it is with the Northern Ireland ombudsman.

Role and control

The new bill at last tries to define the precise role of An Garda Síochána and the nature of its relationship with individual citizens, immigrants and visitors, and with the state. It leaves state security with the gardaí, but it does outline clearly for the first time the functions of the force: these are to provide policing and security (including protecting life, public order and property), state security, preventing crime, bringing criminals to justice, and controlling the roads.

For the first time, the bill affirms that the gardaí must have regard to upholding human rights for everyone. So, an end, we hope, to pulling shoulder-numbers off before going into a situation in a 'difficult' part of town.

Apart from the details in the ombudsman proposals, other sections of the new bill will have a rumbustious passage through the Dáil, including those on the relationship between the government and An Garda Síochána. It is proposed that the minister for justice may issue directives to the garda commissioner in relation to any policing matter. This has already been criticised by Fine Gael as amounting to a huge change in the government's relationship with the force. Fine Gael's justice spokesman, John Deasy, even suggested that it would amount to making Michael McDowell the chief of police.

The issue revolves around control of the gardaí in practice. The force is a creation of statute and serves the community and the state rather than the government. So, should there not be a buffer between the government and An Garda Síochána, as with the police authorities in Britain? The commissioner has always had 'operational responsibility'. But the issue of political interference – 'have you time for a chat or would you prefer a transfer to Spiddal?' – will be subject to lively debate in the Dáil.

The issues surrounding reform of the gardaí go to the heart of Irish society and concern our rights as individuals in an increasingly complex and multicultural society. Fear of alienating the gardaí, for fear of an unwanted visit for having no front light on your bicycle, has no place in a modern society where police and community behave with mutual respect. That is the challenge. G

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Age of i

The long-awaited *European Convention on Human Rights Act, 2003* came into force on 31 December. Geoffrey Shannon considers its impact on child law

MAIN POINTS

- ***European Convention on Human Rights Act, 2003***
- **Protection of children's rights**
- **Relevant case law**

Ireland's dualist approach to international law makes international human rights treaties binding on the state, though not on the courts, as such treaties have not been incorporated into Irish law. This will change, to a limited extent, with the incorporation of the *European convention on human rights and fundamental freedoms* into Irish law.

It is now possible to take proceedings in the Irish courts alleging a breach of the convention. Previously, to assert any rights under the convention, an injured party had first to exhaust all domestic remedies before bringing the case to the European Court of Human Rights (ECtHR) in Strasbourg, with the costs and delays associated with that process.

There is little doubt that inconsistencies will arise between Irish child law and practice and the standards required by the convention. That said, the significance of this development has been overstated in the arena of Irish child law. The indirect or interpretative mode of incorporation preserves the domestic primacy of the constitution (see section 2 of the *European Convention on Human Rights Act, 2003*). Consequently, article 41 of the constitution will continue to act as an impediment to the effective implementation of the legal entitlements of children under the convention. In particular, incorporation of the convention at sub-constitutional level will ensure that child rights remain subordinate to parental rights. If there is a conflict between a provision of the constitution and the convention, the constitution prevails. Therefore, in the area of child law, there will continue to be cases where a remedy for a breach of a convention right cannot be procured in the Irish courts, with the only avenue available to such litigants being an application to the Strasbourg court.

The new regime

Section 1 of the *European Convention on Human Rights Act, 2003* provides that articles 2 to 14 of the convention and protocols 1, 4, 6 and 7 are to be incorporated into Irish law. Section 2 of the act requires the Irish courts to interpret Irish law in a manner compatible with the state's obligations under the convention, 'in so far as is possible'. All courts are now obliged to interpret and apply any statutory provision or rule of law in accordance with the convention and take judicial notice of the decisions of the institutions of the convention. Where this is not possible and where no other legal remedy is adequate and available, the superior courts may make declarations of incompatibility in relation to legislation and awards of damages (and other remedies) against 'organs of the state' that behave in a manner contrary to the state's obligations under the convention.

Every organ of the state, pursuant to section 3(1) of the 2003 act, is required to perform its functions in a manner compatible with the convention. The definition of 'organ of the state' specifically excludes the courts, but does seem to include health boards. Section 3(2) states: *'A person who has suffered injury, loss or damage as a result of a contravention … may, if no other remedy in damages is available, institute proceedings to recover damages in respect of the contravention in the High Court (or, subject to sub-section (3)* [This sub-section deals with jurisdiction limitations], *in the Circuit Court) and the court may award to the person such damages (if any) as it considers appropriate'*.

The effect of this provision is that if a person has suffered injury, loss or damage as a result of a breach of section 3(1), he may take an action for damages, but only if no other remedy in damages is available. It excludes proceedings taken in the District Court. This is a matter of particular concern in the child law area, as the District Court has principal jurisdiction for proceedings instituted under the *Child Care Act, 1991*. Section 3(5) of the 2003 act states that proceedings for violation of a convention right must be brought within one year of the contravention. This one-year period may be extended by court order if it is considered

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appropriate to do so in the interests of justice.

Section 4 of the act requires a court to take judicial notice of both the convention provisions and the decisions of the institutions of the convention. It further requires a court to 'take due account of the principles laid down by … decisions' of the institutions of the convention when applying the convention provisions.

Declaration of incompatibility

Section 5 provides that where the High Court, or the Supreme Court on appeal, rules that there is an incompatibility between domestic law and the convention, a declaration of incompatibility may be granted by that court. But it should be noted that demonstrating that no other legal remedy is 'adequate or available' is a condition precedent to invoking this section. Further, legal aid is not available to the applicant seeking a declaration of incompatibility. Where the courts issue a declaration of incompatibility, it is a matter for the government to consider the steps to be taken to remedy the incompatibility, as such a declaration will not, for constitutional reasons, affect the validity, enforcement or continuing operation of the national law in question.

Compensation scheme

Section 5(4) creates a new compensation scheme for a person who has been granted a declaration of incompatibility by the courts. Such a person may apply to the government for payment of *ex gratia* compensation in respect of any injury, loss or damage he may have suffered as a result of the incompatibility. This section has been criticised for failing to provide a mechanism whereby the level of compensation awarded can be appealed. Section 6 provides that, before a court decides whether to make a declaration of incompatibility, the attorney general must be given notice of the proceedings in accordance with the rules of court.

In summary, the remedies available to a litigant under the act are confined to a declaration of incompatibility (and possible *ex gratia* compensation) and an action for damages against an 'organ of the state'.

The District Court

Sections 2 and 4 of the act apply in the District Court. Consequently, decisions of the ECtHR are now relevant in public and private law cases dealt with in this court. The District Court must also interpret legislation in a manner harmonious with the state's obligations under the convention 'in so far as is possible' and 'subject to the rules of law relating to

PROTECTION OF CHILDREN

Article 3 of the convention imposes an obligation to protect children from harm and ill treatment. In *Z and Ors v UK* ([2001] 2 FLR 612), the ECtHR called into question the approach of the English courts to the liability of public authorities. It held that a local authority has a positive duty to see that measures are taken to protect a child at risk. The court noted, in particular, the local authority's failure to assign a senior social worker or guardian *ad litem* in respect of the child at the centre of that case.

In *KL v UK*, the Commission on Human Rights declared admissible a case in which children placed in care following abuse by their parents argued a breach by the local authority of its duty to comply with its positive obligations under article 3 to take steps to protect them ([1998] 26 EHRR CD 113). (See also *E v UK* [2003] 1 FLR 348, where the ECtHR held that there had been a breach of article 3 where there had been no effective remedy, due to maladministration by a local authority, for the continuous assaults suffered by four children at the hands of their stepfather).

In *A v UK* ([1999] 27 EHRR 611), the ECtHR, considering the caning of a nine-year-old boy by his stepfather and the defence of 'reasonable chastisement' under UK law, concluded that the state had failed to protect the applicant from punishment amounting to inhuman or degrading treatment within the meaning of article 3. The court held that cognisance should be taken of the following criteria when considering whether the punishment is reasonable:

- The nature and context of the child's behaviour
- The duration of the behaviour
- The physical and mental consequences of the behaviour of the child, and
- The age and personal characteristics of the child.

It is clear from the ECtHR's judgment that the state has a positive duty to take measures to ensure that no one private individual is subjected to torture, inhuman or degrading treatment at the hands of other private individuals. On this point, the court held that: *'Children and other vulnerable individuals, in particular, are entitled to state protection, in the form of effective deterrence against such serious breaches of personal integrity'*. (See, however, *Costello-Roberts v UK* [1993] 19 EHRR 112, where three 'whacks' on the bottom administered by a headmaster to a seven-year-old boy was not found to amount to a violation of article 3.)

interpretation and application'. No remedy is available in the District Court for breach of a convention right. District Court issues likely to be informed by ECtHR jurisprudence include placing children in care, access issues in respect of children placed in care, the representation of children in proceedings and expert reports in cases involving children.

In camera hearings

In general, Irish law is committed to the administration of justice in public. This principle is guaranteed by article 34(1) of the constitution. However, family law cases and cases involving children are among the categories of cases that may be shielded from public and media scrutiny.

Individual family law statutes provide that the *in camera* rule is mandatory in most family law matters (see section 34 of the *Judicial Separation and Family Law Reform Act, 1989*, s38(5) of the *Family Law (Divorce) Act, 1996*, s25(1) and (2) of the *Family Law (Maintenance of Spouses and Children) Act, 1976*, s29 of the *Child Care Act, 1991*, s38(6) of the *Family Law Act, 1995* and s16(1) of the *Domestic Violence Act, 1996*. There is no mandatory provision in the *Guardianship of Infants Act, 1964* or the *Family Home Protection Act, 1976*. That said, the discretionary provision of section 45 of the *Courts (Supplemental Provisions) Act, 1961* applies to such applications).

Of special significance in discussing the *in camera* rule is article 6 of the convention. In *Werner v Austria* (judgment of 24 November 1997), the ECtHR stated that 'the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of article 6', save where there is 'a pressing social need' and the reasons advanced for the restriction are 'relevant and sufficient'.

The decision of the ECtHR in *B and P v UK* (judgment of 24 April 2001) states that a rigid interpretation of a mandatory *in camera* rule may be in breach of the convention if it is disproportionate. In the Irish context, the absolute and mandatory nature of the *in camera* rule in the 1989 and 1996 acts is clearly inconsistent with the requirements of article 6(1). This has been addressed in the recently published *Civil Liability and Courts Bill, 2004*. Section 31(2) of the bill allows for the publication of reports of family law proceedings as long as the report does not identify the parties or any child to which the proceedings relate. It provides as follows:

'Nothing contained in a relevant enactment shall operate to prohibit

a) The preparation and publication of a report of proceedings to which the relevant enactment relates, or

b) The publication of the decision of the court in such proceedings, provided that the report or judgment does not contain any information which would enable the parties to the proceedings or any child to which the proceedings relate to be identified'.

There are several concerns in relation to the proposed reform of the *in camera* rule. There is a serious absence of detail in the section. For example, no individual has been identified for the purposes of the preparation and publication of a report of family law proceedings. A code of practice has been promised, but this will be of little comfort to the client whose privacy has been breached, perhaps through inadvertence.

Reform of the rule involves a sensitive balancing act between the right to privacy and the right to a fair, transparent and accountable system of justice. Legislation that omits both to identify those permitted to report on family law proceedings and to provide for prohibitive sanctions for those who breach the anonymity of the parties, at a time of intense emotional family upheaval, fails to achieve this balance.

Delay in child law proceedings

Article 6 of the convention provides that 'in the determination of his civil rights and obligations … everyone is entitled to a … hearing within a reasonable time'. In *Price and Lowe v United Kingdom* (no 43186/98, judgment of 29 July 2003), the ECtHR held unanimously that the length of the civil proceedings (which began on 12 February 1986 and ended on 30 March 1998) amounted to a violation of article 6(1). It stated: *'The court has held on a number of occasions that a principle of domestic law or practice that the parties to civil proceedings are required to take the initiative with regard to the progress of the proceedings, does not dispense the state from complying with the requirement to deal with cases in a reasonable time (see* Buchholz v Germany, *judgment of 6 May 1981, series no 42, p16, § 50;* Guincho v Portugal, *judgment of 10 July 1984, series A, no 81, p14, § 32;* Capuano v Italy, *judgment of 25 June 1987, series A, no 119, p11, § 25;* Mitchell and Holloway v the United Kingdom, *no 44808/98, judgment of 17 December 2002)'.*

The prospects of a fair hearing may be diminished by significant delay in child law proceedings. Article 7 of the 1996 *European convention on the exercise of*

LIBERTY AND SECURITY

Article 5 guarantees the right to liberty and security, though this right is not an absolute right. It has been invoked in cases involving disturbed children, for whom there are currently insufficient high-support units in Ireland and where, in many cases, they are held in penal institutions for want of appropriate accommodation.

Ireland has recently been held to be in breach of article 5 in *DG v Ireland* (judgment of 16 May 2002). The case challenged the legality of detaining in St Patrick's Institution a 16-year-old non-offending child with serious behavioural problems.

The ECtHR held that the detention of the child there was in contravention of rights guaranteed under article 5(1). The court ruled that the state acted unlawfully in failing to provide the disturbed child with a safe, suitable therapeutic unit and upheld the claim that the child's human rights were violated and his right to compensation denied. (See, however, *Koniarska v UK*, judgment of 12 October 2000, where the court held that placing a child in secure accommodation was not contrary to the convention as it amounted to 'educational supervision' within the meaning of article 5.)

children's rights requires that *'in proceedings affecting a child, the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced'*.

The ECtHR has tended to lean towards requiring that national authorities display special diligence in expediting proceedings involving children. Indeed, in *H v UK* ([1988] 10 EHRR 95), the court stated that exceptional diligence is required where the maxim 'justice delayed is justice denied' is fully applicable. This might arise where custody and access proceedings are initiated by parents of children in the care of health boards, as such proceedings are decisive for the parents' future relations with their children and have a 'particular quality of irreversibility'. The ECtHR alluded in particular to delay such that the elapse of time has the effect of determining the issue.

In *Nuutinen v Finland* (ECtHR, 27 June 2000), the ECtHR held that article 6 had been violated by the five years and five months' length of the custody and access proceedings. The current delay in the procurement and completion of section 20 reports in Ireland and the difficulties encountered in retaining guardians *ad litem* must surely be considered in this context. If it transpires that a child is seriously neglected or ill treated due to a delay in the procurement of a s20 report, for example, a breach of article 3 may also arise (see *Z and D v UK*, no 29392/95, Comm rep 10.9.99).

In *Glaser v UK* (ECtHR, 19 September 2000), the ECtHR stated that it is essential that custody and access cases be dealt with speedily. The court ruled that neither the volume of work nor shortage of resources will justify excessive delay.

Change in legal culture

Irish family law is unique in that it has resisted the steady erosion of parental rights that has characterised international family law systems. By ratifying the 1989 UN *Convention on the rights of the child* in 1992 without reservation, Ireland accepted its international obligations towards children. Article 41 of the Irish constitution, however, continues to act as an impediment to the effective implementation of children's legal entitlements under the 1989 convention.

The *European Convention on Human Rights Act, 2003* is likely to create a significant paradigm shift in legal culture in child law. It will consolidate the four main aims of the UN convention – the standard-setter on children's rights – which have been identified as prevention, protection, provision and participation. Where family law and child law issues conflict in terms of rights, it will be necessary to balance the rights of different family members. The approach when article 8 is invoked in relation to private family law will be to balance the rights of all family members, with the interests of the child being decisive when the way is not clear. G

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CARE ORDERS

Article 8(2) says that the right to family life cannot be interfered with, unless such interference is in accordance with law and has an aim that is legitimate. As a core principle, the convention requires that the contracting parties refrain from arbitrary interference in the lives of individuals in the state. Thus, where the state intervenes in the life of a family – for instance, by taking a child into care – it must show that its intervention is in accordance with the law, for the furtherance of a legitimate aim and necessary in a democratic society.

In a case against Finland, the ECtHR held that, as the care order was not the only option available to the local authority for securing the children's protection, the reasons used to justify it were insufficient and amounted to a violation of article 8 (*K and T v Finland*, judgment of 27 April 2000). In *Venema v Netherlands* in 2002, the court said 'it is for the respondent state to establish that a careful assessment of the impact of the proposed care measure on the parents and the child was carried out prior to the implementation of a care measure'.

The impact of these judgments is that where health boards fail to use a care order as a measure of last resort, a violation of a core provision of the convention may arise (See also *EP v Italy* [2001] 31 EHRR 17).

Where a child is validly taken into care, article 8 guarantees that parents and children have access to each other. Thus, any restriction on access must be justified by reference to article 8(2) (see *Hendriks v Netherlands* [1983] 5 EHRR 223, *W v UK* [1988] 10 EHRR 29, *R v UK* [1988] 10 EHRR 74, *O v UK* [1988] 10 EHRR 82, *H v UK* [1988] 10 EHRR 95, *Olsson v Sweden* [1989] 11 EHRR 259, and *McMichael v UK* [1995] 20 EHRR 205).

The ECtHR has stated that a care order is intended to be temporary in nature and that its implementation must always be guided by the ultimate aim of family reunion. Contact between parents and children in care is vital, therefore, in order to maintain the family relationship.

BODY OF

What is the legal position when someone disappears without a trace, but there is no proof of death? Tom Power investigates

A death certificate is probably the most fundamental requirement to begin the administration of the affairs of any deceased person. However, from time to time an unusual situation arises where no body is available for a doctor to examine but it is possible or even likely that the individual is dead. Surviving family members may be left in the unfortunate position that the estate cannot be administered, or that pension funds, social welfare or life insurance benefits cannot be accessed or claimed. It is also a significant impediment to a surviving spouse remarrying.

This type of situation is not very common but may arise, for example, where an individual falls overboard from a pleasure craft, a fishing vessel or ship; where a plane is lost without recovery of all bodies; where an asylum-seeker coming to Ireland was separated from their spouse in circumstances where it is likely that the spouse was killed; where military personnel go missing in action; or with victims of illegal organisations, large-scale terrorist attacks and natural catastrophes. Or perhaps an individual simply goes out to work in the morning and never returns.

