

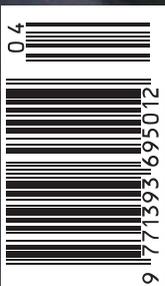
LAW SOCIETY

Gazette

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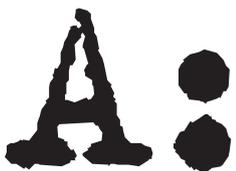
ASBOs: More trouble than they're worth?



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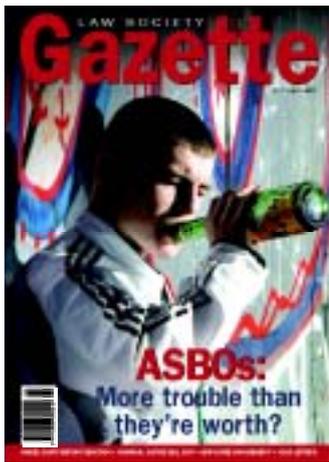
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On the cover

ASBOs are now here. But is there a possibility that, if not carefully applied, they could lead to unjust convictions or hinder a person's right to a fair trial?

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Unless the much-heralded new ASBO provisions are used with great discretion, they could lead to unjust convictions or hamper a person's right to a fair trial. John Noonan reads you your rights

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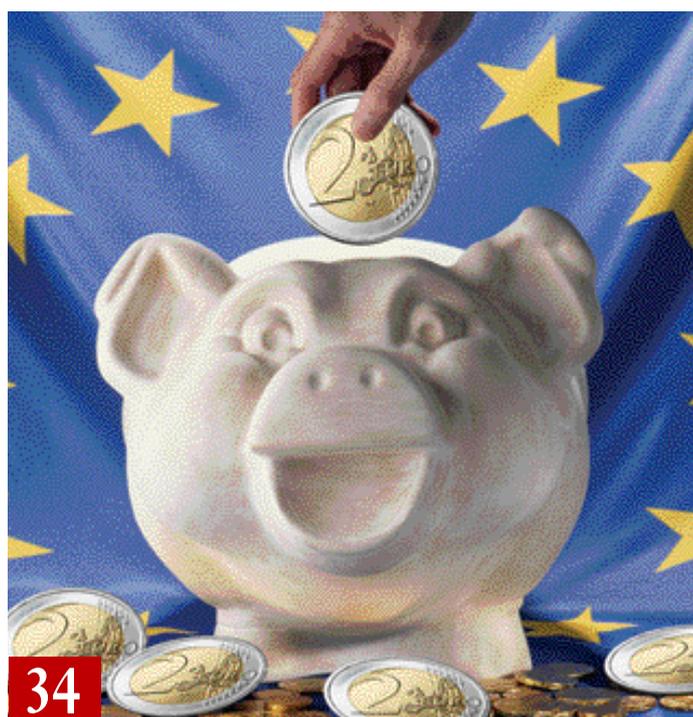
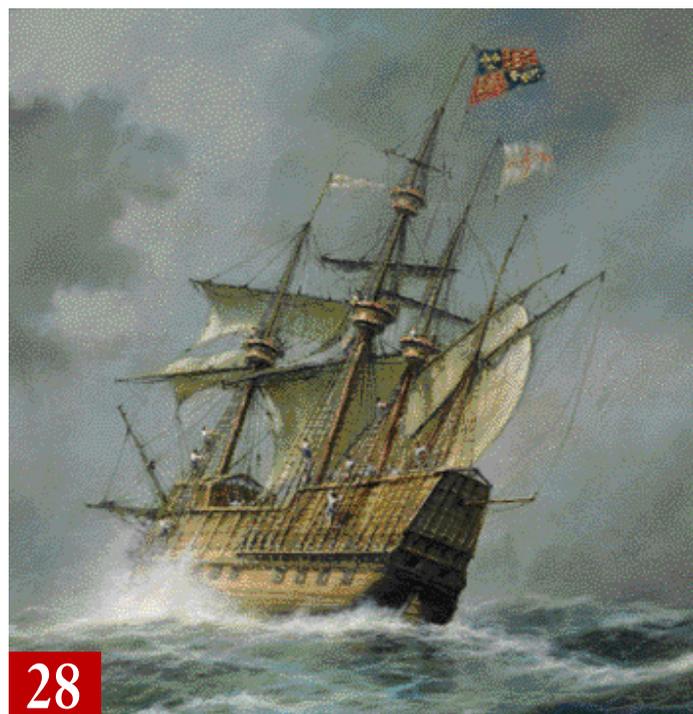
Under 30s – also referred to as 'Generation Y' – regard work very differently to their parents' generation. Adapting to this is no mean feat for any manager, but Paul Davis has the scoop, daddio

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We're all familiar with the residency requirement for SSIA's – if anyone is not resident in Ireland for more than three years, they lose the benefit of the SSIA uplift. But is this a breach of a person's right to freedom of movement under EU law? Frank Mitchell grabs his passport

38 Buy and sell

Profit maximisation is the watchword of any business, and in relation to property development, this means getting the greatest sale price in totality for a completed development. Mel Ferguson turns the first sod



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Questions raised new legal costs

On 1 March last, the *Report of the Legal Costs Implementation Advisory Group* (IAG report) was published. The group consisted of Desmond Miller as chairman, with Garrett Cooney SC (retired), Maurice Curran (solicitor), John Cronin (Department of Justice, Equality and Law Reform), Brian Evans (chartered accountant), Prof Mary Lambkin (School of Business, UCD) and Noel Rubotham (director of reform and development, Courts Service). The report analyses how legal costs should be prepared, assessed and enforced in the future. It has, as a central tenet, the conclusion that “solicitors and barristers should be obliged to have in place a proper system of time-recording and that bills in relation to legal costs should, as appropriate, be supported by time records”.

Work to do

The profession will readily see that, if this practice of charging for one's services is implemented, it will result in a substantial change in the way many, if not the vast majority, of legal offices operate. It will, of course, also have an effect on the way members of the Bar calculate their fees. In the foreword to the report, the chairman expresses the view that “time recording may be challenging, but we are satisfied that it will lead to greater efficiency and transparency”.

The profession will welcome any steps that can be taken to provide a simplified method of assessing costs, and the goal of greater transparency is an excellent objective in itself. The report does not state that, as a result of its recommendations, legal costs are likely to be reduced. There are aspects to the report that give rise to concern.

If we examine our own systems and the way we educate solicitors in relation to costs, we will be

forced to the conclusion that a lot of work needs to be done. Traditionally, the Society has not emphasised the business side of life in practice. This will have to change. Up until now, it has been difficult for a solicitor to properly assess what he or she needs to charge in order to maintain a viable practice and, as a result, inconsistencies have arisen. We have to be sure that the cure will not be worse than the disease.

It is certainly the practice in other professions that work done is based on daily or hourly rates, and supported by appropriate and vouched documentation. However, there are professions and occupations that have not adopted this practice. There is a strong view that, where work is charged for in this way, it will lead to an escalation in costs. The report says that it is not possible to determine the extent to which this may occur and the costs implications.

The present system of adjudication of costs is based on the taxing masters with four support staff, a total of six. It is proposed in the new system that a legal costs regulatory body be established, with three of the part-time members appointed by government, together with necessary report staff. They will be supported by an appeals adjudicator, two senior assessors, six junior assessors and four clerical administrative staff. It will be seen, therefore, that the new system will call for a radically increased staff.

Equality of arms

The IAG has recommended that the regulatory costs body should provide guidelines for costs that would be kept up to date, and it recognises the fact that the practice of taking cases on a ‘no foal, no fee’ basis provides access to justice and that this risk should be taken into account in the formulation of guidelines.

by report

In relation to solicitor and client costs, it states that no party will be bound by guidelines and that parties will be free to enter into agreements with their lawyers as they see fit. On the other hand, it states that it would be neither desirable nor feasible to put in place guidelines of a type that would provide a simple mathematical model designed to predetermine the legal costs recoverable in every type of case. The report states that the guidelines should be kept up to date in order to ensure that the principle of 'equality of arms' is maintained. It also states that it is opposed to the introduction of scales containing fixed costs, save possibly in routine administrative tasks, and thereby it recommends the abolition of appendix W in the *Rules of the Superior Courts*.

No doubt, a far greater analysis of the report will appear elsewhere. It is recommended that an interim board be set up in order to get the task underway, as the report itself states that this will be complex and difficult. Great care will have to be taken to ensure that those who currently enjoy the services of solicitors can continue to afford them. There is a great risk that, where an hourly or daily rate is charged, the average citizen will find that legal services are simply out of his/her reach.

It is ironic that the report recommends the abolition of fixed charges when we still have to face a District Court scale that has not been reviewed since 1992 and, therefore, one can't help but be sceptical that any governmental body will keep costs guidelines up to date.

The report recommends that a much more enhanced system of providing information to the client should be put in place, and the Society agrees with this view. The task that has been set for government is recognised by the report as being complex and difficult. If the changes are to be



implemented and if justice is to be done for the consumer and for the legal profession, it will take a considerable length of time to put in place. The challenge to us as a profession is to prepare for the changes that may occur, but we must also ensure that we remain, as a profession, able to offer advice and assistance to the less fortunate in society while striving for the highest standard of economic practice and efficiency. The full report is available from Government Publications or on the web at www.justice.ie.

Philip M Joyce
President

“Traditionally, the Society has not emphasised the business side of life in practice. This will have to change”



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■ DUBLIN

Clear as MUD

MUD is the latest legal acronym – short for ‘multi-unit developments’. A number of august bodies have recently launched papers on the subject. The DSBA held a recent seminar on this burgeoning topic, which proved a great success. It will be repeated in early May. Speakers included Patricia Rickard-Clarke of the Law Reform Commission, Kevin O’Connell of the ODCE and myself.

Other seminars in the pipeline include a collaborative seminar with the Courts Service on the operation of the Drug Treatment Court, the legal secretaries workshop (in conjunction with Anne Neary), a seminar on privacy law and, in the autumn, for younger members, a basic seminar on company law. Probate seminars are also being planned.

■ KERRY

Kerry gold

Down Kerry way, Kerry Law Society President John Galvin and his team are busy preparing for their second annual conference, in May. Last year it was Barcelona and this year the delights of Florence beckon. Miriam McGillicuddy will present a paper on citizenship and asylum law.

A CPD course in practice management is being organised for 25 April, with others in the pipeline before summer.

■ MEATH

Getting your MBA

A huge gathering of the legal fraternity in Meath attended a dinner organised by the Meath Bar Association in honour of retiring county registrar Máire Tehan. Máire was county



Making the connection

Waterford members recently benefited from a workshop titled ‘Make the Connection – Internet Use for Solicitors’, organised by the Technology Committee. At the Waterford Institute of Technology were: Frank Treacy (deputy registrar, Property Registration Authority), John Furlong, Patrick Madigan and Neil Butler (all of the Technology Committee) and Christine Kiely (PRA)

registrar for Meath for over 30 years – the first woman to be appointed to such a post, we’re told. The huge regard with which Máire was held by the legal community was evidenced by the huge numbers (up to 200) who attended the event, including Judge MP Smith of the High Court, President of the Circuit Court Matt Deery, Judges Ray Groarke, Michael O’Shea, John O’Hagan and Tom Teehan, and from the District Court, Judges John Brophy and John Coughlan. A number of county registrars from the adjoining counties, including Breda Allen from Wicklow, Joe Smith from Cavan, and Elizabeth Sharkey from Westmeath also attended.

■ MONAGHAN

Rebel with a cause

Barry Healy is the newly appointed state solicitor. Although a native of Cork, Barry had been practising in Cavan, and more recently Monaghan, over the last decade.