MAIN POINTS

- Irish case law
- The seven-year rule
- Evidence required by the courts

The seven-year itch

There is no Irish legislation covering this eventuality, but there is a 'general rule' of Irish law that may help the surviving family members or beneficiaries. According to the 1869 Irish case *McMahon and Others v McElroy* (IR 5 Eq 1), this rule is based on an analogy of a 1695 English statute (7 William III c8, s1). The essence of the general rule (see **panel,** page 20) is that an individual's death may be presumed to have occurred once seven years have passed from the date he was last heard of (other than by rumour).

The usual remedies granted by the High Court are a declaration that the individual may be presumed dead and/or liberty to apply for a grant of probate/letters of administration on belief of death.

Dead reckoning

Even though the general rule is that seven years must pass from the date the individual was last heard from, it may not always be necessary to wait for seven years where there is a very clear implication from the circumstances that the individual is dead.

In the Goods of Freytag (43 ILTR 116) concerned an individual who, while staying in a hotel in Messina, Sicily, made some plans for a business trip the following morning, 28 December 1908. A catastrophic earthquake destroyed most of Messina that morning and Freytag did not turn up for his meeting (or any subsequent meeting ever again). His Italian colleagues wrote to the family, outlining the circumstances and indicating that attempts were made to locate him, but neither he nor his body were ever located.

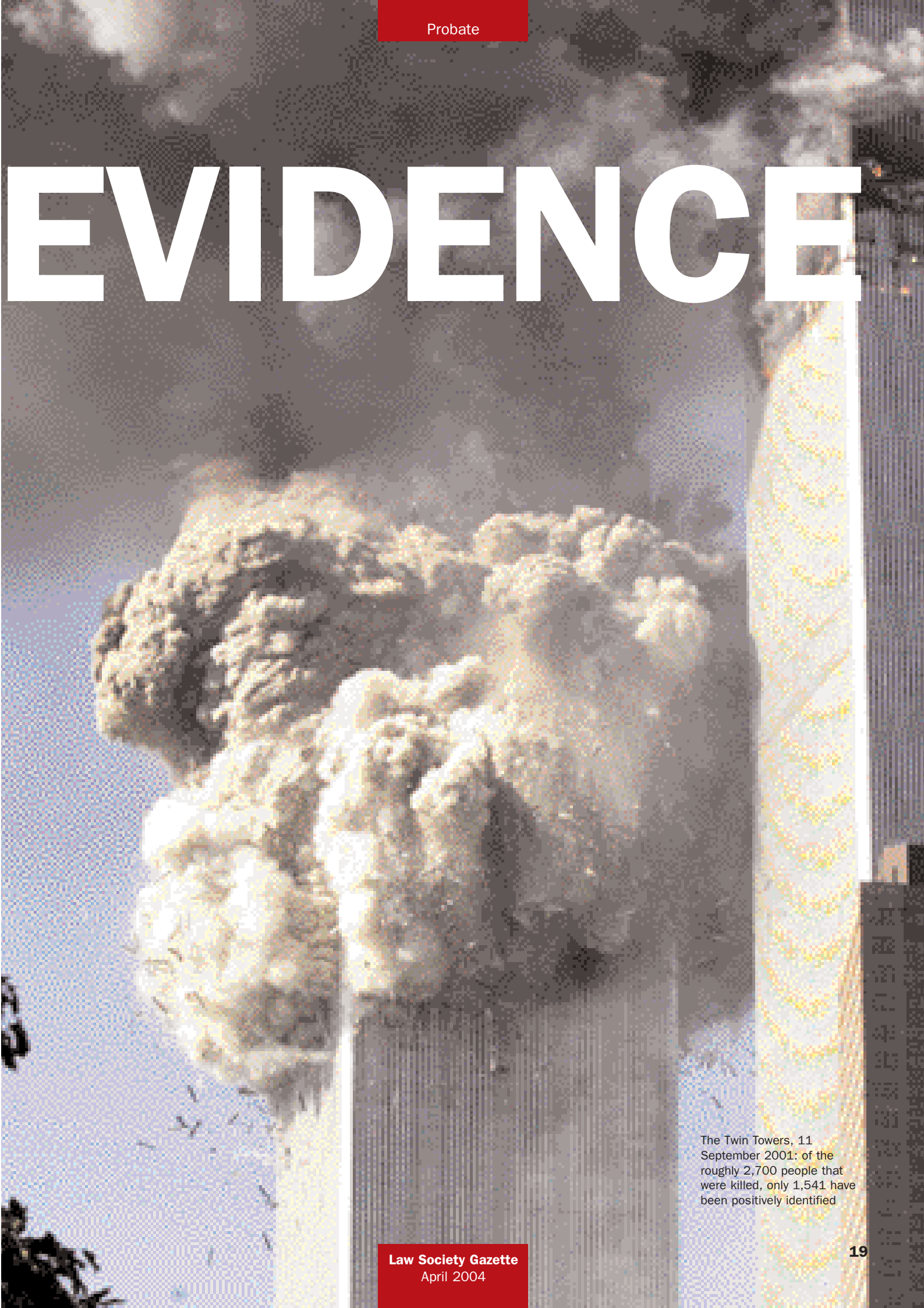
Freytag's brother travelled to Messina and made extensive searches for him, including advertising for his whereabouts in that location, with no result. The letter from the Italian colleagues was produced, but the advertisements were not. Notwithstanding that the newspapers advertisements were not produced, Boyd J granted an order that Freytag should be presumed dead and that his brother should have liberty to apply for a grant of probate. In this case, the time from disappearance to the date of the order was approximately three months. In this case also, in addition to presuming the death, the order specified the date of death (28 December 1908).

Similarly, in *In the Goods of Inkerman Brown* (36 ILTR 173), where a sailor sailed on a ship that was lost, an order presuming his death and specifying the date of his death was granted within two months of the sinking. Given the circumstances, no advertising was sought by the court in this case.

In some cases, it is necessary to prove not only that an individual is dead, but that he died before or after a certain date. In *In re Phene's Trusts* (LR 5 Ch App 139), the family secured an order presuming death of a brother, Nicholas, but a dispute arose as to whether Nicholas had died before or after a benefactor uncle. In the course of his judgment, Gifford LJ stated:

'First: that the law presumes a person who has not been heard of for seven years to be dead, but in the absence of special circumstances draws no presumption from that fact as to the particular period at which he died. Secondly: that a person alive at a certain period of time is, according to the ordinary presumption of law, to be

EVIDENCE



The Twin Towers, 11 September 2001: of the roughly 2,700 people that were killed, only 1,541 have been positively identified

THE RULE IN *MCMAHON*

The *McMahon* case concerned an individual, Hugh McMahon, who inherited an interest in land from his father. However, the inheritance was contingent: if Hugh died before any of his sisters, the property was to be divided between the sisters equally. Regardless of this minor defect in title, the intrepid Hugh still managed to sell the land to a third party and emigrate to America. He returned to Ireland in 1859 but went back to America shortly afterwards, never to be heard of again. Some nine years later, in March 1868, Hugh's sisters applied to the Vice-Chancellor's Court for an order to presume Hugh's death. Hugh's sisters made no attempt to produce any evidence of his death. They relied entirely on the lack of communication from him for more than seven years.

Naturally, their application was hotly contested by the third-party purchaser because, if Hugh was declared dead, his surviving sisters would automatically take title to the land for which he had paid full value. Although the third party maintained that he was unaware of the contingency, by a quirk of this case he had constructive notice of the sisters' contingent interest in the property (because the same solicitor acted for both sides in the purchase transaction) so he could not set himself up as 'equity's darling' (a *bona fide* purchaser for value without notice).

The third party made it clear that he was of the opinion that Hugh was still alive and that he intended to prove that fact. Reading between the lines of the case, the siblings did not get on very well, and the third-party purchaser indicated that Hugh would not necessarily want to get in contact with his sisters. The implication was that an application to presume someone is dead before the High Court cannot be grounded on the fact that the siblings do not talk to one another, especially where one sibling has sold out the others' inheritance. The vice-chancellor outlined the legal position as follows: *'As a general rule, a man's death will be presumed after an interval of seven years since he was last heard of. But this is not an invariable rule, and it admits of exceptions; and indeed in any case the court in following the analogy of the statutes, on which analogy the rule depends, is bound to consider the circumstances of the particular case in order to see whether the presumption is rebutted, or rather whether it fairly arises'.*

In essence, the rule presuming death does not operate automatically on the expiration of the seven years. In order for the presumption to kick in, enough evidence must be adduced to raise the presumption. Once the presumption is raised, it is still rebuttable by evidence that tends to show that the supposed deceased is still alive.

The vice-chancellor indicated that, if it could be demonstrated to him that Hugh had not been heard of by those who might reasonably expect to hear from him, and if proper enquiries were made relating to his place of residence in America and it was found that he had disappeared from there and could not be traced, then he would grant the order. The surviving sisters in this case had made no such enquiries at the time of the application and were denied the order. Given that the sisters did not meet the initial evidential burden, it was not necessary for the third party to rebut the legal presumption of death so there was no need for him to try to communicate with Hugh in the circumstances.

presumed to be alive at the expiration of any reasonable period afterwards. And thirdly: that the onus of proving death at any particular period within the seven years lies with the party alleging death at such particular period'.

Merry Christmas, Mr Laurence

In the Goods of Laurence Griffin (65 ILTR 108) was a case where a postman left to do his rounds on Christmas Day 1929 and never returned. The gardaí and civilians mounted a search, but all that was ever found of him were his leggings and his bicycle. Several men were charged with his murder but discharged. Hanna J dealt with the prosecutions and later expressly took judicial notice of this fact when he heard the application. Oddly, in this case the applicant was granted liberty to apply for a grant of administration, but refused an order presuming him dead. The time period in this case was just over two years.

In essence, therefore, an application for presumption of death or an application for leave to apply for a grant of probate (or both) can be taken within the general seven-year period in the right circumstances. In certain circumstances, it may not be required to advertise or to strictly prove the advertisement.

Bye and sell

The 1869 *McMahon* case was cited as the main Irish authority in the later Irish case of *In re the Goods of James Doherty* ([1961] IR 219). This case concerned an individual who requested that a stockbrokers' firm purchase some shares for him in 1919. He asked the firm to hold the share certificates on his behalf as he was going to Australia. He did not provide any contact address. Some 40 years passed and, despite placing advertisements in Irish and Australian newspapers, the firm never heard from him again. The minister for finance made an application to have the shares declared *bona vacantia*.

Kenny J's view was that the firm of stockbrokers that had purchased the shares for him could reasonably be expected to have heard from him about the shares over the 40-year period. Given that the seven-year period had elapsed and advertisements had been placed in newspapers in Ireland and Australia, Kenny J granted the minister the order presuming death. In this case, the initial evidential burden was met because there was good reason for the supposed deceased to make contact, the period of time involved was over 40 years and the firm had advertised for information about the deceased. In addition to this, the court also went further and presumed that Doherty had died intestate, unmarried and with no next-of-kin.

In the similar earlier case of *In the Goods of John Armstrong* (7 Ir Jur 402), a mother gave shares to her son, who sold them and lodged some of the funds in an Irish bank before departing for Australia. He wrote home to her a number of times and then she heard no more for over seven years. She sought an order presuming his death. Keatinge J held that even

where the seven years had passed, and the supposed deceased had good reason to contact his mother and his bank but did not, no order presuming death could be granted unless advertisements were placed in newspapers.

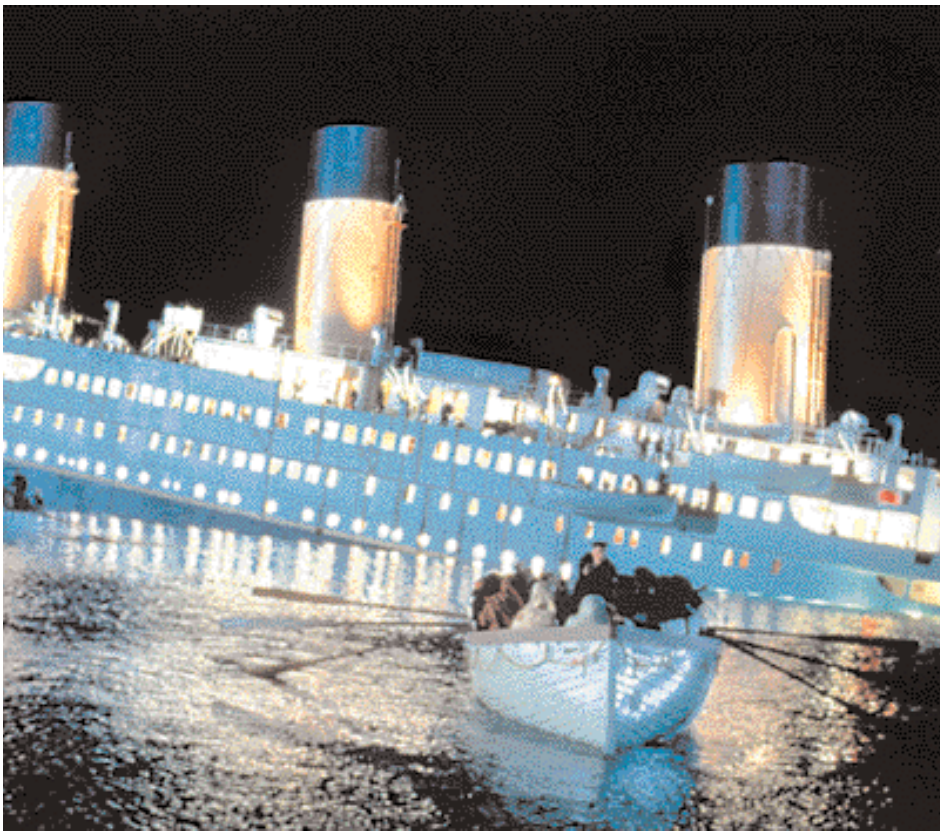
The same line of reasoning was applied in the case of *In the Goods of John Atkinson* (IR 7Eq 219). In this case, the supposed deceased was a sailor who wrote to his family from China to say he was planning to sail home to claim his inheritance from his father's estate. He was not heard of again and the next-of-kin brought an action to presume him dead. It was adduced in evidence that the supposed deceased often travelled under a false name and that it was not known what the name of the last ship he sailed on was, so that it would be useless to advertise. Regardless of these facts, the judge refused to grant the order in the absence of advertising. The next-of-kin referred to an earlier case *In the Goods of Norris* (1 Sw & Tr6), but the judge distinguished *Norris* on the basis that, in *Norris*, the individual sailed on a known ship to a known port and that the vessel was known to be lost.

The general theme running through the Irish cases is that, at a very minimum, the applicant must advertise for the whereabouts of the deceased in the place where he resided, or where he was most likely or was last known to be.

Essentially, therefore, I would suggest that when making an application to the High Court for an order presuming death, the court will need to be provided with a watershed – a date that was the last time the supposed deceased was heard of, as well as at least some proof tending to indicate that the individual is dead. This may take the form of circumstances surrounding the disappearance, lack of communication with people who were likely to hear from him, detailing the last known correspondence or communication, and the length of time since disappearance.

In most cases, unless there are exceptional circumstances, the applicant should advertise for information concerning the whereabouts of the supposed deceased. If possible, the applicant should arrange for the search-and-rescue authorities to confirm, by way of affidavit if possible, that attempts were made to locate the individual, but were fruitless. The applicant will need to set out the full background relating to the disappearance, including the background in relation to the supposed deceased's age and health. This should include mental health, where relevant, such as suicidal tendencies. The applicant should also arrange for the details to be corroborated as much as possible by a family member.

As an additional matter, the applicant's affidavit should set out the next-of-kin entitled to distribution of his assets on his death. Most importantly, the applicant must aver their belief that the individual is dead. G



The *Titanic*: hundreds lost at sea

Tom Power is a Dublin-based barrister.

You may think that you are unlikely to ever come into contact with the Revenue's newly-reorganised investigations and prosecutions division, but in the current climate this is no longer a remote possibility. Julie Burke offers some advice

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How would you react if the Revenue were to write to you or arrive at your office and request client information, documents or files? Or worse, if they announced that they intended to conduct a search of your client's files? What do you do if a client contacts you, saying that Revenue officials are at his home or business premises demanding access and seeking information? When the Revenue arrive, do you or your client have the right to refuse them entry or to refuse their request for production of information? Can your client call you, or can you call another advisor?

As a solicitor, you are an officer of the court and must act reasonably. Do you know your rights and your client's rights? What statutory protection is afforded to you and your client in these circumstances?

It is important to note that while recent *Finance Acts* (particularly in 1999) have dramatically increased the powers of the Revenue, there have been no corresponding statutory safeguards introduced for the taxpayer or advisor. To the extent that any safeguards exist, they are contained in Revenue statements of practice and internal Revenue operations manuals. Suffice it to say that internal guidelines or operations manuals are of questionable legal standing and offer little comfort to a taxpayer or to you as an advisor.

What to do if the Revenue arrive at your office

So what can you do if the Revenue call at your office demanding immediate access and production of client files or information? You should:

- Seek proof of identity of all Revenue officials present. Each official should have an authorisation card that will have on one side the statutory

authority and a Revenue Commissioner's signature and, on the other side, the official's name and photograph, the legislation for which the officer is authorised and the number of the card. The card also has the Revenue Commissioners' hologram
- If a Revenue official does not have his authorisation card, refuse him entry and send him away. The official should also provide you with a business card showing his name, address and contact details
- Check that the Revenue officer's authorisation to exercise powers at a taxpayer's or an advisor's premises is set out on his authorisation card
- Revenue officers are required to produce their authorisation card on first meeting the taxpayer and/or his advisor. The officer should, if requested, allow an advisor or the taxpayer to read the authorisation card and to take notes from it
- Always ask the Revenue official for the purpose of the visit and the legal basis for the request to be produced in writing. Get a copy of the warrant, if one exists, and a copy of the relevant legislation
- If the search is under warrant, check that the warrant has been validly issued and the information therein is correct.
- Ask the Revenue official if it is a criminal prosecution matter. If the answer is yes, then remember that any statement you make may be used in a subsequent case against your client
- If you are unsure of your legal position, ask the Revenue official to wait while you seek advice from a solicitor practising in the area of tax disputes/tax counsel or, alternatively, arrange for the official to return once you have taken advice. This matter is at the Revenue's discretion
- If the solicitor responsible for the client file is not present in the office, inform the Revenue official of this fact and ask him to wait or return when the relevant solicitor is present. Again, this matter is at the Revenue's discretion
- Never hand over client information without considering whether privilege applies to it. Remember, if you disclose client information incorrectly you are responsible, so if you are unsure of your legal position, seek advice
- The Revenue's powers relate to specific named clients. The Revenue are not entitled to do a general trawl of client files. Ensure that any search is controlled by you and confined to the documents of the named client
- Take copies of any documents that the Revenue are removing from your premises and obtain a written receipt before they leave the premises
- Ideally, you should have a colleague present to witness all exchanges with the Revenue officials. Ensure that both you and your colleague make a contemporaneous note of events
- Advise your client in writing of events and the information sought or given.