A latecomer to the legal profession, he served in the army as an officer and is a keen rugby fan, having played for the Connacht inter-provincial rugby side. He has succeeded Enda O’Carroll, who had served as state solicitor in the county with great distinction since 1974, having succeeded his late father Sean O’Carroll.

Tributes were paid to Enda at the recent Circuit Court sitting in Monaghan before Judge O’Hagan. On behalf of the Monaghan Bar Association, John J Keenan praised Mr O’Carroll’s courtesy and efficiency throughout his long innings as state solicitor and wished Barry Healy the very best in his challenging new position.

■ WATERFORD

London calling

The better half (oops, I mean, the female members!) of Waterford Law Society hatched their plot to drop husbands, partners, tag-alongs, offices,

children and other quasi-burdens and head to London on 8 March 2007 – all for the sake of CPD and the furtherance of collegiality. The WWLAs enjoyed some all-night conversations at Ruben’s Hotel, a champagne reception at the Soho Hotel, and dinner at Richard Corrigan’s restaurant at Lindsey House. Good honest fun, with some education thrown in. Such was the success of the trip that it has been declared the inaugural annual trip. Thanks to Fiona FitzGerald and Rosa Eivers for organising the trip and leading those who needed to be led; to Finola Cronin who conceived the idea of the trip; and to Morette Kinsella, president of the Waterford Law Society, for those late-night conversations.

The Waterford Law Society also hosted a debate with the Waterford Institute of Technology on the outcome of the *Nally* case and whether it had failed the travelling community. The debate was won by an accomplished debater, Colm Murphy, a trainee solicitor with a firm in New Ross.

■ WEXFORD

Going electronic

A very successful seminar on Land Registry Practice and e-conveyancing was held in Enniscorthy. The speakers included Michael Treacy, Peter McHugh, Aileen McHugh and Paul Brent of the Land Registry and Louise Campbell, the Law Society’s support services executive. **G**

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

Mayo Bar Association hits 100

The Mayo Bar Association, under the title of the 'Mayo Sessional Bar', was founded on 18 April 1906 when the late Alfred B Kelly was elected president. The other Mayo solicitors who attended the inaugural meeting in Castlebar included John C Garvey (Castlebar), John P Mannion (Swinford), Michael B Coolicon (Ballina), Thomas Dillon Leetch (Ballyhaunis), Edmund Barry (Castlebar), Patrick O'Connor (Swinford), Henry C Bourke (Ballina) and PJ O'Rorke (Kiltimagh). Whatever differences the first members of the association had among themselves, either personally or on behalf of their clients, are long since settled between them as they dine and sup together in those great chambers above!

Through the years, many members of the bar association rose to prominence in the law, politics and business in Ireland. Mayo solicitors have produced a number of government ministers, TDs, senators, a chief justice and numerous judges of the courts, county registrars, land commissioners, tribunal chairmen, knights, and sportsmen in many disciplines at inter-county, provincial, national and international levels in, GAA, rugby, soccer, athletics, swimming, golf, tennis, fishing and darts.

The Mayo Bar Association has provided four presidents of the Law Society of Ireland. Thomas V O'Connor of Swinford in 1972 was the first member of the association to become president of the Society. He was followed by Adrian P Bourke of Ballina, grandson of one of the founding members of the association, in 1991. Patrick O'Connor of Swinford, a grandson of one of the founding members of the association (and son of Thomas V O'Connor) was its president



PIC: TOM CAMPBELL

Attending the Mayo Bar Association Dinner in the Breaffy House Hotel in 1989 were (front, l to r): E Hamilton, Eanya Egan, Attracta Wilson, Eithne Egan, Sue Bryson, T Shaw, Nanette Ivers and Joan Clarke. (Back, l to r): Pat O'Connor, Michael Browne, Mrs B Brennan, Michael J Egan, Justice Liam Hamilton, Tom Shaw, William MacOnkey, District Judge Brennan, Michael Keane, Jim Ivers (director general) and Ward McEllin

in 1998, followed two years' later, at the start of the new millennium, by Ward McEllin of Claremorris.

Through its 100 years of existence, the association has been open to "all solicitors who normally practise in the courts in County Mayo, whether resident therein or not".

The Western Circuit, particularly the Mayo section, was notable for its many lawyer characters that worked on it through the years. Many leading cases in common law and equity were decided in the Mayo Courts, including *Owens v Greene*, *Mulligan v Corr*, *Gannon v Walsh* and *Glencar v Mayo Co Council*, to mention but a few.

Mulligan v Corr was for many years the leading case on restraint of trade clauses in

contracts of service. Readers will recall that Edmond Corr was an apprentice solicitor to Patrick J Mulligan. When Mr Corr was admitted to the roll of solicitors, Mr Mulligan sought to prevent him from practising within a radius of 30 miles of the town of Ballina and 30 miles of the town of Charlestown, where Mr Mulligan had offices and within 20 miles of the town of Ballaghderreen. The Supreme Court held that the restrictions could not be upheld, as the area Mr Mulligan sought to protect was too large and went far beyond anything that could reasonably be required to protect his practice!

Edmund Corr went into practice with PJ Rutledge in Ballina, within a stone's-throw of his former master's office in

Ballina. He practised there for many years. Both solicitors were officers of the Mayo Bar Association and, for upwards of 25 years, did not speak directly to each other, one addressing the other through an intermediary!

However, towards the end of their lives, both solicitors became inseparable friends. In fact Edmund Corr became president of the association in 1955, to be followed by his former master Paddy Mulligan in 1957.

The Mayo Bar Association continues to thrive. Apart from its social obligations to its members, their partners, spouses and friends, it is now actively involved in providing CPD courses for its members. The solicitors of Mayo have a rosy future. There are now more than 140 solicitors practising in the county.

Law Reform essay prizewinners

The Law Reform Committee has announced the winners of the 2007 Student Law Reform Essay Prize from among the 25 entries received, as follows:

- **First prize** (€1,500): Mark Coen, fourth year LLB, TCD: 'Section 37(1) of the *Employment Equality Act*: Living the ethos?'

- **Second prizes** (€750): Michael Moran, fourth year LLB, TCD: 'Impartiality: prerequisite and necessity for judicial office, but in appointing a judge, an absent concept?'
- Helen Nolan, first year LLB, TCD: 'The introduction into Irish law of anti-social behaviour orders for adults?'

The prizewinners were chosen by the judging panel: Judge Liam McKechnie (High Court), Dr Oonagh Breen (UCD) and Moya Quinlan (past president of the Law Society).

This is the first time in the history of the prize that all winners came from one college.

Law Society says rushed criminal legislation is 'wrong and dangerous'

The Law Society has repeatedly and publicly expressed the view that the *Criminal Justice Bill 2007* should be withdrawn until after the general election. This was the view of the Society's Council and Criminal Law Committee arising from deep concern that measures such as mandatory sentencing, restrictions on bail and further erosion of the right to silence were being rushed into law without any proper opportunity for debate in public or in the Oireachtas.

Fundamental freedoms of citizens should only be reduced following a proper opportunity for informed public debate, the Society's Director General Ken Murphy says. "This should involve a calm, careful, assessment of the real need for change. Practically no public debate has taken place on the contents of this bill because no opportunity for such a debate has existed."

Very substantial change was made to the criminal law by the *Criminal Justice Act 2006*, enacted as recently as July 2006 and running to some 197 sections. That measure was said to be a complete overhaul of the criminal justice system and was addressed, in large measure, to the problem of organised crime. Prior to enactment that measure had been before the Oireachtas for over two years and was much changed and improved by the legislative process.

The new bill as published runs to 57 pages of very complex drafting, consisting of hundreds of individual amendments to a great many different pieces of previous legislation. This is precisely the type of law making which, under time pressure, produces errors such as the Dáil's



Ken Murphy: 'Calm, careful assessment required'

inadvertent repeal last May of the offence of soliciting for underage sex. Yet only four hours was set aside for the Dáil committee stage rather than the several weeks that should normally be provided for this.

The bill before the Dáil in part reflects views of an expert group established by the government as recently as last November. Almost incredibly, that group's rushed final report did not become available until

after the bill itself had not only been published but had completed its second reading in the Dáil.

Murphy says "Of particular concern to the Society is the proposed attempt to interfere in judicial independence through imposing widespread and inflexible mandatory sentencing. Equally disturbing are the proposals to further erode the right to silence and other due process values of the criminal justice system."

In the view of the Law Society, every proposed act of the Oireachtas should have the benefit of full and informed debate, including detailed consideration at committee stage, before both houses of the Oireachtas. In measures that will affect every citizen in the country, including the *Criminal Justice Bill 2007*, that debate itself should be preceded by a wider public consultation so that informed representations

can be made from all sources to Dáil Éireann. It is clear that, in the timescale being allowed by the government for this measure, this cannot happen.

Speaking on RTÉ's *Morning Ireland* on 29 March, director general Ken Murphy said: "The bill should be withdrawn until after the general election. It is wrong and dangerous that such legislation should be enacted with so much speed and so little debate. We can't see what is driving the urgency of this.

These are a whole series of new measures, restricting the right to bail, creating new criminal offences, changing sentencing, extending periods of detention for interrogation and, most disturbingly, significant curtailment of the right to silence. All of these are matters in respect of which not only should there be debate in the Oireachtas, there should be a wider public debate. None has taken place."

New independent adjudicator

Carol Ann Casey is the newly-appointed independent adjudicator of the Law Society. She replaces Lenore Mrkwicka, who has retired.

As independent adjudicator, Ms Casey's role is to ensure that complaints about the conduct of solicitors, together with the levels of service and fees, are dealt with fairly and impartially by the Law Society. She can recommend any changes in the Law Society's complaints procedures that are, in her view, necessary to maintain the highest standards. This role will exist until the appointment of the proposed legal services ombudsman.

Ms Casey is also the



managing director of CA Consulting Limited.

Of her appointment as independent adjudicator, she says: "My role is completely independent and autonomous from the Law Society. My

terms of reference give an appeal procedure for clients to refer their complaints against their solicitors for independent adjudication after the Law Society's decision on their matter. Being a non-lawyer, which is fundamental to this role, I provide an unbiased, impartial and accessible approach on such complaints."

Any client who is unhappy with the way in which the Law Society has handled their complaint against their solicitor should write, with full details and copy correspondence, if possible, to: The Independent Adjudicator of the Law Society, 26 Upper Pembroke Street, Dublin 2. Tel: 01 662 0457.

SUPPORT SERVICES FOR MEMBERS

HELP WITH SETTING UP IN PRACTICE

Support services executive Louise Campbell summarises the many support services on offer to members setting up in practice on their own

The mentor programme was set up by the Law Society in direct response to a request from members who had gone out in practice on their own. The programme ensures that every solicitor setting up in practice has the opportunity to make contact with a more senior and experienced practitioner, who will provide him or her with assistance, advice and general guidance on an informal and voluntary basis.

A countrywide register of volunteer mentors, consisting of solicitors qualified for no less than ten years, has been drawn up for the mentor programme. A member who wants to avail of the assistance of a mentor can contact support services executive Louise Campbell (see contact details below), who will be happy to provide a copy of the register of mentors. Members can then make direct contact with a mentor of their choice, whether inside or outside their locality.

Information booklets

The Society's information booklets, *Setting up in Private Practice*, *Guidelines for Solicitors*

Retiring or Ceasing as Sole Practitioners and for Solicitors Purchasing Practices from them and *Partnership?* may also be of assistance to solicitors setting up on their own in practice. Copies can be obtained from the Law Society, free of charge, by contacting Louise Campbell or Nicola Darby. The main text of these booklets can also be accessed on the Law Society website in the members' area, www.lawsociety.ie.