When the Revenue make a house call

Article 40.5 of the constitution protects the inviolability of the dwelling of the citizen, providing that it 'shall not be forcibly entered save in accordance with law'. This provision clearly protects the home of the citizen against unlawful entry. The question of what then constitutes a lawful entry has arisen in a number of cases concerning the validity of search warrants. The issue of such warrants is a highly technical and complex area of criminal procedure.

The Revenue's main search and seizure powers are set out in sections 903, 904 and 905 of the *Taxes Consolidation Act, 1997* (TCA) and broadly provide that:
- The Revenue have the right to enter any premises without a warrant (except premises **wholly** used as a dwelling house) and to seize documents (chapter 4 of part 68 of the TCA). They are permitted simply to enter, search, examine and retain documents and other records for the purpose of examination. Clearly, this gives rise to an issue in relation to any premises that are partly used for domestic/business purposes, such as a home office
- In general, no objective criteria need to be satisfied, such as a suspicion that an offence has been committed, before the Revenue's search and seizure powers can be exercised (except in the case of a premises used wholly as a dwelling house). This is in contrast to other similar powers given in non-tax legislation
- The Revenue are required to obtain a warrant to search premises that are 'wholly used as a dwelling house'. A warrant may be issued by a district judge where he is satisfied that it is proper to do so. Section 905(2A) of the TCA empowers the search and seizure of documents by the officer but offers no guidance as to the purpose behind such search and seizure. The sub-section also envisages anticipated future breaches of Revenue law. Warrants may be issued where it is reasonably

CTORcalls

MAIN POINTS
- **Revenue powers of search and seizure**
- ***Taxes Consolidation Act, 1997***
- **What to do when the Revenue call**

suspected that a person 'may fail' to comply with the acts and such failure is likely 'to lead to serious prejudice in the proper assessment of collection of taxes'. A pre-emptive strike against anticipated criminal behaviour, leading to a loss of liberty, has been held to be unconstitutional by the Supreme Court. In the words of Walsh J, 'the accepted method of preventing the commission of future offences is the threat of conviction and punishment'
- There is no time limit for the return of seized documents.

In summary, your home and that of your client is inviolable and the Revenue cannot gain access without a warrant. In my experience, however, this does not preclude the Revenue from arriving at your home after business hours and seeking access by consent.

Private and confidential

In *Haughey and Others v Moriarty and Others* (Supreme Court, 28 July 1998), the nature and extent of the right to privacy of one's own records, and how it might be invaded, was considered at length. The judgment clearly acknowledged, in general terms, the existence of a constitutional right to privacy and its scope: 'For the purpose of this case, and not so holding, the court is prepared to accept that the constitutional right to privacy extends to the privacy and confidentiality of a citizen's banking records and transactions. This is a right which is recognised at common law'. The judgment then went on to acknowledge the existence of situations in which the public interest in defeating wrongdoing may outweigh the public interest in the maintenance of confidentiality.

'Basically, the Revenue can obtain most information in relation to a client's business that they request, and they can use all information garnered'

REPORT OF THE REVENUE POWERS GROUP

As a member of the Revenue Powers Group, established by the minister for finance in March 2003, I was involved in advising in relation to a number of issues relevant in the context of the main statutory powers available to the Revenue Commissioners to establish tax liabilities, including investigation with a view to prosecution for Revenue offences.

As is obvious from the above issues relating to the Revenue's use of search and seizure and information-seeking powers, there is a real need for the introduction of proper statutory safeguards for the taxpayer and his advisor. One of the key issues considered by the Revenue Powers Group was 'the appropriate balance between the need to secure the revenue of the state and the rights of the taxpayer'.

Among the conclusions set out in the report of the Revenue Powers Group was that 'the Revenue's powers in chapter 4 are characteristic of those of other (sic: foreign) administrations and the Revenue Powers Group accepted the need for such powers, *provided that* adequate statutory safeguards are introduced for the taxpayer, including additional appeal provisions. The legislation must contain key restraints on the use of (sic: Revenue's) powers, which can then be amplified in codes of practice and operations manuals'.

While the recommendations of the report are currently under consideration, it is of critical importance that this opportunity is taken to redress the balance in favour of the taxpayer and his advisor. This is not merely 'a tax advisor's wish list', as one commentator put it; rather, it is a basic component of any developed tax system.

The Revenue have significant powers (mainly to be found in sections 900, 901, 902, 904, 906 and 907 of the TCA) to seek the production of documents from taxpayers or advisors in relation to a taxpayer. Some of the key areas of concern in relation to the Revenue's current information-seeking powers are:
- No precondition is required before the Revenue activate use of these information-seeking provisions. For example, there is no need for a taxpayer to have failed to file a return or to file an unsatisfactory return
- The Revenue have identical powers under sections 900, 901, 902 and 902A of the TCA to request documents, the only distinction being that one requires recourse to judicial authority to activate use. The election as to which power is to be used rests solely with the Revenue – no independent review of the decision is available and no right of appeal exists (for instance, where there is a dispute as to the reasonableness of the request or where there may be a question as to the relevance of documents and information sought). In certain cases, this can cause considerable disruption to business
- If the Revenue proceed with a court application to seek information by formal notice from a taxpayer or from an advisor, the taxpayer receives no notice of any such application nor does he have the right to be represented in court on the making of any application by the Revenue. Therefore, no right of appeal exists
- In the context of requests for information by the Revenue from a third party (such as a financial institution) in relation to a particular taxpayer, there is no requirement to first request the information from the taxpayer
- There is no requirement for the Revenue to have reasonable grounds for suspecting that the taxpayer is in breach of the TCA or that a serious prejudice to proper assessment or collection will arise before the Revenue can make an application to the appeal commissioners to obtain financial information regarding a taxpayer
- There is no redress for taxpayers for damage to reputation where the Revenue's information-seeking powers from third parties are used in error
- There is no time limit attaching to the age of documents that may be requested by the Revenue, thereby forcing taxpayers and advisers to retain documents outside the current statutory time limits.

Basically, the Revenue can obtain most information in relation to a client's business that they request, except privileged documents, and they can use all information garnered provided that it was properly obtained. G

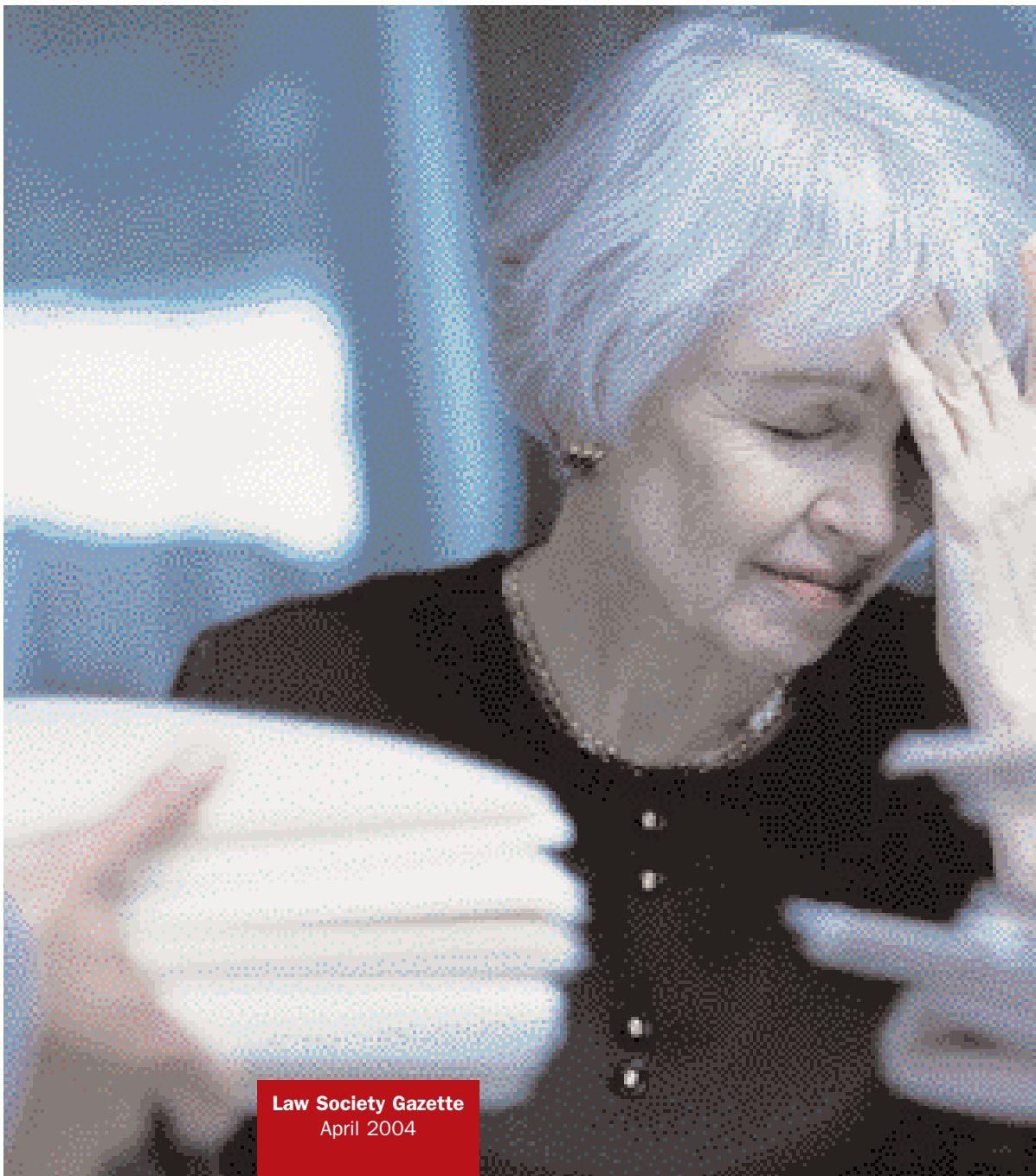
Julie Burke is principal of the Dublin law firm Julie M Burke. She was the only solicitor member of the Revenue Powers Group, whose report was published in February.

The 2003 *Finance Act* presents employers and employees with a whole new regime when it comes to benefits, perks and income tax. Richard Grogan examines some of the new procedures that are likely to cause headaches for employers and their legal advisors

No such thi

When taxes impact on tried-and-tested industrial relations practices, the result is another headache for employers and the solicitors who advise them. From 1 January 2004, PAYE, PRSI and the health contribution levy must be operated by employers in respect of the taxable value of most benefits in kind and non-cash benefits provided to employees. The result is, first, additional PRSI costs for employers of 10.75% of the gross value, and, second, additional deductions for employees. Put another way, employees will receive a lower net salary payment. There is probably a third consequence: employees who see their net salaries fall will seek compensation by way of pay increases.

This article is intended to give a short overview of how the new regulation will affect employers and their employees. This will be relevant in drafting employment contracts or renegotiating packages to



MAIN POINTS

- ***Income tax regulations 2003***
- **Benefit in kind**
- **Revenue guidelines**

avoid the regulation's unnecessary implications. Already there are some innovative solutions.

The regulation was introduced by the *Income tax (employments) regulations 2003* (SI 613 of 2003). The Revenue Commissioners have issued guidance on their operation. The legislation is contained in section 985A of the 1997 *Taxes Consolidation Act* (inserted by section 6 of the *Finance Act, 2003*). This is the legislative basis for PAYE on benefits. Sections 16 to 21 of the *Social Welfare (Miscellaneous Provisions) Act, 2003* contains the PRSI provision.

Summary of the new procedures

Where an employer provides a benefit in a form specified in the legislation, the employer is treated as making a 'notional payment'. Therefore, tax must be operated under PAYE/PRSI. The value of the notional payment is the taxable value of the benefit. This is calculated by the employer 'on the basis of the best estimate that can reasonably be made'.

If there is insufficient salary paid to an employee, the employer must pay the tax. If the employee does not make good to the employer the tax before the end of the tax year, the tax payment on behalf of the employee is treated as a further taxable benefit. The tax on this 'additional benefit' is payable in the following tax year. There is an extension of the time period, to allow an employee to make good the amount, to 31 March in the tax year following the year in which the benefit is provided.

The cost of 'notional payment' is critical to the operation of the system. The employer does not

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deduct tax on the benefit itself. Rather, a notional amount equal to the taxable value is included as 'pay' when calculating PAYE/PRSI.

The employer must now estimate the taxable value, where the Revenue previously assessed the value. There is a considerable body of case law, legislation and Revenue practice in this area. It is arguably unfair to expect employers to take on this assessment task. However, that is what must be done. The value estimation by an employer is open to review in a Revenue audit. Employers will need to be careful in assessing values; the old system of agreeing values in advance with the Revenue is no longer there.

Collection

In principle, tax is payable when the benefit is provided. Under the Revenue guidelines, however, tax due on benefits that are provided over the course of a year (such as cars, loans and accommodation) may be collected over the full year.

There is ample statutory authority to enable an employer to deduct PAYE/PRSI. This is under the terms of the *Payment of Wages Act*. Even so, employers need to be careful. They should make sure that employees are advised of their rights and liabilities. An employer may also be obliged to consider tax planning to minimise the effect on employees.

It may well be that employees will have a right to

TABLE 1
BUSINESS MILEAGE

BUSINESS MILEAGE		PERCENTAGE OF OMV
Lower limits	**Upper limit**	**%**
15,000	20,000	24
20,000	25,000	18
25,000	30,000	12
30,000	–	6

forgo a benefit. This could even be the case where there was a perceived benefit to the employer. Many employers actively encourage employees to be members of, and participate fully in, for example, golf clubs or other clubs and organisations where there is a direct benefit to the employer by way of additional referrals of work. Now such memberships will be taxable. It may well be that an employee will decide that he doesn't want to take on the tax burden. If the employer wants the employee to be a member of an organisation or club, he may well have to pick up the full tax cost.

There have been a bewildering number of different rules and practices in the past, but the legislation has been simplified. The Revenue have issued their own interpretation of the new rules. However, it is important to note that the Revenue guidelines are their interpretation and are not always correct. It is important not to blindly follow the views of the Revenue as to how the regulations should actually be interpreted.

Company cars

The new rules will be particularly relevant in relation to company cars. The old rules provided for a reduction in benefit in kind if the employee paid some or all of the cost of fuel, insurance, servicing and/or motor tax. This has been abolished from 1 January 2004. The benefit will be 30% of the original market value (OMV). From 1 January, there are only four bands for the reducing scale of charges where there is business mileage (see **table 1**).

There will be winners and losers. If any employee with low business mileage pays for his own fuel, then benefit in kind rises from 25.5% of the OMV to 30%. Any employee with 30,000 business miles will see his benefit in kind fall from 7.5% to 6% under the new rules.

I anticipate difficulties in relation to company cars. Many employers will have provided cars on the basis of having advised employees that because the employee will pay for his own fuel, insurance,

TABLE 2
OVERVIEW OF NORMAL BENEFITS

DESCRIPTION	TAXABLE?	TAXABLE VALUE
Vouchers	Yes	The cost is generally incurred by the employer. If the realisable value of the voucher is 'significantly greater' than the cost, then the realisable value is to be the measure of the benefit
Transfer of assets	Yes	The depreciated value of the asset at the time of transfer
Tax paid awards	Yes	'Grossed up' cost of the award
Home telephone – separate line for business use	No	Nil
Home telephone single line	Yes	50% of the cost to the employer, less any amount made good by the employee
Car parking	No	Nil
Staff discounts – price equal to or greater than cost to the employer	No	Nil
Staff discounts – price less than cost to the employer	Yes	The difference between the employer's cost and the price paid by the employee
Corporate membership paid by employer (club subscriptions and so on)	Yes	Cost to the employer
'En bloc' payments (such as corporate memberships)	Yes	Cost to be apportioned equally among all participating employees
Christmas parties and other inclusive events	No	No charge – provided amounts are reasonable
Corporate charge cards: business use only permitted	No	The payment of stamp duty and charges by the employer will not be regarded as a benefit
Corporate charge cards: business and private use permitted	Yes	The amounts paid in respect of private purchases, or for other non-business purposes, and not made good by the employees to the employer
Exam awards	No	Nil
Refunds of course/exam fees	No	No charge where: • The course undertaken is relevant to the business of the employer, and • Payment of fees is actually made by the employee
Small value benefits	No	No charge where: • Value does not exceed €100 • Not more than one such benefit provided in a tax year

servicing and/or motor tax, he will pay less benefit in kind. This benefit has now gone. Depending on the way matters were communicated to employees, it may be that they will now seek to have the full cost of fuel, insurance, servicing and motor tax paid by their employer. It would be important to review existing contracts of employment and benefits schemes to see if such an argument could be put forward. If it can, then unfortunately an employer may have to pick up these additional costs, or at least some of them. I anticipate that there will be difficult times ahead in dealing with some employees in relation to some benefits, particularly in relation to company cars.

The issue of company vans is a thorny issue. Many employers allow employees to bring their vans home. There is now going to be a benefit-in-kind cost. The calculation of the benefit in kind is set out in the Revenue guidelines.