The Solicitor Link service, co-ordinated by Louise Campbell, was featured in the *Gazette* in November 2006. Members contemplating going out in practice on their own might like to avail of this service, which helps to introduce solicitors interested in buying, selling or merging practices or sharing overheads. On request, Louise can provide members with a practice management information leaflet and copies of *Gazette* articles on the valuation of a practice. In addition, she can supply a list of consultants with experience of valuing and negotiating the sale and purchases of solicitors' practices, who provide management consultancy and



other services to solicitors' firms. Though the Society cannot recommend any individual consultant, this list may be of assistance.

Members with queries on Law Society requirements for setting up in practice and, in particular, practising certificates and professional indemnity insurance, should contact Nicola Darby at Blackhall Place, Dublin 7, tel: 672 4972 or email: n.darby@lawsociety.ie.

Annual seminar

The Society's continuing professional development (CPD) section runs an annual seminar, usually in January each year, entitled 'Setting Up in Practice'. This course is

designed to provide a practical guide to solicitors contemplating setting up in practice or those who have already done so. It deals with the costs of setting up in practice, financing, solicitors' advertising regulations, marketing and client care, technology equipment and staff, as well as the *Solicitors' Accounts Regulations*, money laundering, section 68, practising certificates and professional indemnity insurance, among others. This seminar utilises a unique mentor-group system, whereby groups of participants meet with an experienced practitioner who can provide them with advice and answers to any question or concerns. These mentors remain available to the participants in the months following the seminar. Information can be obtained by contacting a member of CPD staff on tel: 01 672 4802. **G**

For information in relation to any Law Society member service, please contact Louise Campbell, support services executive, Blackhall Place; tel: 01 881 5712 or email: l.campbell@lawsociety.ie.

LRC seeks help with 3rd programme of reform

The Law Reform Commission's Second Programme for Law Reform (2000–2007) is nearing completion. Now it's about to embark on its third programme and is inviting suggestions on areas of law in need of reform.

The commission prepares its programmes of law reform following consultation with the

public, government departments, interested parties and the legal profession. According to the LRC, the practical input of the legal profession is considered vital to any deliberation on law reform and results in publications that are of real relevance to society. Indeed, a number of legal issues dealt with under the commission's second

programme originated in suggestions from legal practitioners.

The LRC will be holding a number of public consultative seminars to assist in the selection of topics for the third programme of reform. A consultative seminar will take place in University College Cork's Aula Maxima on 30 April, from 5–7pm. Further

details are available on the commission's website: www.lawreform.ie. The deadline for submissions is 18 July 2007. Written and oral submissions should be sent to: Secretary/Head of Administration, Law Reform Commission, 35-39 Shelbourne Road, Ballsbridge, Dublin 4; email: thirdprog@lawreform.ie, tel: 01 637 7601.

Trainees carry the hod for Zambia's underprivileged

In July, a team of trainee solicitors is to travel to a rural community in Zambia to help provide physical and financial support to underprivileged families. While there, the students will work with the global charity, Habitat for Humanity, to build a number of houses.

Over a two-week period, the 18 volunteers, with the assistance of course manager Jane Moffatt, will travel to Nkwazi in the Zambian Copperbelt, close to the border with Congo. The team will be travelling under the title of the 'Blackhall Builders' and will work under the supervision of local tradesmen. There, they will labour alongside the families who will occupy the houses.

Families receiving the houses pay by 'sweat equity', contributing to the building of their own house and those of their neighbours. This system not only helps provide much-needed housing, but also creates a lasting sense of pride within the local community. Providing labour free of charge eliminates an expensive project cost.

The Blackhall Builders have already been fundraising to pay for some of the building materials required during the project. The campaign began in earnest during the PPCI Summer and Autumn Course Balls, where students generously contributed to the €57,000 target fund.

With a strong history of volunteer work within the local community in the Dublin 7 area, this year's students are expanding the remit of volunteer work by trainee solicitors over the years – always remaining faithful to the goal of helping local communities to help themselves.

Donations to the project can be made via credit or debit card on the Blackhall Builders website



Blackhall builders: Can they fix it? Yes, they can

at: www.mycharity.ie/event/blackhall_builders.

All internet contributions go securely and directly to Habitat for Humanity, charity number CHY 15187. Contributions may also be made to any group member.

The team members are: Saorlaith Bourke (Reddy Charlton McKnight), Sadhbh Burke (Collins Crowley), Ronan Dunne (William Fry), Diana Geraghty (Connelly, Sellors Geraghty), Cliodhna Guy (BCM Hanby Wallace), Martin Fallon (Hugh J Campbell &

Co), Louise Fernandes (Paul H Moore & Co), Eoin Kiely (McCann FitzGerald), Tanya Layng (Landwell Solicitors), Kevin Moore (MG Ryan & Co), Erika O'Leary (O'Rourke Reid), Regan O'Driscoll (Matheson Ormsby Prentice), Íde O'Neill (LK Shields), Julie O'Neill (Arthur Cox), Nigel O'Neill (Eugene Collins), Patrick Quinn (Orpen Franks), Francis Rafferty (Bowman McCabe), Christina Sauer-Dechant (Michael E Hanahoe) and Jane Moffatt (course manager).

Company disclosure details

The Office of the Director of Corporate Enforcement (ODCE) has issued an information notice (I/2007/2) detailing new disclosure requirements for companies on their websites and in all electronic communications. These will commence from 1 April 2007. The main points are:

- From 1 April 2007, all limited liability companies operating websites will be required to show certain information, including:
 - The name of the company and the company's legal form,
 - The place of registration of

the company and the number with which it is registered, and the address of the registered office;

- Also, from that date, all electronic communications by limited liability companies must contain the same information.

From 1 April, limited liability company websites will need to ensure that their websites are compliant. Copies of the information notice are available from the ODCE website, www.odce.ie.

■ DISTRICT COURT RESOURCES FOR REVIEW

The board of the Courts Service is to establish a committee to examine the operational and resource needs of the District Court.

It will objectively examine the judicial and administrative resources required in the District Court. The committee will be chaired by Mr Justice Joseph Finnegan, judge of the Supreme Court and former President of the High Court.

■ BOLLYWOOD BLING BALL

Save the date: **Bollywood Bling Ball and Auction, 12 May 2007**, Hogan Stand, Croke Park, in aid of the Hope Foundation – Street Children of Calcutta Project. Fancy dress is optional. Bring your friends. Further details on: www.hopefoundation.ie or tel: **087 227 1709**.

■ GILBA LECTURE

The German-Irish Lawyers and Business Association (GILBA) is holding a lecture 'Europe – Succeeding Together: Germany's EU Presidency Programme', which will be given by the German Ambassador to Ireland, His Excellency Christian Pauls. The lecture is being held jointly with the EU and International Affairs Committee of the Law Society of Ireland. It will take place on **Tuesday 24 April 2007 at 6.30pm**, in the Blue Room, Law Society, Blackhall Place, Dublin 7. Contact Eva Massa (Law Society of Ireland, Blackhall Place, Dublin 7 or email: e.massa@lawsociety.ie) by **16 April 2007**.

■ HARVARD PROFESSOR FOR IRISH LECTURE

Harvard Law School Professor Richard Fallon will speak on 'Reflections on the morality and legality of coercive interrogation by the US' on **Tuesday 15 May 2007 at 6.30pm** in Room 21, School of Law, House 39, Trinity College, Dublin. All are welcome to attend.



letters

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

Courts Service responds to criticisms on 'disgraceful' family-law facilities

From: *Gerry Curran, Media Relations Advisor, The Courts Service*

There has been a very significant increase in the number of judges in the High Court in the past ten years. As a result of this, and increased and more complex levels of litigation, the Four Courts facilities have become crowded and stretched. The Four Courts is now dealing with a level and mix of business it was never designed for.

It has been possible to undertake some improvements in the short term, such as providing new facilities and venues for the taxing masters' courts and offices, and several High Court public offices in Smithfield, thus freeing up space in the Four Courts.

The Smithfield premises has allowed for the provision of new Circuit Law Family Law Courts, consultation rooms and other facilities for court users. In this purpose-designed venue, 98% of all Dublin's separation and divorce cases are heard. In 2005, 50 High Court family-law cases were finalised in the Four Courts.

However, the Four Courts is still overcrowded and, for this reason, the Courts Service has secured approval from the ministers for justice and finance to construct a new modern, criminal court complex for Dublin. This 22 courtroom, state-of-the-art facility will be delivered by way of a PPP. Negotiations



The Four Courts: still overcrowded

have been finalised and the contract will be signed very shortly. It will take two-and-a-half years to construct.

This will pave the way for a major redevelopment of the Four Courts as a civil courts complex. Planning has commenced, with a view to construction starting immediately the criminal business has moved to the new criminal court complex.

In addition, the Courts Service is planning for a separate family-law complex. Considerable planning has been undertaken already in this regard, and it is our

intention to provide a purpose-designed family-law centre for all three court jurisdictions.

In the meantime, the Courts Service continues to implement whatever improvements are possible in the Four Courts. In this regard we are pleased to announce that a major upgrading of facilities in the Family Law District Court in Dolphin House is at an advanced stage of planning. In the same way, we are examining the High Court family-law facilities in the Four Courts with a view to

improving that accommodation.

Across the country, our capital investment programme of over €170 million has resulted in improvements which include over 40 refurbished or new court buildings – all of which have the consultation rooms and waiting facilities expected and needed for family-law cases.

Specialised and separate facilities, as well as specific family-law days in other venues, provide for the dignity and privacy of family-law litigants.

Many county-town courthouses have been constructed or refurbished with separate family and civil law suites. These include: Mallow, Trim, Limerick, Dundalk, Sligo, Ennis, Castlebar, Cork, Nenagh, Longford, Tullamore, Bray etc, where there are distinct and separate family-law areas with first-class waiting and consultation facilities.

Future projects such as Kilkenny, Monaghan, Blanchardstown, North Kildare, Drogheda, Wexford, Waterford, Wicklow, Tralee, Mullingar and Cork District Court will provide similar facilities.

Added to this, there are separate family-law sittings in over 40 other court venues across the country – ensuring those who seek redress before the courts for family disputes can do so on non-criminal and less public days.

RRL slams *Gazette!*

From: James C Wyse, Managing Director, RRL, Home Equity Release Specialists, IFSC, Dublin 1

Note from pages 16 and 17 of the March 2007 edition of the *Law Society Gazette*, you have an article under the heading 'Law Society slams equity release schemes'!

If you read the *Law Society* paper submitted to the quoted inter-agency group, you will see that the Society has a few problems only with the lifetime mortgage product of three providers in Ireland. Nowhere in the paper does the *Law Society* 'slam' the equity release concept, which your headline implies.

This is the third time that the *Gazette* has published a paper from the Conveyancing Committee on this subject. Each time – (June 2003, July 2005 and March 2007), you use the heading 'Law Society slams equity release schemes'. It does nothing of the sort – each of the articles has a strong criticism of the Bank of Ireland only. The *Sunday Business Post* and *Irish Independent* state so in their headlines.

Your article suggests the *Law*

Society doesn't approve of this area, which would include our property reversion product from RRL. This is not the case – our name is not mentioned. But we are tarred with the same brush.

RRL and our legal advisors, Matheson Ormsby Prentice, met with the Conveyancing Committee in August 2005. We had all our legal documents reviewed by the committee, under the chairmanship of William Devine. The committee made final minor recommendations in respect of our legal documents, which were all accepted by RRL and appropriate adjustments made immediately. They were mainly to do with additional clarification on the term 'valuer' and what happens when a homeowner becomes sick and has to go into a nursing home for more than six months.

You further quote in your article "elderly people are vulnerable to being influenced by others" – all evidence from bodies representing older people suggest that the most likely source of 'undue influence' comes from the children of homeowners –



your article gives the impression that companies in the equity release business could exert 'undue influence'. This is simply not true and cannot be.

RRL insists that the homeowner's solicitor sign a two-page 'solicitor's confirmation', which they must give to the client when completing a contract and the client must sign and acknowledge that they have been so advised. Any aspect of apparent 'undue influence' from any source, among a number of matters, is specifically confirmed by the homeowner's solicitor. Every solicitor is very happy to sign such a confirmation, as are all homeowners – because there is a written audit trail as evidence,

should it ever be required.

Finally, I would further like to criticise your policy of alleging that elderly people are easily duped. Under the photograph of two people, you state "Gently waiting for the next Anna-Nicole: you'll want cash for that" – this is a very derogatory and ageist comment, playing on the Renault TV commercial. I believe Age Action Ireland will have something to say about this. From our experience of dealing with elderly people, this type of comment is insulting and unwarranted.

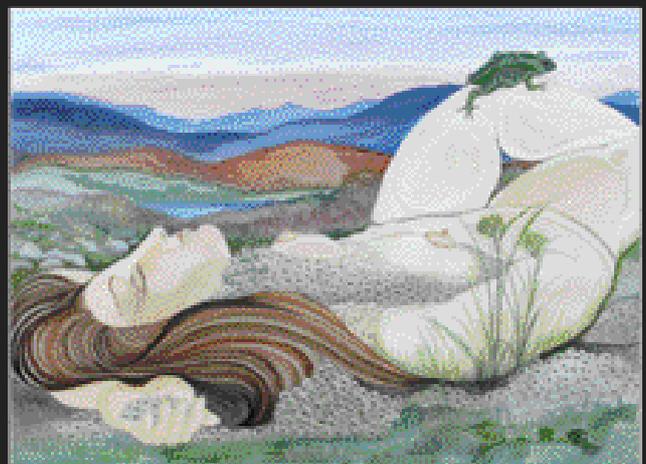
The editor replies: The Gazette used the offending headline twice, not three times - but point taken, we'll try to be more creative in the future (see above). **G**

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"Mother Earth" by Pauline Bewick

Has time come to recalibrate

Continuing our debate on the new *Criminal Justice Bill*, Paul Anthony McDermott argues that the system has many irrational rules and procedures, and the time has come to rebalance the system

I am not saying that crime in my area of Dublin is out of hand, but when a headline appeared in the local newspaper recently saying 'Man wanted for murder', over 100 people applied for the job. I have long been of the view that our criminal justice system has been balanced in favour of the defence for too long. Recent days have seen a welcome attempt to redress the balance, with the publication of the final report of the review group the tánaiste established last November, chaired by Dr Gerard Hogan SC to examine and review aspects of the criminal law. In addition, a new *Criminal Justice Bill* has been published. Together, these developments have begun the task of rebalancing the criminal law. None of this is reactionary law reform. On the contrary, the problems that are now finally being addressed are ones that have been around for decades or, in some cases, centuries, and which have been the subject of countless debates and articles. Indeed there must be few areas of law where there has been more public debate and awareness about the necessity for change.

Some of our rules of evidence date from a century ago. We call them 'recent rules'. Other rules of evidence are hundreds of years old. We call them 'older rules'. Many of these rules were formulated at a time prior to legal aid, when accused persons literally were at the mercy of the state. Many of them date from a time when a person accused of a



PICTURE: GETTY IMAGES

crime was not permitted to give evidence on their own behalf. Despite the fact that our criminal justice system has changed radically since then, our rules of evidence have not. There is no good reason for this.

The final report of Dr Hogan's group deals in particular with: the right to silence; allowing character evidence of an accused; the exclusionary rule of evidence; requiring an accused to outline the nature of his defence before or at the commencement of trial; re-opening new evidence; nullifying an acquittal where there is evidence of jury or witness tampering; 'with prejudice' appeals in the case of wrongful acquittal; extending alibi evidence rules to other analogous situations; allowing submissions by the prosecution before sentencing; and modifying the rule in relation to hearsay evidence.

In respect of the right to silence, it is recommended that, on a general basis, inferences as to the credibility of a defence should be drawn from a failure

to mention the fact relied on in the defence when in custody. In addition, inferences should be drawn from a failure to explain suspicious circumstances in custody. The judges' rules would cease to have effect and would be replaced by regulations, to be made by the minister, regarding the conduct of interviews. The report also recommends that a recorded interview should not be required to be the subject of a written note. Thus the bizarre and outmoded practice of interviews being stilted while the interviewing garda tries to write down every word in every question and every answer are finally coming to an end.

Radically, the report recommends that, where the defence attacks the character of the injured party in a case where the injured party has died or has become incapacitated and is unable to give evidence, the shield would be dropped and the accused would be liable to cross-examination as to his or her character without leave of the court. In addition, ten days' notice would have to be given of an intention to make an imputation against a deceased or incapacitated victim. In the absence of such notice, the leave of the court would be required by the defence to make the imputation.

Unconstitutionally-obtained evidence

The most welcome aspect of the report is the recommendation of the majority that the courts should have a discretion to admit unconstitutionally-

obtained evidence or not, having regard to the totality of the circumstances and, in particular, the rights of the victim. Finally, the death knell may have been sounded for the irrational exclusionary rule of the law of evidence.

Other welcome recommendations of the report include:

- An obligation on the defence to disclose in advance the expert or technical reports or witness statement of experts on which the defendant intends to rely;
- A system under which admissibility issues would be determined prior to the swearing in of a jury on the first day, or days, of a trial;
- A limiting of the 'double jeopardy' principle by means of giving a right to the prosecution to complain in respect of miscarriages of justice on the basis of new or newly-discovered evidence.

A lot more remains to be done. Among the most unfair things to both sides at the moment in a criminal trial are the inherent delays in the system. This becomes particularly acute where a re-trial is required. If an accused is convicted by the trial court, but in the Court of Criminal Appeal they point to some defect in the trial, such as an improper comment made by the trial judge, this may result in the conviction being overturned and the case sent back for re-trial. One might then expect a delay of another year or two before the re-trial is assigned a date. It may be listed

viewpoint



criminal trial system?

on a few occasions when judges are not available and so the case does not get on. Eventually the re-trial will be heard, and this may be many years after the original event. In such circumstances, where witnesses' memories have faded, the defence can benefit, since the prosecution is no longer able to prove its case beyond reasonable doubt.

Every other section of society is required to be efficient. This does not seem to apply to the criminal justice system. It is not unknown to find that, in respect of a serious crime committed by a criminal gang ten years ago, various members of that gang still have appeals or judicial reviews or *habeas corpus* applications before the courts, in an attempt to keep the merits of their conviction an open issue. Thus, our system is approaching a system of criminal justice whereby nobody is ever finally convicted and criminal law is simply an ongoing process, with no obvious end point.

In *DPP v JT* ([1988] 3 Frewen 141), the courts recognised that victims of crime

have a right to be vindicated. The current delays in the system mean this is not happening.

Rights of the accused

Most of our case law on evidence and procedure focuses on the rights of the accused. But there are other rights that should also be considered. In *B v DPP* ([1997] 3 IR 140 at 195-196), Denham J, giving the judgment of the Supreme Court, stated that:

"It is not the applicant's interests only which have to be considered. It is necessary to balance the applicant's right to reasonable expedition in the prosecution of the offences with the community's right to have criminal offences prosecuted."

In *Scully v DPP* ([2005] 1 IR 242 at 252), Hardiman J, giving the judgment of the Supreme Court, appeared to identify an additional interest to the public interest when he discussed judicial review applications that are brought with the aim of tripping up the gardaí rather than in discovery of evidence: "Applications on this basis must be discountenanced in the

interest of *the public right to prosecute*, but also in the interests, of *the integrity of the jurisdiction*, in a proper case, to restrain a prosecution on the basis that significant evidence has been ignored or destroyed" (emphasis added).

In addition, there is an increasing awareness of the rights of victims in criminal law. In fact, the *European Convention on Human Rights* sometimes requires positive measures to be taken in order to protect the rights of victims. For example in *X and Y v Netherlands* ([1986] 8 EHRR 235), a 16-year old mentally handicapped girl was sexually assaulted by an adult male of sound mind. Due to a loophole in Dutch law, he could not be prosecuted. This was because, under Dutch law, only the victim of the crime could register a criminal complaint, a rule that applied even where the victim was incapable of doing so, due to her handicap. The European court found that the absence of an effective criminal procedure was a violation by the Netherlands of its duty to secure respect for the victim's private life under article 8. The court

stated that article 8:

"does not merely compel the state to abstain from ... interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves."

The criminal justice system will never be perfect and the public have enough common sense to appreciate that there are good reasons why, sometimes, evidence has to be excluded. But what the public cannot understand are irrational rules and procedures that have no place in reality. Nor can they understand a system that, from start to finish, seems to come down on the side of the accused. Perhaps the time has come to recalibrate the criminal trial system so as to balance the scales of justice. **G**

Paul Anthony McDermott is a Dublin-based barrister in general practice.

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Legal costs report:

SUMMARY OF

On 1 March, Minister for Justice, Equality and Law Reform Michael McDowell held a press conference to launch the report of the Legal Costs Implementation Advisory Group, chaired by Mr Desmond Miller. President of the Law Society Philip Joyce, who has written in his President's Message on the report in this Gazette, sent an email on 1 March 2007 to every solicitor for whom the Society has a direct email address, with the Society's initial response to this report. This email contained a direct link to the full report. Including appendices, the report is 47 pages long. Here are edited extracts, containing some of the most important conclusions and recommendations of the report.

“Earlier this year, the Tánaiste and Minister for Justice, Equality and Law Reform, Michael McDowell, established the Legal Costs Implementation Advisory Group (the IAG) to progress the recommendations of the report of the Legal Costs Working Group, chaired by Paul Haran.

Issues of cost and efficiency of the litigation process have, quite legitimately, become a focus of public interest and concern in recent years. Implementing change in the Irish legal system is both complex and contentious. Our task has been to elaborate on the general recommendations of the Legal Costs Working Group and to identify suitable structures and processes to implement those recommendations. The task has been time consuming and difficult. The recommendations we have produced may not satisfy all concerned.

The IAG has made the following recommendations:

- 1) The assessment of costs in a particular case must involve

an examination of the work actually done in the case concerned.

- 2) Solicitors and barristers should be obliged to have in place a proper system of time-recording. Bills should be supported by time records.
- 3) The requirement as to time-recording should also be accompanied by solicitors and barristers setting out their hourly/daily charge-out rates.
- 4) Solicitors should be required to issue a client engagement letter with detailed costs information. Barristers and solicitors should also be required to make a legal costs agreement.

Assessing legal costs

Time-recording

- 1) The IAG is of the view that solicitors and barristers should be obliged to have in place a proper system of time-recording and that bills in relation to legal costs should, as appropriate, be supported by time records.
- 2) The introduction of time-

recording should also be accompanied by solicitors and barristers setting out, as the basis of their charging generally for legal services, their hourly or daily rates, as appropriate.

- 3) The IAG is mindful of the dangers posed by an over-reliance on a time-based legal costs charging system. The point about any such system being a ‘plodder’s charter’ has been made repeatedly. However, where a paying party is of the view that there has been an unacceptable level of ‘plodding’ in a case, they will be free to refer the matter to assessment.
- 4) The point has also been made that time-recording may give rise generally to an escalation in legal costs as lawyers charge for work which heretofore has not been specifically charged for. It is not possible, however, to determine the extent to which this may occur and the costs implications. It must also be borne in mind that time-recording represents one part of a series of wide-ranging changes and reforms in relation to the charging of legal services and the assessment of costs where they are in dispute. As such, it is difficult to assess the effects of one measure in isolation from all of the other measures to be adopted.
- 5) The IAG is of the view that the interim regulatory costs body should be put in place and commence work as soon as possible. While it is not

possible to estimate how long it might take to devise recoverable costs guidelines, the IAG thinks it unlikely that the initial guidelines could be devised in less than one year. It should also be borne in mind that the existing system will have to operate in parallel with the new arrangements for some time (that is, cases before the taxing master will have to run their course. Legislative provision will have to be made accordingly).