Employer-owned assets

Until now, benefit in kind was 'agreed' with the Revenue. Now it will be taken as 5% of the market value at the time it was first applied by the employer to provide benefits to an employee. An exception will apply to accommodation. In such cases, it will be the annual rental value.

If an asset is used by employee A and is then used by employee B, employee B pays benefit in kind on the original value. There is no recognition of depreciation. This is likely to cause significant difficulties in practice in dealing with employee benefit packages and for solicitors drafting contracts of employment.

Some matters are exempt. Car parking will not be treated as a benefit in kind. The legislation also effectively excludes all profits and gains arising from share options, stock participation and other share-based incentive schemes from PAYE/PRSI.

Revenue guidelines

It is unfortunate that, in preparing the guidelines, the Revenue appear to have re-designated long-standing practices as now taxable. For example, staff suggestion schemes have never been taxable, but now will be. On a positive side, the guidelines attempt to deal in a sensible way with certain items that could not be described as benefits in any real sense. The provision of a mobile phone will not be regarded as a taxable benefit where it is provided for business use and the personal use is incidental. Where a mobile phone has been provided, it is important to ensure that the employee is aware of this fact and to check that personal use is incidental. It is possible to structure contracts with providers of mobile phones so that a certain number of texts per month are free and that at least one regularly-used telephone number is free. It would appear that the guidelines will determine the incidence of personal use by way of the cost of personal phone calls as opposed to business calls. The provision of an ISDN line does not appear to be a benefit in kind.

It is not possible in a short article such as this to review the entire guidelines. It is important to read them carefully and to be aware of them. When drafting contracts of employment, solicitors may need to advise client employers to consider looking at employees' packages so as to restructure them to minimise extra tax. Some solutions are already available.

These regulations will cause significant difficulties for employers and, therefore, for those who advise them. The guidelines are available directly from the Revenue or on their website. My view on matters is that, going forward, we will see a considerable amount of work having to be undertaken to restructure contracts to minimise the tax implications of these new regulations.

These new regulations are a form of stealth tax. Unfortunately, it will often be left to professional advisors to explain them to employers, who will then have to explain them to their staff. G

Richard Grogan is a partner in the Dublin law firm PC Moore & Co and a member of the Law Society's Employment and Equality Law Committee.

EQUALPA

Partnerships will never be the same again, now that equality legislation is being extended to the self-employed. Ciaran O'Mara looks at how law firms and other liberal professions are likely to be affected by the most serious development in partnership law in over 100 years

MAIN POINTS

- *Equality Bill, 2004*
- Application to the self-employed
- Implications for partnerships

Most solicitors are generally aware of the development of equality law over the past quarter-century in this jurisdiction in relation to employees' rights. The original impetus for the protection from discrimination on gender grounds came from the then-EEC and now EU. The 1998 *Employment Equality Act* moved the Irish framework well beyond the protection afforded by the original legislation. Now, further development is taking place that draws on European influence and, among many other changes, there will be a major widening of the scope of equality law to the self-employed for the first time. This article takes a look at this particular change and the implications for the legal profession in particular.

Following the *Treaty of Amsterdam* in 1997, the EU was given wide competence to legislate for equality. In an extraordinary burst of activity, three directives were adopted in 2000 and 2002 by unanimous vote of the Council of Ministers. These directives generally bring our European partners up to the level of protection we achieved in the 1998 act, but they contain a number of provisions that require further advancement in our domestic law.

Legislation to give effect to these EC directives on equality was quietly published by the minister for justice shortly after Christmas in the form of the *Equality Bill, 2004*. A major change will be to apply employment equality law to the self-employed and to partnerships for the first time. This is a requirement brought about by European law and represents a novel extension of equality law into new areas of economic activity and organisation.

All people in self-employment are to be subject to the protection given by the new directives and the *Equality Bill, 2004*. This is a large category of the workforce. The farming community is probably the biggest single sector affected in terms of numbers in Ireland. Then there is the huge number of self-employed tradespeople and sole traders. Closer to home, the so-called liberal professions will come fully into the scope of equality law.

The devil you know

Take the example of barristers. Up to now, a barrister was entirely free to take on a pupil or a 'devil' of his or her choice without regard to employment equality law. A devil is not an employee. Now, a barrister has to be sure that there is no discrimination in relation

RTNERS

to the choice of devil. If a number of final-year students approach a possible master with a view to being taken on, the master will have to be careful to apply objective criteria in making the choice. If this is a potential problem for members of the bar, then they can be consoled by the advantages of equality law that some of their colleagues may obtain.

Up to now, clients have been free to choose counsel as they see fit. This choice is usually made for them by their solicitors. From now on, this freedom of choice is constrained by the necessity to avoid discrimination. If a client says to a solicitor, 'I only want a male barrister for my case', the solicitor will have to point out that such a request is no longer lawful. The client could retort, 'Well, who is to know?' Quite.

More dangerously, if a large client such as an insurance company has retained a panel of barristers and decides to drop a barrister from the panel because 'she is too old', then we could see a case of age discrimination arise whereby the dropped barrister makes a complaint to the Equality Tribunal seeking restoration to the panel and compensation.

Partnership approach

The *Equality Bill, 2004* provides specifically for partnerships. A new section 13A is inserted into the *Employment Equality Act, 1998*. It applies the whole gamut of employment equality law to partnerships and treats the partnership as the 'employer', and the partner as the 'employee'. It is scarcely an exaggeration to state that this is the most serious development in statutory partnership law since the *Partnership Act 1890*.

A basic principle of partnership law has always been that all partners are equal, unless otherwise agreed, explicitly or implicitly. This is the case not only in relation to financial rights but also to being involved in the management of the firm. Obviously, many partnerships have agreements to vary and change this. The difference now will be that, in relation to the nine outlawed areas of discrimination, it will not be possible to treat some partners less favourably than other partners, even by agreement.

This is a major inroad into the private arrangements of partnerships. Up to now, it could be said that partnerships were free from scrutiny from the outside. A partnership doesn't have to disclose to the Companies Office financial information about itself. It runs its own management affairs privately. It could be said that the *Equality Bill* will potentially open to the outside world an area of economic importance that has never been exposed before.

Some of the largest economic entities in this country are the bigger accountancy and law practices. The bill will, of course, affect even two-partner practices.

Another thorny issue is that of maternity and paternity leave. Up to now, female partners have had absolutely no right to maternity leave under the *Maternity Protection Act, 1994*. This is because they are not employees and this continues to be the case. The European Court has, however, recognised that pregnancy is a gender issue and that dismissal on grounds of pregnancy is discriminatory. It is hard to suggest any particular advice at this point, but certainly partnerships would want to be careful that they do not take positions that could be construed as discriminatory. If regard is made to female partners and their pregnancies by granting leave, then logically shouldn't male partners have some paternity leave, especially after the birth?

As already suggested, any equality disputes between partners or involving the self-employed will not usually go to the courts but will end up in the Equality Tribunal and the Labour Court. This is groundbreaking in itself.

The subject of this article is of considerable importance to the legal profession because of the organisation of most law firms. The Law Society's Employment and Equality Law Committee will be closely monitoring the progress of this legislation, which is due to become law by Easter. G

HOW PARTNERSHIPS MIGHT BE AFFECTED

An example of what might end up in litigation could be the following.

Partners of a large accountancy firm have a discussion after a golf outing at their annual meeting. They discuss promoting a 40-year-old male 'whiz kid' to partner in the firm and rule out a long-standing female associate aged 50. They feel she is too old to be a partner – nothing to do with her sex, of course! They admit the 40-year-old male to being a partner, and thank the 50-year-old for her continuing loyalty by giving her a bonus. In such a scenario, the disgruntled candidate will now be able to litigate her disappointment with the firm at the Equality Tribunal and, on appeal, to the Labour Court. The tribunal has the power to make mandatory orders as well as awarding compensation. She could seek an order directing her appointment as a partner on such terms as the tribunal sees fit.

The only advice that can be given to a partnership is to maintain objectively justifiable practices and procedures for admittance to partnership. This is already best practice, of course.

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

Changing of the guar

Registrar of Solicitors, PJ Connolly, is retiring after 29 years with the Law Society. He talks to Conal O'Boyle about his career and the changes he has seen over that time

For over 14 years, PJ Connolly's has been the signature at the bottom of your practising certificate. In his 29 years with the Law Society, he has been witness to some of the most seminal events in the profession's recent history – the move from overcrowded premises in the Four Courts to the Law Society's headquarters at Blackhall Place, the rise and fall of solicitor advertising, the introduction of two *Solicitors' Acts* and the growth of the society's regulatory powers. Now, at the age of 64, Connolly is taking early retirement.

Ironically, he only intended to stay for two years after he joined the society as director of finance in 1975. 'It became a way of life rather than a job', he says wryly.

In those days the profession was much smaller, totalling perhaps 1,300 practising solicitors, compared with the 6,500 members in practice today. Despite his background as a chartered accountant, Connolly quickly took to his new colleagues. 'I think the solicitors' profession is a more caring profession than the accountants' profession', he says. 'I now have more friends who are solicitors than accountants. I've gone native'.

Hounded out of office

With a small profession came small office accommodation. In those days, the Law Society occupied three rooms in the Four Courts, and the new director of finance didn't exactly get off to a flying start.

'I'll never forget my first day', says Connolly. 'It was a closely-guarded secret that I was joining the organisation. I didn't get any further than reception. The director general, Jim Ivers, had forgotten to tell anybody that I was coming. Unfortunately, he lived in Bundoran so I had to wait until he arrived before anyone even allowed me access into the offices.

'I then had to share an office with two other people, and, believe it or not, an Irish wolfhound. The Irish wolfhound was a pet of Margaret Casey, who was our senior solicitor.

'Eventually, I got a room to myself on the first floor. Its one disadvantage was that it had a dumb waiter, and in or around 12.30 every day I'd hear this rumbling, which gave me a great appetite. Mrs O'Reilly would be passing food right under my nose, but in fairness to her she always managed to retrieve a glass of red wine and a piece of cheese for me, which was something to look forward to on the way back from lunch. They were good old days'.

Apart from the newly-appointed director of finance, the full complement of Law Society staff totalled about 25 people. But as the solicitors' profession grew, so too did the Law Society, and soon it was time to leave the dog days in the Four

Courts behind. In 1977, the society moved its operation to the bigger and more salubrious premises at Blackhall Place. To his evident relief, Connolly got an office on his own again.

Don't give up the day job

The past, they say, is a foreign country, and it certainly seems like it where regulation of the profession was concerned. Investigation of practices was usually carried out by the society's external reporting auditors, Coopers and Lybrand, rather than the Law Society itself. But Connolly did carry out his share, while still holding down his day job.

'I often had the books of the society in the back of my car as I was doing investigations', he recalls. 'And when I'd finished the investigation, I would do some work on the society's accounts'.

Up until 1990, the society's director general was also the registrar of solicitors. Following a reorganisation that year, the representative and regulatory roles were split, and Connolly was appointed registrar of solicitors.

If there has been one thing that has exemplified the rapid changes that the profession has had to

PJ CONNOLLY: A TRIBUTE

To amend, slightly, the title of an old song, '29 years is a mighty long time'.

With the retirement on 2 April of Deputy Director General and Registrar of Solicitors, PJ Connolly, we are losing someone who has been a central figure in the life of the Law Society for almost three decades.

It is unusual, these days, for anyone to devote so many years of their working life to a single organisation. But there is much that is unusual about PJ. In work terms, he is unusually professional, dedicated, reliable and conscientious. As a colleague and friend to so many of us, he is unusually genial, cheerful, modest and popular.

Yes, popular. It is remarkable that an individual who has for so many years headed the Regulatory Department of the Law Society – with the requirement that he frequently be involved in difficult and unpleasant matters such as disciplinary action against individual solicitors – should be so personally popular among all those he has known and worked with. One of the main reasons for this is that, as has always been clear to those working with him, his regulatory actions have never been in any way tinged by ill will towards anyone. As the cliché has it, at times it has been a dirty job but vitally important in the interests of the public and of the profession that somebody should do it.

Of course, PJ has not done anything alone. Individual regulatory decisions and regulatory policy generally have been made by committees, not by him. His guidance and the high principles he has always sought to have applied have been hugely influential, however.

He has now chosen to leave us, a year early, and this will allow him spend more time with his devoted wife, Miriam, who sadly has not enjoyed the best of health in recent times. No more will PJ have to face the time-consuming commute from Bray to Blackhall Place every morning. No more will his considerable skills be visible on the tennis courts on summer lunch breaks (with chastening effect on certain Law Society presidents who had the temerity to challenge him – has Pat O'Connor's swagger on the tennis court ever recovered?).

PJ takes pride of place at his last management meeting

For PJ, there will be no more Tuesday morning management meetings, and we all know how deeply he will miss those!

From 1975 to 2004, PJ Connolly grew with the Law Society and we are losing elephantine organisational memory. More time for him now for his beloved gardening and a well-earned rest.

Above all else, PJ knew what it meant to be a professional and how crucial it is in the interests of all professionals that the highest standards of behaviour and integrity are set and maintained. Although his professional qualification is as a chartered accountant, I would pay to him (only slightly tongue in cheek) the highest compliment any of us can think of. He has been and will remain an honorary solicitor!

Ken Murphy,
Director General

cope with, it is the growth in regulation. As registrar of solicitors, PJ Connolly oversees the work of nine full-time investigating accountants and a professional practice directorate of 37 staff, encompassing the complaints department, the issuing of practice certificates, practice closures, and the society's other regulatory functions. Not surprisingly, he is proud of the way that he has transformed what was essentially an amateur operation into a state-of-the-art model for professional self-regulation.

'It's our core activity to regulate solicitors and to make sure they are accountable to their clients and that they have properly accounted for the monies entrusted to them', he says. 'We don't do it for the hell of it. The profession is a very honourable one, but we have to make sure that clients are looked after, that monies are accounted for in a transparent fashion, and that solicitors comply with the rules, regulations and the law'.

Darkest hour

But the road to such professionalism was not always an easy one. The early 1990s were a dark time for the Law Society and for Connolly personally. And the darkest of those days dawned with the suicide of Jonathan Brooks in October 1992.

'As a result of the Brooks case, claims came in by the dozen', he recalls. 'They totalled eight or nine million pounds. A lot of them were duplications, but we did have to pay out something in the region of £4.5 million in claims. Under the terms of our insurance policy, the society had to bear the first £2 million, so managing the cashflow was a huge problem. Thankfully, we managed to order the payment of the claims in such a fashion that we didn't have to go back to levy a sum on the profession.

'We managed with what we recovered from the insurance company and then we successfully sued the reporting accountants and got a hefty settlement of over £2 million. It was quite an achievement, but it was a very difficult time because the previous year two practices had gone under, and claims against one of them were almost £2 million alone. As a result of all these claims, we were uninsurable for a number of years, but thankfully our insurance has been reinstated again and we're now in a very enviable

position. The society's compensation fund has assets of €30 million invested and we have insurance of €10 million, so we're adequately covered now'.

Waiting for Godot

When the nature of your job is clearing up the fall-out from all-too-human human frailty, it's also inevitable that you are going to come across some pretty bizarre situations. In Connolly's case, his Samuel Beckett moment came in Donegal.

'I was in Letterkenny doing an investigation into the practice of a solicitor who was later struck off. He had a serious deficit in his accounts and monies were missing. It was about ten o'clock at night and the place was one almighty mess. I saw this nice box in the corner of the room, and went over to take a look – more to stretch my legs than anything else. The box turned out to contain the remains of his law clerk, who had been cremated in the crematorium in Belfast. And, typical of the solicitor in question, he never attended to anything; he always deferred it – except taking monies belonging to clients. So he had stacked this beautifully presented box from the crematorium in the corner, and I decided there and then that I would take a photograph because I said to myself "They'll never believe me back in the Law Society". So I did. I put the box on the photocopier and took a copy of it.

'Later, I organised the distribution of the poor man's ashes on the green of the local golf course, with the help of the local rector. The clerk's name was Pyecroft, and to this day Jackson's Hotel, where the man seemed to have held all his meetings, has a room there called *The Pyecroft Room*'.

After almost three decades with the Law Society, PJ Connolly has no regrets. 'I've had a good innings', he says. 'I intend to pursue a few hobbies that really interest me, and hopefully my family will see a little more of me than they have in the past. I'm starting the rest of my life'. G

An interview with the new registrar of solicitors, John Elliot, will appear in a forthcoming issue.

This painting of the Council chamber, by PJ's daughter Emma, was presented to the Law Society by PJ on his retirement

Committee reports

BUSINESS LAW

Competition Authority merger review practice – pre-notification discussions

In a recent change of practice, the Competition Authority has indicated that its staff will be willing to engage in pre-notification discussions of proposed mergers where it is satisfied that the parties have a *bona fide* intention of proceeding with the transaction. It will no longer be necessary to have a signed agreement before such discussions can take place. As evidence of such a *bona fide* intention, the authority will accept documents such as a letter of intent, a memorandum of understanding or heads of agreements signed by the parties.

The purpose of such pre-notification discussions may vary from case to case. They may involve a discussion as to whether a particular transaction is notifiable or not, as well as the scope of the information to be submitted where the transaction is to be notified. They will usually also involve consideration of the nature of competition in the relevant market(s) and any competition concerns that may be raised by the proposed merger.

The authority is represented in such discussions by its Mergers Division staff. Members of the authority are not involved and will not be bound by any comments made in the course of such discussions, which are conducted under conditions of strict confidentiality.

Such pre-notification discussions may be of particular importance in relation to mergers that are not subject to the mandatory notification requirements of the *Competition Act*, but which may nonetheless give rise to significant competition issues. In a recent decision (no E/04/001), the authority reported on an investigation it had conducted in relation to one such merger which had not been notified and in relation to which no pre-notification discussion was requested by the parties. In that case, the authority decided that the merger would not result in a significant lessening of competition in the relevant market, but if there is any doubt about this in a given case (whether the merger involved is notifiable or not), the Business Law Committee would recommend that solicitors advise their clients to request a pre-notification discussion with the authority.

Further information relating to such pre-notification discussions is available on the authority's website: *www.tca.ie*.