Recoverable costs guidelines

- 1) Recoverable costs guidelines should be devised in respect of work carried out by solicitors, barristers and expert witnesses in the course of civil litigation.
- 2) The IAG recommends that any guidelines adopted by a regulatory costs body should take cognisance of the value of the claim or counterclaim where these are expressible in monetary terms. The guidelines should also take into account relevant factors such as time expended and complexity. The IAG concurs with the views expressed in the report of the Legal Costs Working Group in relation to the importance of the ‘no foal, no fee’ arrangement in terms of providing access to justice for many. Accordingly, the IAG considers it important that the risk involved in taking on such cases should be taken into account in the formulation of the guidelines.
- 3) In relation to the abolition of the ‘global’ fees (that is,

RECOMMENDATIONS

solicitors' instructions fee and the barristers' brief fee) and their replacement by a set of charges for work done, the IAG sees no reason why this proposal cannot be acted on. Indeed, the IAG does not believe the retention of these fees – as presently constituted – is compatible with a move towards charging for work on the basis of 'work done'. It seems eminently reasonable to require those charging for legal work to systematically itemise costs by reference to the various stages of the litigation process.

- 4) The point needs to be made that, insofar as solicitor and client costs are concerned, no party will be bound by recoverable costs guidelines. Parties will be free to enter into agreements with their lawyers as they see fit (subject to the provisions relating to client information). Parties liable to pay costs will also be free to decide to pay costs as they see fit. The guidelines are intended to offer an indication – where costs are recoverable – of amounts or time periods generally deemed reasonable. In cases of dispute, costs will be assessed on the basis of the guidelines, while taking the particular circumstances of each case fully into account.
- 5) The IAG accepts that there is a wide range of litigation and it would neither be desirable nor feasible to put in place guidelines of a type which would provide a simple, mathematical model



Michael McDowell: Established the legal costs group

- designed to pre-determine the legal costs recoverable in every type of case.
- 6) However, the IAG does believe that it is legitimate and practical to put in place guidelines designed to provide a degree of clarity to a potential litigant as to the extent of the liability he or she might expect to incur in the event that they were held liable for the other party's costs and, conversely, how much they are likely to recover as party and party costs in the event that they are awarded the costs of the proceedings. Ultimately, in cases of dispute, it will fall to an assessment officer to determine what costs are reasonable in a particular case.

Client information

Solicitors

- 1) The IAG notes that all of the submissions received, which referred to the recommendations in relation to client information, generally welcomed the notion of



Desmond Miller: Chair of the IAG

- strengthening and improving the mechanism currently provided for by section 68 of the *Solicitors (Amendment) Act 1994*. The letter – which is sometimes referred to as a 'section 68 letter' and, sometimes, as 'a client engagement letter' – will be referred to as a client engagement letter from hereon.
- 2) The IAG believes that it should be possible to provide for an improved client engagement letter along the lines proposed in the report of the Legal Costs Working Group, taking into account the practical considerations raised in the submissions.

Miscellaneous

Jurisdictional limits

- 1) The current civil jurisdictional limits for the District and Circuit Courts date back to 1991. Sections 13 and 14 of the *Courts and Court Officers Act 2002* provide that the civil jurisdiction of the Circuit

Court be increased from £30,000 to €100,000 and that of the District Court from £5,000 to €20,000. As the report of the Legal Costs Working Group states: 'There has been sustained opposition from some sectors to the implementation of these provisions because of a concern that such increases, if implemented, would push up the level of court awards. Implementation of the provisions has been effectively "parked" pending further consideration of the issue in the light of ongoing developments, especially the establishment of the PIAB.'

- 2) The IAG is of the view that no sound reason has been advanced to 'freeze' the jurisdictional limits indefinitely. The Oireachtas decided to raise the jurisdictional limits four years ago, but nothing has happened in the meantime. The concern expressed in relation to the limits has been in the context of personal injury cases. However, the PIAB is now up and running and this will increasingly take personal injury actions out of the courts. In all of the circumstances, the IAG recommends that the increases provided for in sections 13 and 14 of the *Courts and Court Officers Act 2002* should be implemented forthwith (except for personal injury cases).⁶

Researcher Working Group on a Court of Appeal

The Government has established a Working Group under the chairmanship of the Honourable Mrs Justice Susan Denham, Judge of the Supreme Court, to:

- review and consider the necessity for a general Court of Appeal for the purposes of processing certain categories of appeals from the High Court;
- address and consider such legal changes as are necessary for the purposes of establishing such a Court of Appeal; and
- make such other recommendations as are appropriate for the purposes of ensuring greater efficiencies in the practice and procedures of the Superior Courts.

As solicitors to the Courts Service, McCann FitzGerald has been requested to provide a research service to the Working Group. In fulfilling this task, McCann FitzGerald is seeking to retain a legal researcher.

Candidates should:

- hold, minimally, a 2:1 (or equivalent) primary degree in law from a recognised university;

- be proficient in the use of a PC and internet browser, and of standard word-processing, database and spreadsheet packages (Microsoft Office and / or Lotus SmartSuite);
- have experience in or be able to demonstrate an aptitude for (a) carrying out legal research, including the analysis and summarising of legislation and case-law; (b) preparing papers on topics of a legal nature and (c) collating, analysing and presenting statistics and other quantitative data; and
- have excellent communications and report-writing skills.

The successful candidate will work with the Courts Service team that will provide administrative support to the Working Group and will require to interact frequently with members of the Working Group, the Courts Service, and other interested bodies and individuals. The position (to be located in Dublin) offers an opportunity to participate in an important and challenging project concerned with the future of Ireland's courts system.

The contract will be for a period of one year, renewable at the option of McCann FitzGerald. McCann FitzGerald is willing to consider retaining a suitable candidate on the basis of a contract for services, if appropriate.

McCann FitzGerald

*If you are interested in this challenging role, please submit your curriculum vitae to:
Lisa van der Weff (lisa.vanderweff@mcannfitzgerald.ie) by Friday 27 April 2007.
Your CV should include particulars of your qualifications, relevant experience and the names of two referees.*



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Growing your business

Good client care is good for business. It's not just a desirable 'optional extra' – it is absolutely essential to your business, writes Tom Murran

In early 2006, the Law Society established the Client Care Task Force. Its brief was to take whatever steps were necessary to improve client care by solicitors. Most practitioners recognise that lawyers, in general, do not receive a good press, but have laboured under the misapprehension that 'their own' clients think highly of them. Unfortunately, this is not necessarily the case.

Experience has shown that, in other common-law jurisdictions, there is a wide disparity between the solicitor's view of the service he provides for his client and the client's view of that service.

Solicitors do, by and large, provide an excellent technical service to their clients. They successfully perform the tasks entrusted to them by their clients – from the acquisition of title to a property, to the successful outcome of a personal injury action.

However, in practice, what the client thinks of that service does not always accord with the solicitor's view of the service provided.

Ultimately, good client care is absolutely essential to your

business, because it helps to improve your profits by ensuring client satisfaction, client retention and repeat business. It's about your clients selling the virtues of your business to other potential new clients. Your job is well done if, at the end of the transaction, you are satisfied that not only have you performed well in a technical sense, but your client believes that he or she has got great service.

Client care is all about trying to see the experience from the client's point of view. Very often, the client's gripe about the service he receives does not relate to the technical services provided, but to the client's perception of how the solicitor dealt him with. For example, it's no good charging what you consider a reasonable fee, which may objectively be very reasonable, if the client thinks the fee is outrageous and unwarranted for the services provided.

When a client walks into your office instructing you to act in relation to the purchase of a property, he or she already assumes (rightly) that, technically, you are a competent lawyer and are



PIC: GETTY IMAGES

sufficiently skilled to get the title to the property in his name and procure his loan cheque from the building society or bank. In a crude sense, client care is about letting the client know that the job has been done well.

The task force has already held client focus seminars in Dublin, Limerick, Waterford, Athlone and Cork. More recently, having taken on board feedback from attendees, the format has changed somewhat. Numbers have increased, with 150 delegates signing up for a seminar in Dublin last November, and another 90 signing up for a Thurles seminar in December. In total, over 600 solicitors have signed up. By and large, the feedback has been extremely positive.

Three seminars will be held

in spring/summer 2007 – the first starting 18 April in Carrick-on-Shannon, followed by another in Cork on 3 May and a third on 7 June in Dublin. These will be augmented by the rolling out of phase II of our programme – the provision of workshops for much smaller numbers. Throughout the year, workshops comprising no more than ten or 12 attendees will take place. The approach will be hands-on and will be adapted to real-life working situations. These will be presented by a former practising solicitor who has first-hand understanding of the issues involved.

The committee feels that those most likely to benefit from the workshops will be those who have already attended the seminars. Consequently, workshops will only be open to those who have attended the client focus seminars. Details of these workshops will be published shortly by way of individual letters to previous attendees. **G**

Tom Murran is chairman of the Client Care Task Force

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'Shortcomings' in therapeutic

Alma Clissmann reports on developments in relation to the practical application of the *European Convention on Human Rights*

In the case of *Tysiac v Poland*, ECtHR, 20 Mar 2007, Alicja Tysiac suffered from severe myopia (short sightedness) and was advised by three ophthalmologists that her eyesight would be at serious risk if she carried a third pregnancy to term. However, they refused to issue a certificate for the therapeutic termination of her pregnancy, which is an option under Polish law, and which she requested. Her GP issued a certificate stating the risks to her eyesight and her health, in view of two previous caesarean deliveries.

After two months, her eyesight had significantly

deteriorated. She was refused a termination by Dr RD, head of obstetrics and gynaecology at her local public hospital, on the basis that there were no medical grounds for performing a therapeutic abortion, and she gave birth by caesarean section at full term. Following the child's birth, she suffered a retinal haemorrhage, and was reclassified as significantly disabled, and is at risk of full blindness. On her criminal complaint against Dr RD, the prosecutor found no causal link between the doctor's decision and her deterioration. No disciplinary action was taken against him.

The court found that the case related to Ms Tysiac's right to private life, and considered the state's obligation under article 8 to secure the physical integrity of expectant mothers. It did not question the doctors' assessments, but found that her fears were reasonable in the circumstances. It found that the lack of transparent and clear procedures on deciding if therapeutic abortion was warranted had a chilling effect on such a finding – which left doctors liable to up to three years' imprisonment if they got it wrong.

The court found that once therapeutic abortion was

legalised, the legal framework must not be structured in such a way as to limit it. There should have been a procedure before an independent and competent body that could hear an application and issue prompt decisions with written grounds. The court found that there was no procedure in place to address and resolve disagreement as to the advisability of therapeutic abortion, either between the mother and her doctors, or the doctors themselves.

Although doctors were permitted to seek second opinions, this did not give patients a procedural guarantee to obtain such an opinion, or to

ONE TO WATCH: NEW LEGISLATION

Criminal Justice Act 2006

The *Criminal Justice Act 2006* became law in July 2006 and most of it has been brought into effect since by a series of commencement orders (SI nos 390, 529, 586, 622 and 689 of 2006 and 25 and 65 of 2007). An updated list of sections commenced is currently available on the Criminal Law Committee page of the Law Society website.