Business Law Committee

PRACTICE NOTE

Undertaking to furnish discharge – Land Registry certificate of charge

When a vendor's solicitor gives an undertaking on the closing of a sale to furnish a discharge of a charge or other burden on the vendor's folio or a vacated mortgage/charge, it is the view of this committee that this undertaking, by implication, extends to and includes the certificate of charge, if one has issued in respect of any such charge, and any other document necessary for the removal of the charge or burden from the folio.

Conveyancing Committee

LEGISLATION UPDATE: 20 JANUARY – 15 MARCH 2004

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue at *www.lawsociety.ie* (members' and students' area), with updated information on the current stage a bill has reached and the commencement date(s) of each act.

ACTS PASSED

Civil Registration Act, 2004
Number: 3/2004
Contents note: Provides for the reorganisation of the system, to be known as the civil registration service, of registration of births, stillbirths, adoptions, marriages and deaths (including certain births and deaths occurring outside the state); provides for the extension of the civil registration system to decrees of divorce and decrees of nullity of marriage; amends the law relating to marriages and provides for related matters
Date enacted: 27/2/2004
Commencement date: Commencement order(s) to be made (per s1(2) of the act); 2/3/2004 for s27 (per SI 84/2004)

European Parliament Elections (Amendment) Act, 2004
Number: 2/2004
Contents note: Implements the recommendations of the constituency commission report (2003) on changes to the European Parliament constituencies and gives effect to council decisions 76/787 and 2002/772 on the election of members of the European Parliament
Date enacted: 27/2/2004
Commencement date: 27/2/2004

Immigration Act, 2004
Number: 1/2004
Contents note: Provides for the control of entry into the state, the duration and conditions of stay in the state, and the obligations of non-nationals while in the state. Addresses the situation following the judgment in the case of *L(I) v DPP and C(L) v DPP* (High Court, Finlay Geoghegan J, 22/1/2004) regarding provisions of the aliens orders
Date enacted: 13/2/2004
Commencement date: 13/2/2004

Industrial Relations (Miscellaneous Provisions) Act, 2004
Number: 4/2004
Contents note: Makes various amendments to the *Industrial Relations (Amendment) Act, 2001*
Date enacted: 9/3/2004
Commencement date: Commencement order(s) to be made (per s17(4) of the act)

Motor Vehicle (Duties and Licences) Act, 2004
Number: 5/2004
Contents note: Amends and extends the *Finance (Excise Duties) (Vehicles) Act, 1952* and the *Finance (No 2) Act, 1992* in respect of certain duties or licences leviable or issuable under these acts and provides for related matters
Date enacted: 10/3/2004
Commencement date: 10/3/2004

SELECTED STATUTORY INSTRUMENTS

Building control (amendment) regulations 2004
Number: SI 85/2004
Contents note: Substitute a new second schedule (form of commencement notice for development [notice to a building control authority pursuant to part II of the *Building control regulations 1997*]) in the *Building control regulations 1997* (SI 496/1997)
Commencement date: 1/4/2004

Carriage of dangerous goods by road regulations 2004
Number: SI 29/2004
Leg-implemented: Dir 94/55 as amended by dir 2000/61 (commission decision of 7/11/2002) and dir 2003/28; dir 95/50 as amended by dir 2001/26
Contents note: Revoke and replace the *Carriage of dangerous goods by road regulations 2001* (SI 492/2001) and the *Carriage of goods by road (amendment) regulations 2002* (SI 393/2002). Apply to the carriage, in tanks, in bulk and in packages, of dangerous goods by road, including the packing, loading, filling and unloading of the dangerous goods in relation to their carriage. Apply the provisions contained in the technical annexes to the European agreement concerning the international carriage of dangerous goods by road (ADR) (2003). Implement or re-implement the EC directives listed above
Commencement date: 21/1/2004

Courts Service Act, 1998 *(second schedule) (amendment) order 2004*
Number: SI 35/2004
Contents note: Amends the second schedule to the act (functions of minister to become those of service) in order to transfer responsibility for the collection of court fees to the Courts Service
Commencement date: 23/1/2004

Double taxation relief (taxes on income) (adjustment of profits of associated enterprises) (European Communities) order 2004
Number: SI 40/2004
Contents note: Gives the force of law in Ireland to the protocol that amends the convention between the EU member states on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. The convention is contained in SI 88/1994

Double taxation relief (taxes on income) (adjustment of profits of associated enterprises) (Republic of Austria, Republic of Finland and Kingdom of Sweden) order 2004
Number: SI 41/2004
Contents note: Gives the force of law in Ireland to the admission of Austria, Finland and Sweden to the convention between the EU member states on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. The convention is contained in SI 88/1994

European Arrest Warrant Act, 2003 *(designated member states) order 2004*
Number: SI 4/2004
Contents note: Designates, for the purposes of the *European Arrest Warrant Act, 2003*, those EU member states that have, under their respective national laws, given effect to the council framework decision of 13/6/2002 on the European arrest warrant and the surrender procedures between member states
Commencement date: 1/1/2004

European Communities (abolition of withholding tax on certain interest and royalties) regulations 2003
Number: SI 721/2003
Leg-implemented: Dir 2003/49
Contents note: Insert a new chapter 6 (ss267G to 267J) (implementation of council directive 2003/49 on a common system of taxation applicable to interest and royalty payments made between associated companies of different member states) into part 8 (annual payments, charges and interest) of the *Taxes Consolidation Act, 1997*
Commencement date: 1/1/2004

European Communities (copyright and related rights) regulations 2004
Number: SI 16/2004
Leg-implemented: Dir 2001/29
Contents note: Amend the *Copyright and Related Rights Act, 2000* to complete the implementation into Irish law of directive 2001/29

Commencement date: 19/1/2004

European Communities (undertakings for collective investment in transferable securities) (amendment no 4) regulations 2003
Number: SI 737/2003
Leg-implemented: Dir 2001/107 (management directive), which amends dir 85/611 as amended by dir 88/220, dir 95/26 and dir 2001/108 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).
Contents note: Amend SI 497/2003 (management regulations) by defining the transitional arrangements applicable to self-managed investment companies and set out the circumstances in which self-managed investment companies have to comply with certain provisions of SI 497/2003
Commencement date: 22/12/2003

Immigration Act, 2004 *(approved ports) regulations 2004*
Number: SI 57/2004
Contents note: Specify the ports approved for entry into the state for the purposes of the *Immigration Act, 2004*
Commencement date: 13/2/2004

Immigration Act, 2004 *(visas) order 2004*
Number: SI 56/2004
Contents note: Specifies the classes of persons who are required to have a transit visa and the classes of persons exempt from Irish visa requirements
Commencement date: 13/2/2004

Ombudsman for Children Act, 2002 *(section 4) (commencement) order 2003*
Number: SI 712/2003
Contents note: Appoints 18/12/2003 as the commencement date for section 4 of the act. Section 4 provides for the appointment of the ombudsman for children

Ozone in ambient air regulations 2004
Number: SI 53/2004
Leg-implemented: Dir 2002/3
Contents note: Implement directive 2002/3 relating to ozone in ambient air. Specify target values and long-term objectives to be attained for concentrations of ozone in ambient air. Provide for advice by the environmental protection agency to local authorities about the need for air-quality management plans to attain the target values or long-term objectives, and the preparation of such plans by local authorities. Provision is also made for air-pollution action plans for short-term risks of exceeding the ozone alert threshold. Provide for the dissemination of public information, including where the alert threshold is or is predicted to be exceeded. This requirement necessitates informing the public of the types of groups potentially at risk, possible health effects and recommended conduct and preventive action
Commencement date: 16/2/2004

Rules of the Superior Courts *(courts-martial appeal court rules) 2003*
Number: SI 646/2003
Contents note: Amend rule 1 of the Rules of the Superior Courts (no 2) *courts-martial appeal court rules (amendment) 2000* (SI 105/2000) by the substitution of 'SI 206/1983' for 'SI 206/1993'
Commencement date: 13/11/2003

Social welfare (rent allowance) (amendment) regulations 2003
Number: SI 729/2003
Contents note: Provide for increases in the amount of means disregarded for people affected by the de-control of rents (on the expiry of the 20-year protection period on 26/7/2002 under the *Housing Act, 1982*) and for increases in the minimum rent for the purposes of the rent-allowance scheme
Commencement date: 1/1/2004

Tobacco smoking (prohibition) (revocation) regulations 2004
Number: SI 31/2004
Contents note: Revoke the *Tobacco smoking (prohibition) regulations 2003* (SI 481/2003)
Commencement date: 23/1/2004 G

Prepared by the Law Society Library

Solicitors' Benevolent Association

140th report

Year 1 December 2002 to 30 November 2003

The Solicitors' Benevolent Association is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, family and immediate dependants who are in need. The association was established in 1863 and is active in giving assistance on a confidential basis throughout the 32 counties.

In the past, the association traditionally helped elderly widows living on inadequate incomes. The association still has a number of such cases but, over recent years, the circumstances of new applicants has altered dramatically, in that new applicants now frequently tend to be from younger age groups and there are often a number of dependant children involved.

The amount paid out during the year in grants was €375,339. Currently, there are 51 beneficiaries in receipt of regular grants and approximately one-third of these are supporting spouses and children. The accounts will be available at the AGM of the association on 21 April.

There are currently 13 directors, two of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices at Blackhall Place. They meet at Law Society House, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and of approving new applications. The directors also make themselves available to those who may need personal or professional advice. The directors have available the part-time services of a professional social worker who, in appropriate cases, can advise on state entitlements, including sickness benefits.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to Geraldine Clarke, past-president of the Law Society of Ireland, Joe Donnelly, past-president of the Law Society of Northern Ireland, Ken Murphy, director general, John Bailie, chief executive and all the personnel of both societies.

I wish to express particular appreciation to all those who contributed to the association when applying for their practising certificates, to those who made individual contributions and to the following:

- The Law Society of Ireland
- Northern Ireland Law Society
- Dublin Solicitors' Bar Association
- Faculty of Notaries Public in Ireland
- Limavady Solicitors' Association
- Kerry Law Society
- West Cork Bar Association
- Sheriffs' Association
- Waterford Law Society
- Southern Law Association
- Wexford Bar Assocation
- Contributors to *Irish conveyancing precedents*
- Oisín Publications, publishers of the *Gazette yearbook and diary*
- Contributors to *The Law Society of Ireland, 1852 – 2002.*

To cover the ever-greater demands on the association, additional subscriptions are more than welcome as, of course, are legacies and the proceeds of any fundraising events. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4, and I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest below.

I note, with deep regret, the death in December last of our Northern Ireland colleague Desmond Doris, who was a director of the association for many years and, during that time, gave up his time and energy in furthering the aims of the association. His kindness and courtesy will be long remembered by all those with whom he came in contact, both as a colleague and as an able representative of the association.

I would like to thank all the directors, the association's secretary Geraldine Pearse and Brendan Walsh, solicitor, for their valued hard work, dedication and assistance during the year.

Thomas A Menton,
Chairman

FORM OF BEQUEST

I give and bequeath the sum of € _____ to the trustees for the time being of the Solicitors' Benevolent Association, c/o the Law Society of Ireland, Blackhall Place, Dublin 7, for the charitable purposes of that association in Ireland, and I direct that the receipt of the secretary for the time being of the association will be sufficient discharge for my executors.

DIRECTORS AND OTHER INFORMATION

Directors
Thomas A Menton (chairman)
John Sexton (deputy chairman)
Sheena Beale, Dublin
Felicity M Foley, Cork
John Gordon, Belfast
Colin Haddick, Newtownards
Niall D Kennedy, Tipperary
Mary H Morris, Swinford
John M O'Connor, Dublin
Brian K Overend, Dublin
Colm Price, Dublin
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Andrew F Smyth, Dublin

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CHILDREN AND YOUNG PERSONS

Custody, statutory interpretation

Family law – child abduction – Hague convention – *removal from jurisdiction – statutory interpretation – definition of custody – whether removal of child wrongful within* Hague convention – Child Abduction and Enforcement of Custody Orders Act, 1991 – Bunreacht na hÉireann, 1937

The application was brought pursuant to section 15 of the *Child Abduction and Enforcement of Custody Orders Act, 1991* seeking a declaration under the *Hague convention* that the removal of a child from the state by the respondent and his retention outside the state was wrongful. The child had been born in Belgium and the applicant was the Irish father and the respondent was the Belgian mother. The parties lived in Ireland and the child went to school in the state. In 1995, the parties had instituted proceedings seeking a decree of judicial separation and, as part of the proceedings, the respondent was granted sole custody of the child with access arrangements for the applicant. Subsequently, the respondent was granted a number of weeks both at Christmas and summer to take the child back to her family in Belgium. The applicant became aware that the child had been removed from the jurisdiction and initiated proceedings under the *Hague convention*. It was contended that such a removal by the respondent was in breach of rights of custody under the convention, whereas the respondent contended that the right of the applicant at the date of removal was only a right of access.

Finlay Geoghegan J granted the application, holding that the applicant, even though he did not have custody under the convention, was a guardian of the child and had a right to be consulted on all matters affecting the welfare of the child. Such matters included decisions on where the child should be educated and where the child should live. The applicant did not have custody of the child but had rights of custody within the meaning of the convention. The removal of the child to Belgium was a wrongful removal within the meaning of the *Hague convention*, as was the subsequent retention of the child.

***C(R) v S(I)*, High Court, Miss Justice Finlay Geoghegan, 11/11/2003** [FL8643]

CONSTITUTIONAL

Censorship, validity

Censorship of publications – constitutional law – validity of statute – whether judicial powers and functions of Censorship of Publications Board limited – whether judicial powers conferred on board constitutional – Censorship of Publications Act 1946, *section 9* – Bunreacht na hÉireann, *article 37.1*

The first respondents indicated to the applicants that they were considering whether to make a prohibition order in respect of a periodical published by the applicants following complaints from members of the public. Following a request by the applicants, the respondents refused to disclose the identity of the complainants. The applicants argued that since the powers and functions vested in the respondents under section 9 of the *Censorship of Publications Act, 1946* to ban the sale and distribution of a publication for a limited period related to criminal matters, they were not validated by article 37.1 of the constitution. Alternatively, they submitted that the powers so conferred were judicial in nature but not limited and, accordingly, could only be exercised by a court established under the constitution. The High Court refused to grant the relief sought. The appellants appealed that refusal to the Supreme Court.

The appellants submitted that if the court decided that the provisions of the 1946 act were constitutionally valid, the board was nevertheless obliged to disclose the identity of the complainants as, unless their identity were disclosed, it would not be possible to determine whether the complainants were cranks, business competitors or persons acting for some ulterior motive and not making complaints in good faith. They submitted that natural and constitutional justice required that a person against whom a complaint had been made should know who the accuser was to test the *bona fides* of the complainant. The respondents submitted that the identity of the complainants was irrelevant as the board was required to arrive at its determination without having any regard to the identity of the complainant.

The Supreme Court dismissed the appeal, holding that:

1) Where any particular law was not expressly prohibited and it was sought to establish that it was repugnant to the constitution, such repugnance had to be clearly established
2) If in respect of the impugned provisions two or more constructions were reasonably open, one of which was constitutional and the other unconstitutional, it had to be presumed that the Oireachtas intended only the constitutional construction
3) The court had to apply the consequential presumption that the Oireachtas intended that any procedures permitted or prescribed by an act of the Oireachtas would be conducted in accordance with the principles of constitutional justice
4) The test as to whether a judicial power was limited was to determine if the exercise of those powers affected in a profound and far-reaching way the lives, liberties, fortunes or reputations of those against whom they were exercised
5) The consequences of the first respondent's decision, namely the ban on the sale and distribution of the appellant's publication for a limited period, was not profound and far reaching
6) Accordingly, the powers and functions vested in the board under section 9 of the 1946 act, although of a judicial nature, were limited within the meaning of article 37.1 of *Bunreacht na hÉireann*
7) The first respondent was concerned with the wholly subjective process of determining whether, in its opinion, the publication in question was indecent or obscene or devoted an unduly large proportion of space to the publication of matter relating to crime. Given that that decision was exclusively a matter for the subjective determination of the board, the complaints mechanism was no more than a trigger to set the banning procedures in motion. While the board was obliged to afford fair procedures to the

appellants, that obligation did not extend to disclosing the identities of the complainants, if, in the opinion of the board, there were valid policy reasons for not doing so.

***Melton Enterprises v The Censorship of Publications Board & Ors*, Supreme Court, 4/11/2003** [FL8712]

CRIMINAL

Admissibility of evidence, costs

Appeal – evidence – admissibility – discharge of a jury – costs – retrial – whether a jury should be discharged in circumstances where a party introduces evidence previously ruled as inadmissible by the court

The plaintiff alleged that he had been assaulted while in a garda station. In the course of the trial, counsel for the defendant applied for a discharge of the jury in circumstances where the plaintiff attempted to introduce notes of a doctor who was deceased and who had apparently treated the plaintiff in relation to the injuries allegedly sustained by him as a result of the assault. At the outset of the trial, legal arguments were made in the absence of the jury in relation to the admissibility as evidence of these notes and the trial judge ruled that they would be inadmissible. Counsel for the defendant argued that he should not have been put in the position of having to object to that evidence and also that a totally erroneous impression was being conveyed to the jury that his clients were seeking to keep back matters from them. Counsel for the defendant had previously applied for a discharge of the jury but was unsuccessful. However, the jury was discharged as a result of the second application and the costs of the aborted trial were subsequently awarded to the defendants. The plaintiff appealed against this order.

The Supreme Court (Keane CJ, Denham, Murray JJ) allowed the appeal and substituted for the order of costs that was made an order that the costs of the first trial be reserved to the trial judge who hears the retrial. It held that:

1) It would have been much preferable if the plaintiff had invited the trial judge to reconsider her earlier ruling regarding the admissibility of the evidence in the absence of the jury, rather than simply calling the doctor without warning and then proceeding to lead evidence that the trial judge had already expressly and unambiguously ruled out
2) It was a matter for the trial judge to consider whether, as a result of the actions of the plaintiff in calling the doctor to give evidence, the nature of the prejudice caused to the defendants was such as to create a real and substantial risk of an unfair trial that could not be avoided by any directions to the jury
3) Taking into account the fact that the trial judge observed the demeanour of the jury and was aware of the atmosphere of the trial, it was for the trial judge, in the exercise of her discretion, to decide whether matters had reached the stage where the ends of justice could only be served by a discharge of the jury
4) Applying the appropriate test, namely, whether there was an unavoidable risk of an unfair trial, the trial judge was in error and there was nothing to indicate from the transcript of the trial that matters had reached the stage where, even with appropriate directions being given to the jury as to matters they could or could not take into account, there was a risk of an unfair verdict resulting in that case.

***Murtagh v Ireland and the Attorney General*, Supreme Court, 5/2/2004** [FL8680]

Autrefois acquit, fair procedures

Judicial review – practice and procedure – fair procedures – autrefois acquit – *mistake on the charge sheet – discharge of accused – double jeopardy* – res judicata – Criminal Law (Jurisdiction) Act, 1976 – Criminal Procedure Act, 1967

The applicant had been charged with unlawful seizure of a vehicle contrary to section 10 of the *Criminal Law (Jurisdiction) Act, 1976*. When the matter came before the District Court as part of the preliminary examination procedure, it was apparent that there was an error on the charge sheet and the statement of charge with regard to the year of the alleged offence. The prosecutor sought to amend the charge and this application was then refused. The district judge then made an order discharging the accused. The applicant was subsequently charged with the unlawful seizure of a vehicle with the correct date. An order was then made in the District Court returning the applicant for trial. The applicant initiated judicial review proceedings seeking an order of *certiorari*, contending that the first respondent had acted in excess of jurisdiction as the applicant had been returned for trial on a charge that had already been the subject of a preliminary examination and already had been in jeopardy in respect of this offence. In the High Court, Ó Caoimh J refused the relief sought.

The Supreme Court (Hardiman J delivering judgment, Murray J and Geoghegan J agreeing) dismissed the appeal. The basis of the district judge's decision was a misstated date. The order of discharge was in respect of an offence that bore a different date to that of the present charge. There was therefore no question of double jeopardy or unfairness of any sort. The appeal would be dismissed.

***Kelly v District Judge Anderson*, Supreme Court, 30/1/2004** [FL8697]

Certificate, *res judicata*

Arson – point of law of exceptional public importance – certificate – jurisdiction – section 29 of Courts of Justice Act, 1924 – res judicata – *whether the DPP was entitled to appeal against an order quashing the conviction of an accused and ordering a retrial – whether the DPP could grant a certificate certifying a point of law of exceptional public importance and subsequently apply to the court by way of appeal*

The respondent was charged with the crime formerly known as arson at a house in Waterford on 25 November 1996 and was tried twice at Waterford Circuit Court in relation to this charge. The jury failed to agree a verdict in the first trial and the second trial concluded in recording a verdict of guilty, and the respondent was sentenced to four years' imprisonment. During the course of the first trial, the trial judge ruled that the evidence of the owner of the house that was attacked (that the respondent had stalked her) was not relevant in the context of the charge. However, the trial judge indicated that the prosecution could renew its application to have this evidence admitted at any stage.

On the second trial, this evidence was again objected to, but the trial judge was not informed in any detail of the ruling on the first trial. The judge treated the evidence as relevant on the ground that it went to possible motive, and he also treated it as relevant to the *res gestae*. Accordingly, the evidence was admitted but the trial judge did accept that it was more prejudicial than probative. The respondent successfully appealed this decision to the Court of Criminal Appeal and a retrial was ordered on the basis that the question of the admissibility of the proposed evidence of the owner of the house was *res judicata*. Consequently, the appellant applied for and was granted a certificate by the Court of Criminal Appeal pursuant to section 29 of the 1924 act on the basis that the court's previous decision quashing the conviction of the respondent and directing a retrial involved a point of law of exceptional public importance. The point of law concerned was whether the Court of Criminal Appeal was correct in deciding

that the question of the admissibility at the trial of the respondent of certain evidence was *res judicata*, having regard to the ruling of the trial judge in an earlier trial that such evidence was inadmissible and that such evidence should not therefore have been admitted in evidence by the trial judge in the subsequent trial that resulted in the conviction of the respondent. The present appeal came before this court as a result of the certificate granted by the Court of Criminal Appeal. The respondent raised a preliminary issue as to the jurisdiction of the Supreme Court to hear this appeal, which was brought by the DPP from a decision of the Court of Criminal Appeal quashing a conviction and ordering a retrial. However, the attention of the Court of Criminal Appeal was not drawn to any possible difficulty that might arise in relation to the granting of a certificate by the DPP in the circumstances of the present case.

The Supreme Court (Keane CJ, Denham, Murray, McGuinness, McCracken JJ), in determining the preliminary issue in favour of the respondent, held that:

1) Although this court would normally be reluctant to consider and determine an appeal for reasons that were never the subject of argument or a decision in the High Court, where a serious question is raised as to the court's jurisdiction to hear the appeal, that issue must be resolved, albeit for the first time, by this court
2) The giving of a certificate either by the Court of Criminal Appeal or the DPP is a necessary statutory precondition to the entertaining by the Supreme Court of an appeal that relates to a point of law of exceptional public importance, assuming section 29 conferred the relevant jurisdiction on the court. There is nothing in the wording of section 29 to suggest that the DPP is precluded from granting a certificate in his own favour and then applying to the Supreme Court by way of appeal
3) The wording of section 29 was obscure and ambiguous and, accordingly, it would have been wrong in principle to have construed it in a manner that was inimical to the accused. In interpreting section 29, the intention of the Oireachtas was not to confer a right of appeal on the attorney general in addition to the right of appeal conferred on accused persons. There would have been no particular difficulty in including a provision in section 29 that the attorney general was to have a right of appeal as provided for in section 2 of the *Criminal Justice Act, 1993*
4) The Court of Criminal Appeal ordered a retrial on another ground not the subject of the appeal. Accordingly, the DPP was inviting this court to affirm rather than reverse that order but to direct the Circuit Court to resolve the *res judicata* issue in a particular manner when the retrial took place. If the court adopted that approach, it would not be acting as a court of appeal but would be exercising a form of consultative jurisdiction, which it did not possess
5) Section 29 did not confer on the attorney general and the DPP the right of appeal in every case where a conviction had been quashed and a retrial ordered, provided the necessary certificate was granted.

***People (DPP) v O'Callaghan*, Supreme Court, 16/1/2004** [FL8706]

FREEDOM OF INFORMATION

Family law, appeal

Freedom of information – appeal on a point of law – medical records – family law – Freedom of Information Act, 1997

The appellant and his wife, who had two children, separated in 1992 due to difficulties in their marriage. During the course of Circuit Court family law proceedings in June 1993, an allegation was made that the appellant had sexually abused his daughter at the end of 1991. The appellant denied this allegation and in January 1994 the gardaí, having investigated the matter, concluded that there was no evidence to warrant a prosecution. By order of the Circuit Court, the appellant was granted supervised access to his children in 1993. However, in 1998, the appellant's wife passed away and by agreement the appellant's two children went to live with his late wife's brother and his wife. Subsequently, in November 2000, the Circuit Court appointed the appellant's brother-in-law and his wife as joint guardians of the two children. However, the appellant was entitled to supervised access to the children. In January 2000, the appellant's daughter was admitted to hospital and on, visiting her, the appellant was advised that she had been admitted for an unspecified viral infection. Having been unable to obtain further information regarding his daughter's admission to hospital, the appellant, by letter dated 17 January 2000, made a request pursuant to section 7 of the *Freedom of Information Act, 1997*, requesting access to the personal records of his daughter. This request was refused and, accordingly, the appellant sought a review of this refusal. A decision affirming this refusal was subsequently communicated to the appellant and on 10 March 2000 he applied pursuant to section 34 of the 1997 act for a review by the respondent of the decision that was deemed to have been made by the hospital. By letter dated 12 August 2002, a senior investigator in the respondent's office wrote to the appellant advising him that his request had again been refused. Consequently, by notice of motion dated 10 September 2002, the appellant initiated this appeal pursuant to the provisions of section 42 of the 1997 act.

Mr Justice Quirke allowed the appeal, holding that:

1) The appellant enjoyed a right to appeal in a point of law only from the decision of the respondent pursuant to section 42(1) of the 1997 act
2) *Prima facie*, the terms of article 3(1) of the Freedom of Information Act, 1997 *Regulations 1999* are imperative and positive, requiring that access to appropriate records shall be granted where the requestor is a parent or guardian and where the record relates to a minor (as in this case). There is one relevant qualification: that the provision of access to such records be in the interests of the minor. The regulations imposed an obligation on the respondent to form an opinion as to whether access to the records would, having regard to all the circumstances, be in the minor's best interests. When considering those circumstances, the deciding officers were obliged to have regard to the proximity of the relationship between the parent and child
3) The respondents erred in construing regulation 3 of the 1999 regulations as imposing an onus on the appellant to prove by way of evidence that the granting of access to the records concerned would result in a tangible benefit to his child
4) By enacting section 28(6) of the 1997 act, the legislature was legislating in the interests of vindicating and defending the rights of children. Accordingly, the provisions of that act fell to be interpreted in the light of the provisions of the constitution generally and of articles 41 and 42 in particular
5) The appellant enjoyed the presumption of innocence and the evidence indicated that he was concerned with the welfare of both his chil-

dren and availed of his right of access to them in a conscientious fashion. Accordingly, the appellant, as a parent, joint guardian and joint custodian of the child concerned, enjoyed a presumption that he had the welfare of his child at heart in the absence of evidence to the contrary and therefore the appellant was entitled to access to his daughter's medical records.

***McK v The Information Commissioner*, High Court, Mr Justice Quirke, 14/1/2004** [FL8671]

LIBEL

Abuse of process

Defamation – practice and procedure – litigation – abuse of process – role of jury in defamation proceedings – allegations made against former IRA bomber – whether proceedings were an abuse of process – whether proceedings should be struck out

The plaintiff had instituted libel proceedings against the defendants arising out of an article that appeared in the newspaper *The Sunday Mirror*. The article claimed that the plaintiff, a former IRA bomber, was opposed to the peace process and intended to kill Gerry Adams. The plaintiff asserted that the article was implying that he intended to obstruct the peace process, intended on using violence against the British and considered that the peace process was a surrender. The defendant brought an application to have the action struck out on the basis that the proceedings were an abuse of process. It was submitted that the article could not have defamed the plaintiff as he had no reputation that could be lowered in the eyes of right-thinking members of society. The plaintiff was a mass murderer and by his own actions had held himself up to public hatred, odium and contempt and, accordingly, had no cause of action. The plaintiff asserted that the allegations made against him were completely untrue, he was an enthusiastic supporter of the peace process and was involved as a voluntary worker in a reconciliation programme.

McKechnie J dismissed the application, holding that, given the constitutional right of access to the courts and the desirability of there being a judicial determination on the merits of every case, a claim could not be dismissed in its infancy unless the court was fully satisfied that it was bound to fail. The court had to accept the plaintiff's contention that he was an active subscriber to the peace process and his involvement in a reconciliation programme was evidence of this. Given the crucial role that a jury plays in a libel action, it could not be concluded with certainty that right-thinking members of society would not, despite the plaintiff's past, find in his favour. The application would be refused.

***Magee v MGN Limited*, High Court, Mr Justice McKechnie, 14/11/2003 [FL8698]** 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

Representing clients before the Competition Authority

Any description of the practical lessons for solicitors representing clients before the Competition Authority is a mixture of the *Ten commandments* and the *Sermon on the mount*. There are certain things that one ought not to do and there are certain things that one should try to do. Staying with the religious theme, while one may know the dogma of the legislation, there are also certain 'theologies' within the Competition Authority that change from time to time and can have a heavy influence on the authority's decision-making process and allocation of priorities.

Before examining the sins that one might commit in terms of representing clients before the authority, it is worth recalling that after more than 12 years there are still no rules of procedure. This is more than unfortunate – it increases compliance costs for clients and causes uncertainty for everyone involved. It is important that the authority or the minister for enterprise, trade and employment adopt formal (or, at the very least, informal) rules of procedure to facilitate clients appearing before the authority.

First of all, be honest. It should go without saying, and for the overwhelming majority of competition lawyers it does, but be honest with the authority. Some advisors, admittedly very few, might be tempted to bend the truth a little so as to get the deal through or the allegations dropped. The simple advice is 'don't even think about it'. The authority will not take you seriously ever again. Equally, colleagues will be very dubious about what you say and reluctant to take your word on issues. It is worth mentioning, however, that occasionally lawyers are not told the whole story by their clients and, in such circumstances, the authority should give leeway and understanding to the client's lawyer – the lawyer was only doing a job and was not the client.

Be comprehensive and comprehensible. Underestimate the level of industry knowledge held by the authority or officials. This is not an insult to the officials but a practical recognition of the issues involved. A lawyer may have worked on the deal for many weeks or months before the matter reaches the authority and may have worked with the client for many years on other matters in that industry or economic sector. Do not overestimate the level of knowledge held by the officials; explain what needs to be explained. Start documents with a summary and do not overload the system with too much paper.

Be particularly careful about terminology and technology as well as acronyms and attitudes. Terminology may be entirely unknown to the authority or easily misunderstood. Technology is normally baffling to all but the initiated. Do not be afraid to bring along samples, pictures, graphs and diagrams. Equally, acronyms can be confusing and difficult to apply. Be careful not to lapse into jargon.

Preconceptions and attitudes can be the most difficult to deal with – it is much easier to deal with a complex or unusual fact or situation than an apparently simple or routine case. For example, in a case about drinks, foods, financial-services products or other consumer products, regulators can be tempted to superimpose their own experiences. By contrast, in a case about chemicals, pharmaceuticals or technology, regulators do not typically come to the case with any preconceived notion or attitude.

Some officials in national authorities may be new to the country and you may have to explain how things are not the same as they are abroad.

Be careful with terminology that might also be used in economics. Clients, lawyers and economists have an ability to confuse each other by using a common terminology. A 'firm' to an economist means anyone (including a company) engaged in business in the economy; by contrast, a 'firm' means, to lawyers, a partnership but not a company. The term 'costs' means different things to clients, economists, lawyers and accountants. Avoid too many legal expressions or technicalities. Even if the official in front of you today is a lawyer, there is a chance that the file will be passed on to another official who has a different training.

Appreciate the needs of the authority. Clients so often see their case as the only one that matters. Lawyers representing clients can sometimes also fall into that trap. Appreciate the needs of the authority to allocate cases, assign personnel, timetable proceedings and decide on priorities. There are many cases going on at the authority that attract no publicity and yet can be very time consuming, so it is not possible from the outside to know where your case fits in the queue.

Present problems and solutions. In representing clients, present the problems and difficulties but also present solutions and answers where possible. This is common sense, but it is interesting how many forget it. The authority is not always able to find a solution as quickly as the client, so it is important to offer possible solutions.

Understand that the authority is an evolving and changing body. Having observed the authority over the last 12 years, one is very conscious of the evolutionary nature and different approaches of the authority over time. The authority changes form and agenda by virtue of the legislative background, the personality and interests of the chairperson and members, the personality and level of intervention of the Department of Enterprise, Trade and Employment, the type of cases brought before it and the priorities of the day.

Ironically, lawyers and economists outside the authority who have stood the test of time and seen the authority through its various stages of development are at an advantage over the more transient, provided they keep up with developments.

The authority has now got plenty of resources and a high profile. However, one can recall when Andrew Whittaker,

the well-known competition commentator, wrote on 25 February 2000: *'The authority is in a run-down condition. For an era of enforcement it needs experienced lawyers and economists, not only at staff level but among its members. Of the three remaining members (out of five), one is an economist, one an engineer and one a career civil servant. All the authority's staff lawyers and its two most senior staff economists have left for higher-paid jobs elsewhere. It has no proper budget. It has been frustrated by the DPP … not yet having got into court the criminal prosecutions that it recommended against some dairies and/or supermarkets'.*

On 5 April 2000, *Business and finance* magazine stated: 'All is not well at the Competition Authority, with a number of high-profile resignations and complaints about pay scales and lack of promotional structures bedevilling the organisation'.

The authority can go through phases of good times and bad times. The level of public awareness can rise and fall. The cases can go the way of the authority or they might not. It is worth noting that the authority had no investigatory functions between 1991 and 1996. With the enactment of the *Competition (Amendment) Act, 1996*, the authority believed that it would deliver great results. This was not to be. Let us hope that the 2002 act will deliver the results, but the authority has already expressed some concern that the new legislation is not fully effective.

Remember that you are representing the interests of the client. Lawyers who deal regularly with the authority must always remember that they are there to represent the interests of the client at hand. The relationship with the authority must never be acrimonious or difficult but, if need be, you must be firm in representing your client's interests.

Have a realistic view of the chances of the case. As in everything, it is important to have a clear view of the chances of success (or failure) of your client's case so as to avoid giving any false hope to the client or unnecessarily bothering the authority.

Representing clients being dawn-raided. The most difficult time in representing a client in relation to the authority comes during a dawn raid. It is imperative to be calm, dispassionate, objective and mindful of the rights of the client and the authority. It is important to be well briefed in advance of the authority's procedures so as to avoid being wrong-footed on the day. You need to explain to the client about the authority's extraordinary powers, but to identify any excesses on the part of the authority.

Representing clients giving evidence under oath. The authority is increasingly using its powers to summon witnesses and to hear evidence on oath. Summons are being issued at an average of one a week. At a practical level, ask for a second tape to be made at the same time. Talk through the procedure with the client in advance. Explain that everything is on oath but ultimately that the client should 'be themselves'. The fact that it is on oath should make no difference whatsoever to one's involvement, because one should not be involved with a client who is not telling the truth anyway.

Be non-political and avoid the media. Keep politics out of the case. Avoid letters or telephone calls to the minister or Department of Enterprise, Trade and Employment unless there is a serious issue arising. This can be difficult, as some clients will always raise the notion of seeking political intervention. Don't try to play out the case in the media. Do not criticise the officials. Feel free to criticise the appalling job that they have done (if they have done so), but do not criticise the officials themselves. There are judges who can do that for you later if need be.