This act represents a considerable amount of change to digest and implement. New offences, procedures and penalties need to become understood and familiar to legal personnel, gardaí and others. Already, however, it risks being overshadowed by the new *Criminal Justice Bill 2007* recently announced by the Minister for Justice and promised for

enactment in March.

At 197 sections and four schedules contained in 173 pages, the act represents significant changes of many aspects of the criminal law. It amends 64 other statutes. Its passage through the Oireachtas was turbulent, with many amendments and new additions added at short notice. An updated explanatory memorandum, encompassing the provisions of the act as they now stand, is available with the act on the Oireachtas website, www.oireachtas.ie.

The following is a brief overview of the main provisions:

Investigation and prosecution of offences

Parts 2, 3 and 15 include provision for:

- The **admissibility of witness statements** in circumstances where a witness recants and refuses to stand over a previous statement, with certain safeguards;
- **New powers** to be made available to the Garda Síochána, including:
 - 1) The power to preserve evidence and designate a place as a **crime scene**,
 - 2) The power to **seize and retain** evidence (other than documents related to legal advice),
 - 3) A general power to seek a **search warrant** for a broad range of offences,
 - 4) A power to **photograph** an arrested person for the purposes of identification, and
- 5) A power to apply to a court for an **order for the disclosure of information** concerning property held in trust;
- Extension of the **post-arrest detention** period from 12 hours to 24;
- Extension of the period for **retention of photographs and palm/fingerprints** and **samples obtained from persons** in the absence of proceedings from six to 12 months;
- A new offence of **reckless endangerment of children**, as recommended by the *Ferns Report*;
- The introduction of a **new system of fixed charges for certain public order offences**, that is, disorderly conduct in a public place and being

termination case



contest it in the event of disagreement. Therefore, the court concluded that Polish law did not contain an adequate mechanism for determining if the conditions for a therapeutic abortion had been met. Further, she had no remedy under Polish tort law for preventive action, only for compensation after a wrong was done. The court found that retrospective measures alone did not provide appropriate protection for the physical integrity of people in such a vulnerable position as Ms Tysiac.

She was awarded €25,000 for non-pecuniary damage and €14,000 for costs and expenses. The judgment may be seen on the ECtHR website at www.echr.coe.int/echr under



Poland: Deficiencies in how the law applied in practice

PICTURE: REX FEATURES

Does this case mean that your rights under article 8 are violated if you do not get important medical assistance promptly when you need it? Not necessarily. The defendant state, Poland, did not plead lack of resources to carry out the abortion, or the need to allocate scarce resources through a waiting list. It admitted that there were deficiencies in the manner in which the therapeutic abortion law was applied in practice. The focus was on the procedural shortcomings rather than on the availability of the treatment. **G**

'caselaw', 'HUDOC database', 'list of recent judgments'. Her legal team was assisted by Interights, London, to which

the Law Society makes a small annual contribution for the maintenance of their human rights caselaw database.

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

- intoxicated in a public place;
- Provisions to address a difficulty in relation to the **jurisdiction of District Court judges** to issue a search warrant when he or she is outside his or her district, arising from the Supreme Court judgment in the *Dylan Creaven* case;
- The restriction on **prosecution within six months is restricted** to summary offences only, and not offences that can also be tried on indictment;
- The **anonymity of witnesses with medical conditions** to avoid undue distress, and restrictions on reporting;
- New offences to deal with **attacks against emergency workers**, with penalties up to seven years' imprisonment.

Prosecution appeals

Part 4 provides for a broadening of the circumstances in which the prosecution can appeal a decision on a point of law.

Firearms and fireworks

Parts 5 and 6 provide:

- A **statutory basis for an amnesty** during which firearms, knives and offensive weapons may be surrendered to the Garda Síochána before new penalties and minimum mandatory sentences are introduced. This was to enable people to regularise their position before the mandatory sentences were introduced, thus enabling the gardaí to concentrate on more serious offenders. This amnesty operated during September and October of 2006;

- Increases in fines and penalties**, generally for offences under the *Firearms Acts*;
- Firearm certificates for three years** rather than one, and a requirement for a firearms training certificate for persons over 14 years, using a firearm legally held by an adult, to train;
- Provisions to allow the minister to **deem certain firearms as 'restricted'** by reference to specific criteria, including the calibre, action type and muzzle energy of the firearm. Any person wishing to obtain a certificate for such a firearm will now have to apply directly to the Garda Commissioner;
- Regulation of **firearms ranges** by authorisations and inspections;

- Mandatory minimum sentences** for serious firearms offences of ten to 20 years; for lesser firearms offences of five to ten years (including possession of a firearm in suspicious circumstances, possession of a firearm with criminal intent, possession of a firearm with intent to endanger life or cause serious injury to property, possession of a firearm while hijacking a vehicle, and use or production of a firearm to resist arrest); and for **altering a firearm** (such as sawing off the barrel of a shotgun) of five to ten years, all subject to judicial discretion for a first offence (further, the power to commute these sentences does not apply, and the power to grant temporary release is restricted);

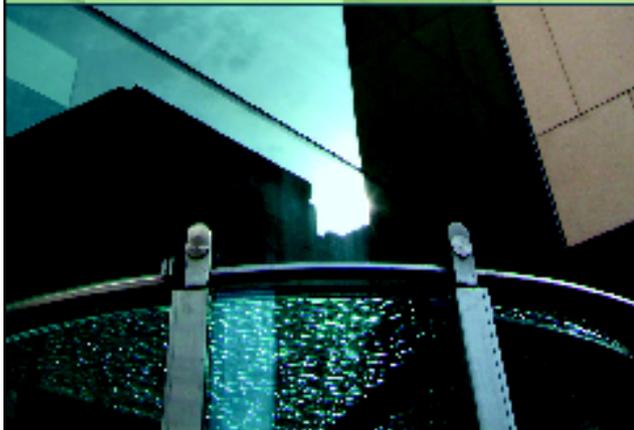


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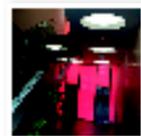


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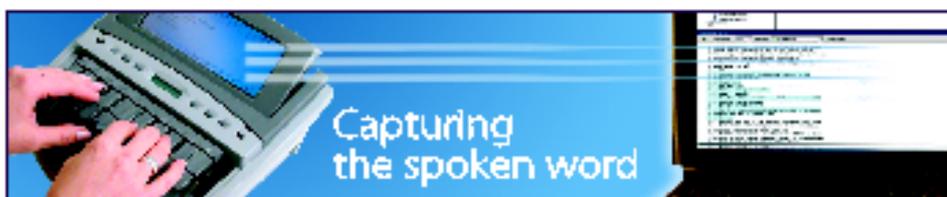
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- The extension of the *Firearms Act* to cover **stun guns and crossbows**;
- **Increased regulation** of ownership and licensing of firearms;
- A new offence of **possession of illegally-imported fireworks** with intent to supply;
- New offences governing the **misuse of fireworks** in public places; and
- **Increased penalties** governing the illegal importation, sale and use of fireworks.

Organised crime and drugs

Parts 7 and 8 provide:

- A new definition of 'criminal organisation' as a **structured group composed of three or more persons** acting in concert, established over a period of time and **having as its main purpose or main activity the commission of, or facilitation of, a serious offence.** Facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.
- New offences relating to **participation in, or assisting the activities of, organised gangs**, including by non-gang members.
- Restrictions on summary trial of gang-related offences and restriction of power to grant bail to the High Court.
- New offences relating to the **importation of drugs** in excess of €13,000 and the supply of drugs to prisons.

- Provisions to strengthen the **existing sentencing provisions in relation to the ten-year mandatory minimum sentence** for the possession of drugs for sale and supply and the application of the mandatory sentence to the new importation offence.

Sentencing and post-release

Parts 9 and 10 provide:

- Provisions requiring that **drug offenders convicted on indictment are to provide certain notification as to their place of residence and movements**, for varying periods of time from one year (sentence suspended) to 12 years (life sentence), with half periods for children under 18 years;
- The introduction of provisions allowing for a broader range of **sentencing options** as alternatives to imprisonment, including:
 - 1) The power to suspend all or part of a sentence, subject to agreement by the offender to abide by conditions imposed,
 - 2) The power to impose a fine and defer a custodial sentence,
 - 3) The power to impose a restriction on movement order, and
 - 4) A legal basis for the introduction of electronic monitoring.

Restriction on movement orders and electronic monitoring may also be applied by the minister as conditions for prisoners on temporary release.

Adult anti-social behaviour orders

Part 11 introduces **anti-social behaviour orders** to deal with situations where an individual causes, or is likely to cause, harassment or significant or persistent alarm, distress, fear or intimidation to another person, or where there is significant or persistent impairment in the use and enjoyment of property. Prior warning to desist is required, and the order must be applied for by a senior garda. ASBOs (or 'civil orders') may apply for up to two years, may be appealed and breach gives rise to imprisonment for six months and/or a fine of €3,000. Legal aid may be awarded.

Children

Parts 12 and 13 provide:

- **The age of criminal responsibility** is raised from seven to 12 years except for certain serious crimes (murder, manslaughter, rape and serious sexual offences), where it is ten years. The rebuttable presumption of *doli incapax* for children under 14 is revoked. The DPP's consent is required for prosecuting (though not arresting and charging) a child under 14.
- Responsibility for the **provision and operation of detention facilities** for children under 16 years is transferred from the Department of Education and Science to the Department of Justice, Equality and Law Reform.
- In hearing a criminal case against a child, a court may

request **the attendance of a representative of the HSE.**

- A court may dismiss a case against a child under 14 if the child did not have a **full understanding** what was involved in the offence.
- A court, when dealing with a child charged with an offence, must have due regard to **the child's best interest**, the interests of the victim and the protection of society.
- The **parents** of a child being made the subject of a behaviour order may be required to **attend all stages of the court proceedings.**
- **Restrictions on reporting** of proceedings concerning children are extended to all courts, subject to judicial discretion in the public interest or in relation to ASBOs.
- **Child anti-social behaviour orders** (from 12 to 18 years), which may be imposed as a last resort after other specified diversionary interventions have failed. They may apply for up to two years, may be appealed and give rise to detention for three months and/or a fine of €800.

Codification of the criminal law (part 14)

This project will be undertaken over a period of years by a team established in UCD under the direction of Prof Finbarr McAuley. 

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

'Stage International' à Paris

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SUFFER

the children

Unless the much-heralded new ASBO provisions are used with great discretion, they could lead to unjust convictions or hamper a person's right to a fair trial. John Noonan reads you your rights. (Additional reporting by Mark McDermott)

Anti-social behaviour orders (ASBOs) were first introduced in England and Wales by the *Crime and Disorder Act 1998*. Subsequent legislation strengthened their application, namely through the *Anti-Social Behaviour Act 2003* (England and Wales) and in Northern Ireland through an order in council. In Scotland, ASBOs were introduced for the first time in October 2004 by the *Antisocial Behaviour etc (Scotland) Act 2004*. Scotland, however, has an existing tribunal – the Children's Hearings System – which is charged with dealing with children and young persons who offend.

ASBOs have now migrated to Ireland. The *Criminal Justice Act 2006* introduced a new civil procedure into Irish law – similar to English ASBOs. Part 11 (ss113-119) provides for 'civil orders' against adults and came into force on 1 January 2007 (SI 689/06). Part 13 (ss159-166), which provides for 'behaviour orders' against children from the ages of 12 to 18, became law on 1 March 2007 (SI 65/07).

The Minister for Justice, Equality and Law Reform, Michael McDowell, has said that ASBOs, used in a focused way, can be of real and practical benefit to society. "There is ... concern about lower-level, anti-social behaviour causing serious interference in the lives of people, and especially the most vulnerable, in our communities," he said. "While some people have the financial resources to seek private law injunction-type remedies to protect their rights to enjoyment of their property, many do not. I believe that the state should ensure that similar protection is available to all our citizens." The minister has said that such mechanisms will further add to the range of early interventions available to

deal with children at risk and prevent their progression into more serious offending.

However Youth Work Ireland, which campaigned against ASBOs, has called for the Human Rights Commission to monitor such orders and has urged that the Ombudsman for Children should have a leading role in the process.

The first stage of the ASBO procedure is the same for both children and adults. A garda may now issue a behaviour warning to an adult or child if he or she behaves in an anti-social manner. Anti-social behaviour is defined as causing, or being likely in the circumstances to cause:

- Harassment,
- Significant or persistent alarm, distress, fear or intimidation, or
- Significant or persistent impairment in the use or enjoyment of property to a person or persons who are not in the same household.

This warning can be either written or oral, and – if oral – it is to be written down as soon as is reasonably practical. It must demand that the warned person cease or otherwise address the behaviour, and it must give notice that failure to comply, or a subsequent warning, may result in a court application. The behaviour warnings must issue within one month of the behaviour (or the most recent instance of it), and the warning remains in force for three months.

Diff'rent strokes

At this point, the procedure for children and adults differs. In the case of an adult, an application can be made by a garda (not below the rank of superintendent) if they are satisfied that a behaviour

MAIN POINTS

- Behaviour orders for children
- Civil orders for adults
- Effective deterrent to anti-social behaviour?



PICTURE: GETTY IMAGES

Typical ASBOs

ASBOs may prohibit any behaviour. Breach of an ASBO can result in criminal penalties of up to five years in prison. Such orders in Britain have included:

- Vandalism
- Theft
- Abusive behaviour
- Harassment
- Flyposting
- Organising raves
- Begging.

Less common ASBOs (Britain)

- A 23-year-old woman from Bath, England, who was given an ASBO preventing her from jumping into rivers, canals or railways. This is because the rescue services were placed at risk when rescuing her while she attempted suicide on several occasions. Magistrates made her subject to an ASBO, which means that if she attempts suicide again she could be sent to prison;
- An ASBO granted to an area, Skegness sea front, allowing the police to arrest anyone who caused trouble there;
- Two teenage boys from east Manchester forbidden to wear one golf glove because it signified gang membership;
- A 14-year-old forbidden to use the word 'grass'. The north Manchester youth was made the subject of an ASBO after he repeatedly abused his neighbours, claiming that they were police informers. The order bans him from saying 'grass' at any time in England and Wales until 2010;
- A 17-year-old forbidden to use his front door;
- An 87-year-old man ordered not to shout, swear or make "sarcastic remarks to neighbours or their visitors";
- In the centre of Manchester, a group of residents called for an ASBO against noisy builders on big construction sites.

warning has not been complied with or that the adult has received three or more behaviour warnings in less than six consecutive months. The District Court may then make a 'civil order' if it is satisfied, on the balance of probabilities, that:

- The adult has behaved in an anti-social manner,
- The order is necessary to prevent this behaviour, and
- The order is reasonable and proportionate in the circumstances.

Such an order can last for up to two years, but the order can be varied or discharged on the application of the ordered person or of a garda not below the rank of superintendent, and there is also a right of appeal to the Circuit Court.

The terms and conditions of a civil order are within the discretion of the court. If the person, without reasonable excuse, does not comply with the civil order, they can be convicted of an offence, the maximum penalty for which is a fine of €3,000 or six months' imprisonment, or both. It is also a less serious offence to fail to give one's correct name when warned under the 2006 act.

In the case of a child, there may be an additional step prior to the matter being brought to court.

Under s257C of the *Children Act 2001* (which was inserted by the 2006 act), the garda who gave the warning shall prepare a report for the superintendent in his or her district and the superintendent shall convene a meeting to discuss the child's behaviour if:

- The child has behaved in an anti-social manner and is likely to continue, or
- The child has previously behaved in an anti-social manner, but has not been warned about it, or that holding such a meeting would help to prevent further such behaviour.

The meeting shall be held with the child, his or her parents/guardians, the garda who warned the child, the child's juvenile liaison officer (if he or she has one) and any other person the superintendent considers would be of assistance. The child will be asked to undertake to stop their behaviour, and his or her parents/guardians will be asked to undertake steps to prevent a recurrence.

Saved by the bell

If the child and his or her parents/guardians agree to give those undertakings, a 'good behaviour contract' is entered into, which will last for a period not exceeding six months, although there are provisions to renew the contract for a further period of up to six months. Where the good behaviour contract is not applicable (where the superintendent does not consider it to be beneficial, where the contract is breached, or where the child or parents/guardians do not give the undertakings), the child shall be admitted to the diversion programme under part 4 of the *Children Act 2001*.

A garda, not below the rank of superintendent, may apply to the Children's Court to make a 'behaviour order' if it is satisfied, on the balance of probabilities, that:

- The child, notwithstanding his or her participation in the measures contained in s257C of the *Children Act 2001*, has continued and is likely to continue to behave in an anti-social manner;
- The order is necessary to prevent this behaviour; and
- The order is reasonable and proportionate in the circumstances.

Similar to the civil orders already mentioned, a behaviour order can last for up to two years, but the order can be varied or discharged on the application of the child, his or her parent/guardian or a garda not below the rank of superintendent, and there is also a right of appeal to the Circuit Court. The terms and conditions of a behaviour order are within the discretion of the court. However, the 2006 act states that, for the purpose of protecting a person from the child, the court can:

- Prohibit the child from specified behaviour or from such behaviour at a specified place;
- Require the child to comply with school

Cheeky monkeys deserve an ASBO



attendance, reporting to a person in authority (for example, a garda or teacher); and

- Provide for the supervision of the child by a parent/guardian or another specified person.

If the child, without reasonable excuse, does not comply with the behaviour order, they can be convicted of an offence, the maximum penalty for which is a fine of €800 or three months' detention, or both. Again, it is a less serious offence for a child to fail to give his or her correct name when warned under the 2006 act.

It should be noted that a person may not be charged, prosecuted or punished for a criminal offence where the act or omission that constitutes the offence is the same behaviour for which an application for a civil order or behaviour order is sought. Finally, where there is an application for a civil order or a behaviour order, a legal-aid certificate can be obtained where appropriate.

This is an overview of the procedure, and the 2006 act should be consulted for a more detailed analysis.

Magic roundabout

It is difficult to predict the amount of success the new measures will have in preventing anti-social behaviour. Studies on the effectiveness of ASBOs in England and Wales have produced mixed results. The report of the Youth Justice Board, which was based on their research between January 2004 and January 2005, notes that: "Nearly half of the young people whose case files were reviewed, and the vast majority of young people who were the subjects of in-depth interviews, had been returned to court for failure to comply with their order. The majority had 'breached'



PIC: PHOTOCALL IRELAND

Levitation is not yet classified as 'anti-social behaviour'

their ASBO on more than one occasion. Eighteen young people were sentenced for breach of an ASBO as the sole offence: for one young person, the outcome was a custodial sentence."

On the other hand, the British Home Office reports that 63% of the people who received a warning letter desisted from anti-social behaviour. It may be suggested from these findings that, if civil orders and behaviour orders are to be an effective deterrent to anti-social behaviour, the courts and gardaí must exercise great care and discretion when deciding to make the order, and also when deciding the terms of such an order.

On a more general level, the question must be asked whether these orders are compatible with our system of criminal justice? Anti-social behaviour has a very loose definition and covers a large number of situations. Breach of a civil order or behaviour order is a criminal offence, but a behaviour warning can be given for behaviour that is not in itself criminal. Furthermore, when deciding whether to make an order, the courts need only be satisfied on the civil standard of proof that the behaviour complained of took place. It is possible, therefore, that the system could be used to criminalise acts or omissions that would not otherwise attract a conviction.

Unless the new provisions are used with great discretion by the courts, and by the gardaí, it is possible that the new measures could lead to unjust convictions or hamper a person's right to a fair trial. **G**

"The question must be asked whether these orders are compatible with our system of criminal justice?"

LOOK IT UP

Legislation:

- *Anti-Social Behaviour Act 2003* (England and Wales)
- *Antisocial Behaviour etc (Scotland) Act 2004* (Scotland)
- *Children Act 2001* (no 24 of 2001)
- *Crime and Disorder Act 1998* (England and Wales)
- *Criminal Justice Act 2006 (Commencement) (No 2) Order 2007* (SI 65/07)
- *Criminal Justice Act 2006 (Commencement) (No 5) Order 2006* (SI 689/06)
- *Criminal Justice Act 2006* (no 26 of 2006)

Literature:

- Home Office crime reduction website (Britain): www.crimereduction.gov.uk
- *Juvenile Justice*, Dermot Walsh (2005, Thomson Round Hall)
- Youth Justice Board (Britain): www.yjb.gov.uk

John Noonan is a Dublin-based barrister.

VOYAGE OF *Discovery*

It is not sufficient for an applicant for discovery to establish that the documents sought are relevant and assume that the court will conclude that they are also necessary. Emily Marie Egan plumbs the depths

The nature and extent of the change in the law in relation to discovery occasioned by the enactment of the *Rules of the Superior Courts (No 2) (Discovery) 1999* (SI no 233 of 1999) was not immediately apparent in the wake of the amendment. However, the courts have subsequently teased out the precise impact of SI no 233 of 1999 in a series of cases, and it is now clear that it did not fundamentally alter the existing substantive law in relation to discovery (*Ryanair v Aer Rianta*).

As such, the twin criteria of relevance and necessity continue to determine the availability of discovery pursuant to order 31, rule 12. Although these tests derive from the language of rule 12 as originally enacted, the requirement for a grounding affidavit and a more specific request for voluntary discovery means that the courts may now engage in a meaningful assessment as to whether or not these requirements have been satisfied. The courts have availed of this opportunity to develop and refine the concepts of relevance and necessity in a number of cases since the amendment.

Time after time

Rule 12(1) provides for the discovery of documents “relating to any matter in question” in the proceedings. It is clear from this language that an applicant for discovery must establish the relevance of the documents sought.

Indeed, in *Ryanair v Aer Rianta*, the Supreme Court identified relevance as the primary requirement on an application for discovery. As regards the test to be applied to determine relevancy, the court unequivocally upheld the continued validity of the test formulated by Brett LJ in *Compagnie Financiere du Pacifique v Peruvian Guano Co*, which “has long been accepted as laying down the appropriate test of relevancy”. Brett LJ stated that a document related to the matter in question in the action is one “which it is

reasonable to suppose contains information which may – not which must – either directly or indirectly enable the party requiring the affidavit either to advance his own case or damage the case of his adversary”.

This test was described by the Supreme Court in *Taylor v Clonmel Healthcare Ltd* as the test which has been referred to and approved “time and time again” in this jurisdiction, and was recently applied by Clarke J in *VLM Ltd v Xerox (Ireland) Ltd*. In that case, Clarke J stated that the question the court must ask itself in respect of each category of documents sought is “whether there are real grounds for believing that discovery of the category concerned might advance the plaintiff’s case or damage the defendant’s case”.

In determining relevance, the importance of the pleadings cannot be overstated. In *Ryanair v Aer Rianta*, Fennelly J pointed out that the court hearing an application for discovery must have regard to the issues in the action as they appear from the pleadings. The importance of this was reaffirmed by the Supreme Court in *Framus Ltd v CRH plc*, where Murray J cited the decision of McCracken J in *Hannon v Commissioners for Public Works*, with approval. In that case, McCracken J held that relevance must be determined by reference to the pleadings in the particular case and pointed out that the court must be satisfied of the relevance of the document sought as a matter of probability; the mere possibility that they are relevant will not suffice. It follows from this that a party may not seek discovery of a document in order to find out whether it may be relevant.