Hearings. Speak cogently, coherently, briefly, relevantly, concisely, clearly, logically and avoid too many adverbs. Prepare for the hearing carefully and methodically. It is less difficult than a European Commission hearing, but it is important to prepare. Summarise. Concentrate on the key points. Do not be afraid to limit your argument after advising the client that some issues should be omitted for presentational purposes. Think the case through thoroughly. Identify the key issues and stick to them. Admit shortcomings in the case. It is more convincing if you disclose it first. Know the law.

Have the client speak. The person who is 'at the front' has a much better grasp of what is going on. The client is more credible and authoritative than the 'hired gun'. However, there are certain risks with letting the client speak. First, clients are generally not as careful with legal or economic terminology and language as competition officials, economists and lawyers. This means that officials can sometimes believe that there is a greater problem than may appear at first because of some 'loose language'. Second, some clients can be very nervous and feel that they are being unduly burdened by having to present their case. Also, be very careful of those who are overly-enthusiastic to be 'Perry Mason for a day'.

The judicial dimension. Be aware of the judicial dimension as you deal with the authority. Judicial review is an option, and be aware that it may have to be used where the authority steps beyond what is permitted or permissible.

Precedent. Lawyers are familiar with the use of precedent in the courts. The issue of precedent is not so obvious, but is just as important, in the context of Competition Authority cases. What has the authority already decided on this issue? What would be the impact of this case (or deciding the case in a particular way) on other cases? This is not as easy as it first appears. At any one time, one knows the cases before the European Court of Justice or the Irish courts by examining the lists, but one does not know all of the cases before the Irish Competition Authority. The authority will be conscious of how a decision in this case may impact on other cases, but one may be aware of this dimension. What would be the impact on other policies?

European Commission practice. The Competition Authority would be wise to abide, as much as possible, by the practice and procedure adopted by the European Commission in competition matters. This is for several reasons. First, it provides certainty. Second, it would be inefficient to reinvent a set of procedures and practices. Third, the 2002 act is by analogy with articles 81 and 82 of the *EC treaty*.

Who are you representing? So far, there is an assumption that representing a client is one-dimensional and involves the same process and procedure irrespective of the type and circumstances of the client. Nothing could be further from the truth. The type of client and case will have a significant influence on how you represent your client. There are different issues depending on whether you are representing a complainant, a merging party, an intervening party, a whistleblower, a party to a study or a party seeking immunity. It is important to bear the difference in mind at all times.

Documentation length. There is no doubt that one should aim for brevity. However, brevity should not sacrifice the necessary factual, legal and economic background.

Identify the background of the official dealing with the case. Lawyers need to know their opponents or counterparts. The official in the authority is not always your

opponent but, nonetheless, ask yourself the following basic questions:

- Is this person an economist, a lawyer or an administrator?
- Have they dealt with this type of situation before?
- Have they dealt with this client before?
- What sort of issues are on that person's agenda?

Internal documentation. There are cases where it may be appropriate to seek access to internal documentation in the Competition Authority by virtue of either the *Freedom of Information Act, 1997* or the authority's own regime in a second-phase investigation of a notified merger.

Watch the network. If you are addressing a competition authority in one jurisdiction, then you might as well address all the authorities internationally at the same time. They are linked together by various networks: formal ones such as the International Competition Network and the EC one, and informal ones such as the competition authorities of small islands and academic networks. They meet at conferences and workshops. They exchange views through bodies such as the EC and the OECD. It is important to remember that your views and documents can (and will in appropriate cases) 'travel' across boundaries.

It is worth noting the modernisation of EC competition law in this context. This is the process of decentralising more from the European Commission to the member states and the abolition of notification to the commission (other than in the case of mergers and concentrations). There has long been a *Notice on co-operation between national courts and the commission* in applying articles 81 and 82 of the *EC treaty*. There is no doubt that modernisation will change the dynamic of the authority's review and the process of representing clients before the authority, because the authority will have to take into account all of the wider issues, including reviewing article 81 in the wider EC context and not just section 4 in the Irish context.

Confidentiality. The Competition Authority is subject to a very strict statutory regime of confidentiality. It is imperative that everyone in the authority abides by this regime (see, generally, the comments of the Supreme Court in *Cronin v Competition Authority, Minister for Enterprise and Employment and the Attorney General*; and *Texaco (Ireland) Ltd (notice party)*, Supreme Court, 27 November 1997 [1997] ICLR 352). A failure to do so would diminish, perhaps even destroy, confidence in the institution and those who administer it. There is most certainly a role for the authority to advocate adherence and cultivate compliance with competition law by pointing out general lessons and past successes in terms of investigation and punishment. However, there is no room for the authority to be involved in discussing live and current cases, studies or files with the media in an inappropriate way. This interdict crosses all areas of the authority's work but particularly in the area of merger control, where information may be price-sensitive and an odd word from the authority may move markets.

Warn clients about the technical bits. Clients will grow to love, for a short while, the Herfindahl-Hirshman index, average variable costs, externalities, unilateral effects, co-ordinated effects, market entry, market exit, barriers to entry, contestability, monopoly, monopsony and other great concepts of our time. Clients suddenly discover that they have been in a 'vertical relationship' for the last ten years! Clients often find this frightening and disturbing. Frankly, they sometimes tend to ask, after coming out of some meetings with the authority, questions such as 'was this the real world?'. It is the real world, but sometimes analysed through a prism and with a toolkit that most clients find alien. Clients are expected to know the law but may find the economics even more baffling.

Appreciate the state of the authority's resources. The current authority has been busy but, compared to its earlier forms, it has a wealth of resources. Nonetheless, it claims to be short on resources. Try to ease the work of the authority as much as possible.

Economists. It is wise to engage an economist in many (but not necessarily all) cases involving the authority. Try to get an economist with some industry background. Instruct them as early as possible. Be promiscuous with economists, because each may have a different expertise, experience and perspective to offer.

Negotiations. There can be some element of negotiation with the authority. This is particularly so in the case of mergers. Only agree to commitments and conditions that are clear, deliverable and capable of being adjudicated upon. The authority is often very concerned with the press release/publicity surrounding a case. This is often an important part of the negotiation.

Use of advocacy. Don't try to use court-style advocacy before the authority. Some clients, when they hear the phrase 'oral hearing', assume that they are before a court and should have senior counsel, attended by junior counsel, instructed by solicitors and the whole 'court thing'. This is not so. Meetings are in the nature of a discussion and sometimes in the nature of a negotiation. Certainly, one is 'advocating' a case (for example, this merger is good, that merger is bad, this behaviour is lawful, that behaviour is unlawful), but it is not a court. Stick to the good arguments. Omit the weak arguments. Negotiate the case.

Differences between the commission and the Competition Authority. Before concluding, it is useful to identify some of the differences between dealing with the European Commission and the Irish Competition Authority. First, the commission has the ability to impose fines and periodic penalties, whereas the authority is more of an investigative agency. Obviously, both may adjudicate on mergers and acquisitions, but their roles differ quite considerably in the area of other arrangements and types of behaviour.

Second, commission hearings tend to be more helpful because all interested parties are in the room and that helps to elicit the facts more easily.

Third, the commission is much more willing to meet complainants – the Irish authority loses a lot by not being willing to meet complainants more.

Fourth, the commission tends to be more high profile in its cases (some may call this 'leaking') and it is important that the authority does not go down that road. The authority and its officials would be in grave danger of losing respect were they to engage in inappropriate briefing of the media.

Fifth, the commission is more political in its deliberations and, thankfully, the authority seems to have been spared that problem.

This article has attempted to summarise the key lessons for those representing clients before the authority. It is not exhaustive or incapable of adaptation or amendment. There is no doubt that representing clients will change over time, but it is hoped that this article has given some basic lessons. G

Vincent Power is head of the EU, Competition and Regulatory Law Unit of A&L Goodbody Solicitors.

Recent developments in European law

COMPETITION

Case T-219/99 *British Airways plc v Commission of the European Communities*, 17 December 2003. British Airways is the largest airline company in the UK. It entered into agreements with travel agents in the UK to sell its tickets to customers. A commission was paid for ticket sales, with other financial incentives, such as a performance bonus calculated with reference to the growth of sales of BA tickets from one financial year to another. In 1993, a rival airline company (Virgin) lodged a complaint with the commission concerning these practices. After an investigation, BA adopted a new system of performance bonuses. The new system allowed for percentage bonuses relative to 95% of the tickets sold the previous month. Virgin lodged a second complaint with the commission about this system. In 1999, the commission ruled that the agreements and the incentive schemes were an abuse by BA of its dominant position on the UK market. The commission found that the effect of these schemes was to encourage UK travel agents to maintain or increase their sales of BA tickets in preference to sales of tickets of rival airlines. BA brought an action against this decision before the CFI. The court upheld the ruling of the commission and dismissed this action. It rejected a claim of discrimination and held that the fact that the commission had made no finding against other carriers operating similar incentive schemes did not warrant the lifting of the finding against BA. Where the commission is faced with such conduct on the part of several large undertakings in a single economic sector, it is entitled to concentrate its efforts against one of the undertakings in question. Abuse of a dominant position can consist of applying dissimilar conditions to equivalent transactions with other trading parties. This could apply to BA's scheme, as different agents could receive different commissions for the same transaction, depending on their rate of increase of sales of tickets. In addition, the scheme had the effect of restricting UK travel agents from providing their services to the airlines of their choice. Thus, it limited access by BA's competitors to routes to and from UK airports.

INTELLECTUAL PROPERTY

Case T-16/02 *Audi AG v Office for Harmonisation of the Internal Market (OHIM)*, 3 December 2003. In 1996, Audi filed an application with OHIM to register 'TDI' as a community trademark. This abbreviation is generally recognised as standing for 'turbo diesel injection' or 'turbo direct injection'. OHIM rejected the application on the basis that the mark was devoid of any distinctive character. In May 2002, Audi brought an action before the CFI seeking to have the decision annulled. The CFI observed that signs that designate the characteristics of goods and services should be available to all and cannot be registered. It concluded that, from the perspective of the public, there was a sufficiently direct and specific link between the words 'TDI' and the essential characteristics of the categories of goods and services for which registration was sought. Such a mark could, however, be capable of being registered if it had become distinctive through use in the entire EC.

Audi had produced no evidence enabling the court to find that the mark 'TDI' had become distinctive in this way.

Case C-283/01 *Shield Mark BV v Joost Kist hodn MEMEX*, 27 November 2003. Shield Mark BV is an intellectual property consultancy established in the Netherlands. It registered some sound indications as sound marks with the Benelux Trademarks Office. The Dutch Supreme Court made a reference to the ECJ asking whether the *Directive on trade marks* allows sounds to be registered. The ECJ held that the list of signs that can be registered as trademarks, set out in article 2, is not exhaustive. Signs that are not capable of being perceived visually are not expressly precluded from the directive. However, in order to be registered as a trademark, the sound must meet certain conditions. It must make it possible to distinguish the goods or services of one undertaking from another. It must also be capable of graphical representation by means of figures, lines or characters that are clear, precise, self-contained, easily accessible, intelligible, durable and objective. G

Annual dinner of the Law Society 2004

Law Society president Gerard Griffin, Catherine Griffin, president of the High Court Mr Justice Joseph Finnegan, senior vice-president Owen Binchy and junior vice-president John D Shaw

Immediate past-president Geraldine Clarke wishes Gerard Griffin all the best

Paul Egan, chairman of the society's Business Law Committee, and Gerard and Catherine Griffin

Former Supreme Court judge Frank Griffin, Helen Griffin, Gerard Griffin and Catherine Griffin

The Competition Authority's Declan Purcell with Gerard and Catherine Griffin

Chairman of the Revenue Commissioners Frank Daly with Frank Daly, chairman of the Solicitors Disciplinary Tribunal

Northern exposure
Law Society president Gerard F Griffin and director general Ken Murphy at a recent meeting with the Donegal Bar Association

Labour intensive
President Gerard Griffin, director general Ken Murphy and representives of the Law Society recently hosted a dinner for Labour Party leader Pat Rabbitte and his front-bench spokesmen from the Dáil and Seanad

First family
Law Society president Gerard Griffin with his family on the occasion of the handing over of the society's chain of office in November 2003

Trials and tribulations
Pictured at the recent CPD seminar on preparing for a trial on indictment in the Circuit and Central Criminal Court are *(from left)* Mr Justice Kevin O'Higgins, Bobby Eagar of Garrett Sheehan and Company, and Noel McCartan of McCartan and Burke, Solicitors

Bibliophiles
Pictured at the tenth *Hugh M Fitzpatrick lecture in legal bibliography* at the King's Inns on 2 March are *(from left)* Charles Lysaght BL, Chief Justice Ronan Keane, Professor John McEldowney of the University of Warwick's law school, Hugh M Fitzpatrick, and Gordon Nabney, examiner of statutory rules of Northern Ireland. Prof McEldowney delivered the lecture entitled *Challenges in legal bibliography: the role of biography in legal history*

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As the legal profession evolves to accommodate changes in the law and to embrace growth areas the legal recruitment environment must also adapt. The landscape of legal practice has changed in recent years with the influx of international commerce to Ireland and the creation of the Personal Injuries Assessment Board. This has impacted on the career progression of many lawyers and has also led practices to review areas of specialisation.

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Catrin Prys-Williams is an experienced barrister, having finished in the top 3% on the Bar Vocational Course at the Inns of Court School of Law in London. She maintained a successful practice at the Bar of England and Wales from 2000 to 2004 during which time she also recruited barristers to chambers.

Clare Reed is an experienced and highly successful recruitment consultant currently pursuing an LLB. Previously, a degree in Business Management was followed by 2 years as a Human Resources Manager and 2 years as a Senior Executive Recruitment Consultant.

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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 2 April 2004)

Regd owner: Thomas and Mary Shannon; folio: 490F; lands: Tullowbeg and barony of Rathvilly; **Co Carlow**

Regd owner: Thomas Daly; folio: 28031; lands: townland of Drimna and barony of Moyarta; area: 0.0379 hectares; **Co Clare**

Regd owner: James and Annette Kenneally; folio: 6 and 9973; lands: townland of (1) Cloonanaha, (2) Boolyduff and barony of Inchiquinn; area: (1) 8.0200 hectares and (2) 2.0690 hectares; **Co Clare**

Regd owner: Patrick Coakley (deceased); folio: 11041; lands: plots of ground being part of the townland of Derrymeeleen in the barony of Carbery East (east division) and county of Cork; **Co Cork**

Regd owner: Percy Roderick Crone; folio: 39518; lands: a plot of ground being part of the townland of Ballingarrane in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Pamela V Hutchence and Mary Catherine Bosanquet; folio: 1768F; lands: plots of ground being part of the townland of Caherlusky in the barony of Carbery West (west division) and county of Cork; **Co Cork**

Regd owner: Anna Murphy; folio: 28081 and 28082; lands: plots of ground being part of the townland of Kilcatherine, Gortgarriff and Ballycrovane in the barony of Bear and county of Cork; **Co Cork**

Regd owner: William Cox Ireland Limited; folio: DN2098F; lands: property situate in the townland of Robinhood and barony of Uppercross; **Co Dublin**

Regd owner: William Cox Ireland Limited (Limited Liability Company); folio: DN3045F; lands: property situate in the townland of Robinhood and barony of Uppercross; **Co Dublin**

Regd owner: Anthony Poland; folio: 39819; lands: (1) and (2) townland of Kellysgrove and barony of Clonmacnowen; area: (1) 0.3414 hectares and (2) 0.2579 hectares; **Co Galway**

Regd owner: Anthony Poland; folio: 1975F; lands: townland of Gortnahorna (Clancarty) and barony of Clonmacnowen; area: 1.2140 hectares; **Co Galway**

Regd owner: Oliver Daniels, 49 Knocknacarra Park, Galway; folio: 39840F; lands: townland of Keeraun and barony of Galway; **Co Galway**

Regd owner: Thomas Weldon: folio: 12844; lands: townland of Clonfert North and Laragh and baronies of Ikeathy and Ougherany; **Co Kildare**

Regd owner: Laurence W Rentes; folio: 24768f; lands: townland of Ballynadrumny and barony of Carbury; **Co Kildare**

Regd owner: Ciaran Gannon, 9 Summerhill, Carrick-on-Shannon, Co Leitrim; folio: 1708F; lands: Townparks; area: 0.132 acres; **Co Leitrim**

Regd owner: Peter P Kellegher, Drumgowna, Ballinamore, Co Leitrim; folio: 796; lands: Drumgownagh; area: 6.7810 hectares; **Co Leitrim**

Regd owner: Christopher (orse) Bernard Christoper McBrien, Augalough, Aughavas, Carrigallen, Via Cavan, Co Leitrim; folio: 265F; lands: Aghalough; area: 10.9265 hectares and 3.2096 hectares; **Co Leitrim**

Regd owner: Bernard McKeon, Keshcarrigan, Carrick-on-Shannon, Co Leitrim; folio: 11078Rev; lands: Keshcarrigan; area: 0.04299 hectares; **Co Leitrim**

Regd owner: Catherine Marnane; folio: 6824; lands: Bunavie and barony of Coonagh; **Co Limerick**

Regd owner: Michael H Noonan; folio: 5782; lands: townland of Coolacokery and barony of Shanid; **Co Limerick**

Regd owner: Henry Byrne, Rathescar South, Dunleer, Co Louth; folio 2862; lands: Rathescar North; area: 2.4078; **Co Louth**

Regd owner: Michael McDonagh; folio: 48771; lands: townland of (1) Skiddernagh, (2) Creaghanboy and barony of Carra; area: (1) 8 acres 3 roods, 4 perches, (2) 6 acres, 2 roods 28 perches; **Co Mayo**

Regd owner: Drogheda Borough Council (formerly known as the Mayor Aldermen and Burgesses of the Borough of Drogheda); folio 25806; lands: lands at Roughgrange, Donore; **Co Meath**

Regd owner: James D McDonnell, Carrickleck, Nobber, Co Meath; folio: 15911; lands: Carrickleck; area: 12.1060 hectares; **Co Meath**

Regd owner: Mary Bennett; folio: 18876; lands: Stonestown, Cortullagh or Grove and Coolreagh or Cloghanhill and barony of Garrycastle; **Co Offaly**

Regd owner: Kevin Brereton; folio: 4502F; lands: Ballinowlart South and barony of Coolestown; **Co Offaly**

Regd owner: Martin and Sandra Reynolds; folio: 14549; lands: 32 Colmcille Road, Edenderry, Co Offaly; **Co Offaly**

Regd owner: John Conneally and Maura Conneally; folio: 36259; lands: townland of Caher and barony of Castlereagh; area: 1.3076 hectares; **Co Roscommon**

Regd owner: Thomas Hanly; folio: 32509; lands: townland of (1) Lisroyne, (2) Cloonslanor, (3) Drinagh and barony of Roscommon; area: 3 acres, 3 roods, 14 perches; **Co Roscommon**

Regd owner: Thomas Hanly; folio: 27051; lands: townland of Newtown and barony of Roscommon; area: 20 acres, 3 roods, 12 perches; **Co Roscommon**

Regd owner: Thomas Hanly; folio: 12553F; lands: townland of Newtown and barony of Roscommon; area: 1.214 hectares and 1.366 hectares; **Co Roscommon**

Regd owner: Patrick J Brennan (deceased); folio: 2764F; lands: townland of Urlar and barony of Carbury; area: 0.463 hectares; **Co Sligo**

Regd owner: James P Cooper (deceased); folio: 3538F; lands: townland of Carney (O'Beirne) and barony of Carbury; area: 0.1133 hectares; **Co Sligo**

Regd owner: Thomas Murphy (undivided half share); folio: 21205; lands: townland of Carricknagat (Leyny Barony) and barony of Leyny; area: 0.2023 hectares; **Co Sligo**

Regd owner: Michel Hannigan; folio: 1106L; lands: townland of Carrickbeg and parish of Kilmoleran; **Co Tipperary**

Regd owner: William Cheasty (deceased) and Sheila Cheasty; folio: 1087L; lands: a plot of ground known as 26 Roanmore Park situate in the parish of Trinity Without and county borough of Waterford; **Co Waterford**

Regd owner: Frederick and Cecilia McGoldrick; folio: 2063F lands: plots of ground being part of the townland of Poulnagunoge in the barony of Glenahiry and county of Waterford; **Co Waterford**

WILLS

Bollingbrook, Kate (deceased), late of Meelick, Swinford, Co Mayo. Would any person having knowledge of a will made by the above named deceased who died on 25 December 1995 at St Attracta's Nursing Home, Charlestown, Co Mayo, please contact Egan, Daughter & Company, Solicitors, Castlebar, Co Mayo; tel: 094 902 1437, fax: 094 902 2136, reference: P090/AC/SC

Cullen, Jack (John) (deceased), late of The Ross, Manorhamilton, Co Leitrim. Would any person having any knowledge of the whereabouts of a will made by the above named deceased please contact Kelly & Ryan, Solicitors, Manorhamilton; tel: 071 985 5034

Farrell, Noel (deceased), late of Westarbrook, Howth Road, Clontarf, Dublin 3 and 47 Dunseverick Road, Clontarf, Dublin 3. Would any person having knowledge of a will made by the above named deceased who died on 23 November 2003, please contact O'Donohoe, Solicitors, 11 Fairview, Dublin 3 (ref: Michael O'Donohoe)

Fletcher, Mary Josephine (née McNally) (deceased), late of 40 Griffith Avenue, Finglas East, Dublin 11. Would any person having knowledge of a will made by the above named deceased who died on the 13 October 2003 at St Mary's Hospital, Phoenix Park, Dublin, please contact Michael E Hanahoe, Solicitors, 21 Parliament Street, Dublin 2; tel: 01 677 2353, fax: 01 635 1926, e-mail: meh@mehanahoe.ie

Foley, Alice Frances (deceased), late of 109 Dunluce Road, Clontarf, Dublin 3. Would any person having knowledge of a will made by the above named deceased who died on 3 May 1981, please contact Anne L Horgan & Co, Solicitors, 3 Convent Road, Blackrock, Cork (ref: SO'C); tel: 021 435 7729, fax: 021 435 7070

Lacy, William (Builder) (deceased), late of St Patrick's (otherwise known as Abbey House), Abbey Street, Howth, Co Dublin, and formerly of 'Highfield', Thormanby Road, Howth, Co Dublin. Would any person having knowledge of a will made by the above named deceased who died on 25 October 1923 at St Patrick's (otherwise known as Abbey House), Abbey Street, Howth, Co Dublin, please contact Miss Deirdre I Lacy, Ballymilish, Dungriffin Road, Howth, Co Dublin (granddaughter)

Malone, Brigid (deceased) (ob 30 December 2003), late of 2 Park Road, Longford, and formerly of Gurteen, Ballymahon, Co Longford. Would any person having knowledge of a will made by the above named deceased please contact Groarke & Partners, Solicitors, 32/33 Main Street, Longford; tel: 043 41441, fax: 043 45335

Maher, William (deceased), late of 10 Westgate (otherwise 1 Friar Street), Thurles, Co Tipperary. Would any person having knowledge of a will made by the above named deceased who died on 14 February 2004, please contact Michael J Breen & Co, Solicitors, Main Street, Roscrea, Co Tipperary; tel: 0505 22155, fax: 0505 22394

Roche, Maurice (deceased), late of 3 Clarinda Manor, Dun Laoghaire, Co Dublin. Would any person having knowledge of a will made by the above named deceased who died on 28 October 2003 at Tallaght Hospital, Dublin, please contact William Fitzgibbon, Solicitor, Shinnick Fitzgibbon & Co, Solicitors, Baldwin Street, Mitchelstown, Co Cork; tel: 025 84081, fax: 025 84370, e-mail: billyfitzgibbon@eircom.net

Shanagher, Patrick (deceased), late of Faughena Mor, Ballintubber, Co Roscommon. Would any person having knowledge of a will made by the above named deceased who died on 30 September 1998 at the County Hospital Roscommon, please contact Claffey Gannon & Company, Solicitors, Castlerea, Co Roscommon, DX 72001 Castlerea; fax: 094 962 0522, e-mail: alan@clafgann.com; reference: AG/S41

Yorke, James (deceased), late of 3 Rock Street, Rathdrum, Co Wicklow. Would any person having knowledge of a will made by the above named deceased who died on 17 November 2003 at St Coleman's Hospital, Rathdrum, Co Wicklow, please contact Denis Hipwell, solicitor, of Patrick O'Toole, Solicitors, Church Street, Wicklow, Co Wicklow; tel: 0404 68320, fax: 0404 68001, e-mail: potoolesols@eircom.net

EMPLOYMENT

Apprentice solicitor required for general practice in Roscommon town. Please apply by post or e-mail to Sean Mahon of Sean A Mahon & Company, Market Square, Roscommon, or tel: 090 662 7350, e-mail: samahon@eircom.net

Locum solicitor required for Sean A Mahon & Co, Solicitors, Market Square, Roscommon, for three to six months from end of June. Possibility of full-time position. Post-qualification experience preferable, with experience in conveyancing, probate and litigation. Please apply by post or e-mail to Sean Mahon at tel: 090 662 7350 or e-mail: samahon@eircom.net

Experienced family-law solicitor seeks part-time employment; five years' PQE in north Dublin/south Meath area. Please reply to **box no 30/04**

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Locum solicitor required for a period of four months, commencing on 5 April 2004, for conveyancing work at the following practice: Michele Morris & Co, Solicitors, no 34 Grattan St, Portlaoise, Co Laois; tel: 0502 60590, e-mail: michellemorrissolr@eircom.net

Solicitor required for general practice in Galway area, with one to two years' PQE. Please reply to **box no 33/04**

Experienced solicitor seeks full or part-time position in the mid-west region; has worked in all areas of law, particularly conveyancing and probate. Reply to **box no 34/04**

Solicitor with two years' PQE seeks position in Cork city; experienced in all main areas of law, in particular litigation. Reply to **box no 35/04**

Wanted: litigation solicitor for partnership in start-up general practice in the mid-west area. Reply to **box no 36/04**

Assistant solicitor with two plus years' PQE in conveyancing and some litigation experience for Galway practice. Apply with CV to Bruce St John Blake & Co, Solicitors, Ross House, Merchants Road, Galway

Locum solicitor required. Limerick city practice. Minimum five years' PQE. Reply to **box no 37/04**

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, Co 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

England and 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 2088 17777, fax: 0044 2088 896395

Wanted – publican's ordinary seven-day licence. Replies to Eoin O'Connor, Eoin O'Connor & Company, Solicitors, 16 South Main Street, Naas, Co Kildare; tel: 045 875 333, fax: 045 875 637, e-mail: info@eoconnorsolicitors.ie

Personal injury solicitor required. Must have excellent computer/keyboard skills and have a proven track record of good fee-generation and over three years' experience. A knowledge of Northern Ireland litigation would be an advantage, but not essential. Remuneration offered is on a basic salary/commission basis and is uncapped. Applicants should forward CV by post or e-mail to the address below. Closing date is Friday 23 April 2004. Gary Matthews Solicitors Limited, 12 John Mitchel Place, Newry, Co Down, BT34 2BP; e-mail: info@gary-matthews.com

London solicitors will be pleased to advise on UK matters and undertake agency work. We handle probate, litigation, property and company/commercial. Parfitt Cresswell, 567/569 Fulham Road, London SW6 1EU, DX 83800 Fulham Broadway; tel: 0044 2073 818311, fax: 0044 2073 816723, e-mail: arobbins@parfitts.co.uk

TITLE DEEDS

Patrick Leavey and Marie Leavey, 144 Tonglegee Road, Raheny, Dublin 5. Anybody with any information regarding the whereabouts of the above title documents please contact Ryan & Associates, Solicitors, 53 North Strand Road, Dublin 3; tel: 01 836 3369, fax: 01 836 4599

Thomas Joseph Murphy (deceased), late of 48 Connolly Square, Bray, Co Wicklow. Would any person having knowledge of the whereabouts of the title documents of the above mentioned property please contact Brian McLoughlin & Company, Solicitors, 3 Herbert Road, Bray, Co Wicklow; tel: 01 286 8211, fax: 01 282 8143, e-mail: rokeeffe@bmllaw.com

In the estate of Gertrude O'Reilly (otherwise Nora Gertrude O'Reilly) (deceased), late of 101 High Street, Cork. Anybody with any information regarding the whereabouts of the title deeds of 101 High Street, Cork, please contact Eamon Murray & Company, Solicitors, 6/7 Sheares Street, Cork; tel: 021 427 6163, fax: 021 427 4801, e-mail: ejmlaw@eircom.net

Yorke, James (deceased), late of 3 Rock Street, Rathdrum, Co Wicklow. Would any person having knowledge of storage of title documents relating to the above named deceased who died 17 November 2003, please contact Denis Hipwell, solicitor of Patrick O'Toole, solicitors, Church Street, Wicklow, tel: 0404 68320, fax: 0404 68001, e-mail: potoolesols@eircom.net

Anybody with information regarding the whereabouts of title deeds to 67 High Street, Cork, please contact Edward B Carey & Co, Solicitors, 23 Marlboro Street, Cork; tel: 021 425 1699, fax: 021 4251682

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Act, 1978* and in the matter of the *Landlord and Tenant Act, 1984*: an application by Gael Linn Teoranta, 35 Dame Street, in the city of Dublin

Take notice that any person having any interest in the freehold estate of the following property: all that and those the hereditaments and premises known as Cabra Cinema, situate at Quarry Road in the Parish of Crumlin, barony of Uppercross and the city of Dublin, more particularly described in an indenture of lease dated 2 May 1949, Cabra Grand Cinemas Limited to Irish Cinemas Limited for a term of 495 years from 16 April 1949, subject to the yearly rent of IR£450 and to the covenants and conditions therein contained.

Take notice that Gael Linn Teoranta intends to submit an application to the county registrar for the county/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, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county and 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.

Date: 11 March 2004

Signed: Young & Company (solicitors for the applicant), 2 Charleston Road, Dublin 6

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 John Mulroy

Take notice that any person having an interest in the freehold estate of the following property: (a) 231 Richmond Road, in the parish of Clonturk and county of the city of Dublin, (b) 233 Richmond Road, in the parish of Clonturk and county of the city of Dublin.

Take notice that John Mulroy intends to submit an application to the county registrar for the county of 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 properties or any of them are called upon to furnish evidence of title to the aforesaid property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the 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.

Date: 2 April 2004

Signed: Roundtree Tarpey (solicitors for the applicant), 25 Upper Mount Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Act, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Francis P Taylor and Olive Taylor

Take notice that any person having an interest in the freehold estate of the premises known as Ashfield House, 5 Clonskeagh Road, formerly known as 3 Connaught Place, Clonskeagh, in the parish of St Mary, Donnybrook, and the city of Dublin, held under a lease dated 25 March 1931 and made between John Tierney of the one part and John Leslie Harris of the other part for the residue of the term of 868 years from 1 April 1931 at a yearly rent of (£13) €16.51.

Take notice that Francis P Taylor and Olive Taylor intend to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest of the aforesaid property and any person ascertaining that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named solicitor within 21 days from the date of this notice.

In default of any such notice being received, the below named solicitor for the said Francis P Taylor and Olive Taylor 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.

Date: 2 April 2004

Signed: Woodcock & Sons (solicitors for the applicant), 23 Molesworth Street, 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*: an application by Charles Street Development Limited

Take notice that any person having interest in the freehold estate of the following property: all that and those the premises known as the rear of number 31 Mountjoy Square together with the premises known as numbers 54, 55 and 56 Great Charles Street, the parish of St George and the county and city of Dublin, together with the private land off Great Charles Street, all of which said premises are in the parish of St George and the county and city of Dublin.

Take notice that Charles Street Developments Limited intends to apply 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 (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, Charles Street Developments Limited 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/persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 2 April 2004

Signed: Mark Connellan, Connellan Solicitors (solicitors for the applicant), 3 Church Street, Longford

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

Take notice that any person having interest in the freehold estate of the following property: all that and those the premises known as the rear of number 30 Mountjoy Square in the parish of St George and city of Dublin.

Take notice that Charles Street Developments Limited intends to apply 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 (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, Charles Street Developments Limited 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 and city of Dublin for directions as may be appropriate on the basis that the person/persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 2 April 2004

Signed: Mark Connellan Solicitors (solicitors for the applicant), 3 Church Street, Longford

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 Reverend Edward Foley OP, the personal representative of the estate of the late Reverend Louis (otherwise called Cecil Angelus Augustine) Coffey (in respect of no 10 Granby Lane), and Calaroga Limited (in respect of no 15 and no 16 Granby Row)

Take notice any person having any interest in the freehold estate or the superior interest of the following properties: **no 10 Granby Lane** – all that and those the premises known as no 10 Granby Lane in the parish of St Mary and city of Dublin, held under indenture of lease dated 26 August 1915 between Sir John William Moore of the one part and Thomas Price of the other part for a term of 100 years from 1 July 1915, subject to an annual rent of €7.62; **no 15 Granby Row** – all that and those the premises known as no 15 Granby Row in the parish of St Mary and city of Dublin, held under indenture of lease dated 9 April 1951 between Winifred Allen, Charles Ernest Basil Dowker Kidd and Russell Mills as trustees of the will of Thomas Taylor of the one part and Sheila O'Brien of the other part for a term of 99 years from 1 July 1950, subject to an annual rent of €190.46; **no 16 Granby Row** – all that and those the premises known as no 16 Granby Row in the parish of St Mary and city of Dublin, held under indenture of lease dated 24 August 1951 between Frances Ellen Orpen, Margaret Mary Byrne, Margaret Robinson, Nora Mary Robinson, Richard Gabriel Robinson, Emma Bodkin, Aileen Bodkin, Mary Vaughan, Anne Parker, Elizabeth Bodkin, Helen Bodkin, Brigid Bodkin, Andrew John Horne, Emma Bodkin and Thomas Bodkin of the one part and Sheila O'Brien of the other part for a term of 99 years from 7 July 1950, subject to an annual rent of €198.08.

Take notice that Reverend Edward Foley OP, the personal representative of the estate of the late Reverend Louis (otherwise called Cecil Angelus Augustine) Coffey, and Calaroga Limited intend to apply to the county registrar for the county/city of Dublin for the acquisition of the freehold 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, Reverend Edward Foley OP, the personal representative of the estate of the late Reverend Louis (otherwise called Cecil Angelus Augustine) Coffey, and Calaroga Limited intend to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 2 April 2004

Signed: Eugene F Collins (solicitors for the applicant), 3 Burlington Road, Dublin 4

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 premises known as number 11 Brennan's Terrace, Strand Road, Bray, in the barony of Rathdown and county of Wicklow (formerly known as 'Innisfree', Strand Road, Bray, in the barony of Rathdown and county of Wicklow): an application by Michael Collins

Take notice any person having any interest in the freehold estate of or superior interest in the following premises: all that and those the premises known as number 11 Brennan's Terrace, Strand Road, Bray, in the barony of Rathdown and county of Wicklow (formerly known as 'Innisfree', Strand Road, Bray, in the barony of Rathdown and county of Wicklow), held under a lease dated 7 May 1940, and made between Robert Nesbitt Keller and Percival Hugh Browne of the first part, Sir Stanley Herbert Cochrane of the second part and William John McCallion and Frances McCallion of the third part, subject to the yearly rent of £11.75 and as to part of the said premises (the lands coloured green on the map endorsed on the lease) held for a term of 818 and one-half years from 1 January 1940 and as to the remaining part of the said premises (the lands coloured blue on the map endorsed on the lease) held for a term of 80 years from 25 March 1940, the immediate reversion on which lease is or is believed to be presently held by Mr William Francis Harley Vanston.

Take notice that the applicant, Michael Collins, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, intends to submit an application to the county registrar for the county of Wicklow for the acquisition of the freehold interest and any intermediate interests 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 within 21 days from the date of this notice.

In default of any such notice being received, Michael Collins 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 Wicklow for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 16 March 2004

Signed: Murray Flynn (solicitors for the applicant), 14 Fairview Strand, Dublin 3