True colours

Rule 12(3) provides that an order for discovery must not be made if the court is of the opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

Although the substantive test for necessity has not changed, the burden of proof in this regard was

MAIN POINTS

- **Discovery – meaningful assessment**
- **Establishing relevance**
- **The burden of proof for necessity**
- **Distinction between relevance and necessity**



PIC: REX FEATURES

reversed by SI 233 of 1999. Prior to the amendment of rule 12, the party resisting discovery bore the onus of proving that the documents sought were not necessary (*Allied Irish Banks plc v Ernst & Whinney*). The Supreme Court has made it clear that this burden is now on the applicant and is not a mere formalistic requirement (*Ryanair v Aer Rianta*).

It is important to note, however, that the Supreme Court has rejected the contention that the applicant must show that the documents sought are absolutely necessary in *Ryanair v Aer Rianta*. Rather, Fennelly J approved of the notion of “litigious advantage” adopted by Kelly J in *Cooper Flynn v RTÉ*, whereby it suffices if the applicant establishes that a litigious disadvantage would be suffered if the documents were not obtained.

The obligation of the court to confine the categories of documents sought, identified by Fennelly J

in the *Ryanair* case, was stated in somewhat stronger terms by Clarke J in *VLM Ltd v Xerox (Ireland) Ltd*: “In having regard to the overall requirements of the administration of justice in expedition and economy and also having regard to the question of whether documents are really necessary for the fair disposition of the case, I should also have regard to whether there is any lesser category of documents which would, in substance, be likely to give the plaintiff the same opportunity to advance his case or damage the defendant’s case but which would be less onerous in terms of compliance.”

However, it should be noted that the Supreme Court has sounded a note of caution in this regard. In *Framus Ltd v CRH plc*, Murray J made it clear that the circumstances in which the categories of discovery sought may be redefined by the court are limited: “In certain circumstances, the court may grant

Intrepid lawyers man the rigging of the good ship *Discovery*

discovery on a more limited basis than that sought where it considers it appropriate to do so. On the other hand, it is not for the court to re-draft the applicant's motion where it, in effect, amounts to a form of blanket discovery ... It may be appropriate to do so where a more limited category can be more readily defined and it is in the interests of fairly disposing of the application."

A trend that emerges from the case law, relating to necessity, is the concern of the court as to the burden, scale and cost of discovery. As stated above, this was specifically raised as a concern by the Supreme Court in *Ryanair v Aer Rianta*. It was also referenced by McCracken J in *Hannon v Commissioners for Public Works*, where he stated that the court should look to whether the discovery sought was oppressive, in order to ensure that the procedure was not used as a 'tactic of war' between the parties. This aspect of the judgment was also approved of by Murray J in *Framus*.

What's going on?

As regards the distinction between relevance and necessity, there remains some confusion. In *Taylor v Clonmel Healthcare Ltd*, the Supreme Court played it down, stating that where a document is relevant it is, more often than not, necessary. This sentiment is echoed by Macken J in *McDonagh v Sunday Newspapers Ltd*, where she stated that: "In so far as the distinction and nuances, if any, between the question of relevance, litigious disadvantage and necessity are concerned, as these words are used in the jurisprudence, the real question remains at all times ... one of relevance."

In other cases, however, the courts have taken care to emphasise that there is a distinction between the two, and both requirements must be satisfied on an application for discovery. Generally, this occurs where the material sought is relevant but the applicant has some other readily available means of

"A party may not seek discovery of a document in order to find out whether it may be relevant"



proof, as was the case in *PJ Carroll & Co Ltd v The Minister for Health and Children*. In that case, the Supreme Court concluded that the documents sought by way of discovery were relevant, but upheld the refusal of the High Court to grant an order for discovery on the basis that the applicants had failed to discharge the burden of proving necessity. Geoghegan J took the view that the information was available elsewhere and concluded his judgment with the following comments:

"It has been pointed out that some of the case law relating to discovery, and I think I specifically said it in *Taylor v Clonmel Healthcare Ltd*, that perhaps more often than not, if a document is relevant, it is also necessary. But the separation of the element of necessity from the concept of relevance is, nevertheless, important and has real application in some cases ... It would seem to me that this is clearly a case where the distinction is important. The documents are relevant but unnecessary."

It is clear from this that it is not sufficient for an applicant for discovery to establish that the documents sought are relevant and assume that, on this basis, the court will conclude that they are also necessary. These requirements are cumulative and will be treated as such by the court.

That's what I think

The High Court initially adopted a strict approach to compliance in the wake of the enactment of SI 233 of 1999. In *Swords v Western Proteins Ltd*, Morris P held that the amended rule imposes an obligation upon the party seeking discovery to identify precisely the categories of documents sought and to provide reasons as to why they are necessary. He appeared to suggest that the master has no jurisdiction to make an order for discovery in the circumstance where the applicant for discovery has failed to comply with the provisions of order 31, rule 12.

However, the Supreme Court adopted a more pragmatic approach in *Taylor v Clonmel Health Care Ltd* and rejected the contention that strict compliance with rule 12 is a condition precedent to the jurisdiction of the master to order discovery. It was held that the master has full power to waive a technical breach if the object of the rule has, in reality, been achieved. However, Geoghegan J did point out that the court would be slow to exempt applicants from the provisions of "an amended rule specially designed to provide procedures to cure a perceived mischief".

Practitioners should note that the Master of the High Court is slow to overlook non-compliance with rule 12. In addition, there are costs implications to be considered, as the courts may well take non-compliance into account in exercising their discretion in this regard. **G**

Emily Marie Egan is a Dublin-based barrister.

LOOK IT UP

Cases:

- *Allied Irish Banks plc v Ernst & Whinney* [1993] IR 375
- *Compagnie Financiere du Pacifique v Peruvian Guano Co* (1882) 11 QBD 55
- *Cooper Flynn v RTÉ* [2000] IR 344
- *Framus Ltd v CRH plc* [2004] 2 IR 20
- *Hannon v Commissioners for Public Works*, unreported, High Court, 4 April 2001
- *McDonagh v Sunday Newspapers Ltd* [2005] 4 IR 528
- *PJ Carroll & Co Ltd v The Minister for Health and Children*, unreported, Supreme Court, 1 June 2006 [2006] IESC 36
- *Ryanair v Aer Rianta* [2003] 4 IR 264
- *Swords v Western Proteins Ltd* [2001] 1 ILRM 481, 487
- *Taylor v Clonmel Healthcare Ltd* [2004] 1 IR 169
- *VLM Ltd v Xerox (Ireland) Ltd*, unreported, High Court, 25 February 2005 [2005] IEHC 46

Legislation:

- *Rules of the Superior Courts (No 2) (Discovery) 1999* (SI no 233 of 1999)



PIC: REX FEATURES

On the right TRACK

Under 30s – also referred to as ‘Generation Y’ – see work very differently to their parents’ generation. Adapting to this is no mean feat for any manager, but Paul Davis has the scoop, daddio

Today’s Generation Y (aged under 30) has a view of the workplace that is distinctly different from that of their parents. Few of them believe in a job for life.

Materially wealthy, with bedrooms full of electronic gadgets and a world of experiences at their fingertips with their iPods, mobiles and PCs, Generation Y looks on work as a means of gaining different experiences and developing within an organisation at a faster pace.

Adapting to this is no mean feat for any manager, but by focusing less on a top-down approach of managing employees – and more on encouraging

and developing them in a more informal manner – firms can ensure they benefit from their employees’ success and vice versa.

A good performance-management system is key to this, and it will ensure your firm doesn’t become one of the 40% of firms less than five years old that fail because of insufficient management capabilities (according to the Small Firms Association).

Managing staff by reviewing their performance through quarterly or annual appraisals alone is not sufficient to ensure employees are achieving their potential and contributing to the success of your firm.

MAIN POINTS

- Performance management systems
- Job description
- Goals and measurement



Hamster-powered IT systems are the next big thing

According to a survey of 506 organisations by the Chartered Institute of Personnel and Development (CIPD) in 2004, 87% used a formal performance-management process, 74% of senior managers described performance management as being very effective or mostly effective, while 59% of employees shared this view.

Most managers don't have the time to seek guidance from one of the thousands of books written on management techniques. If you implement an effective performance-management system that involves the following processes, you won't have to.

Job description

A clearly-defined job description should highlight competencies or required knowledge, skills, abilities and values for the job. CVs and other information from the selection process will indicate where gaps in these aspects exist between what is ideally required and what a person has. This is a key stage in beginning to manage an employee's performance.

One of the *Irish Independent's* 'Best Companies to Work For', pharmaceutical giant Glaxo Smithkline, recognises the importance of selecting the right person for the job. HR director Paul Creedon says: "We'll select the best person for the job and won't settle for second best, which means we may have to wait longer to make an appointment."

The company's assessment centre then helps new employees to grow by devising a personal development plan, looking at their current situation and what their aspirations are, which then allows for an open conversation about their development needs.

Goal-setting

Another of the 'Best Companies to Work For', recruitment firm Brightwater Group, encourages employees to devise their own strategy to meet targets, allowing them to see clearly their own contribution to the overall success of the company. They sit down with managers and present how they want to plan their month and set their own targets.

The setting of goals or objectives should be based

on the expectations, duties and tasks related to the job. Job candidates will expect these to be outlined during the application or interview process, and they should again be outlined in an introductory session, ideally during a formal induction.

If your firm has a documented business plan in place, setting out its measurable goals and objectives, this should also feed into department or team plans. By referring to 'key performance indicators' (KPIs) rooted in your firm's strategic plan, people at all levels of the firm can refer to these and describe what the objectives of the business mean for their job.

Employees will see how their knowledge, skills, abilities and values are relevant to helping to meet your firm's KPIs. By identifying where there is room for improvement, they can then discuss with a manager what training and development is needed to help them meet those targets. This should then be noted in a personal development plan.

The key to setting objectives is that they should be 'SMART': specific, measurable, achievable/agreed/accepted, realistic/relevant and timebound/trackable. They should include a 'what,' 'who,' 'how,' and 'when' element: what needs to be achieved (for example, a fee target)? Who is ultimately responsible for the delivery? How should the employee go about this? When does it need to be achieved by?

Measuring up

Measuring performance is a way of comparing an employee's work with the overall strategy and goals of the business. It should take into account whether the goals defined in the employee's personal development plan have been met.

Cathal Divilly, project director at the Great Place to Work Institute Ireland, says: "The best companies tend to measure what they do. In a workplace situation, what doesn't get measured doesn't get done."

For a firm providing a service, for example, employees who have a say in how the service is delivered will feel engaged in their work. Employees who feel they have satisfaction in their work will, in turn, translate this into greater customer satisfaction, and this tends to result in higher profits. This will inevitably meet one of your firm's objectives and, therefore, should be measurable and result in a reward for that employee.

Be clear about the job expectations and how employees are performing against them. As workplaces become increasingly informal, this can be as simple as regularly talking to employees, making suggestions, and keeping them on track.

eBay uses a number of methods, such as a 'pulse survey' that enables employees to give candid, anonymous feedback to management on their day-to-day experiences in the workplace. It not only means that managers can strengthen their own skills and effectiveness, but also means employees' concerns are addressed as well.

GENERATION Y NOT?

The term 'Generation Y' first appeared in an August 1993 *AD Age* editorial to describe those children born between 1984 and 1994. The scope of the term has changed greatly since then, to include, in many cases, anyone born as late as 2001. There is still no precise definition of years. Generation Y is often shortened to 'Gen Y' or 'Ygen'.

DEMOGRAPHICS BY GENERATION

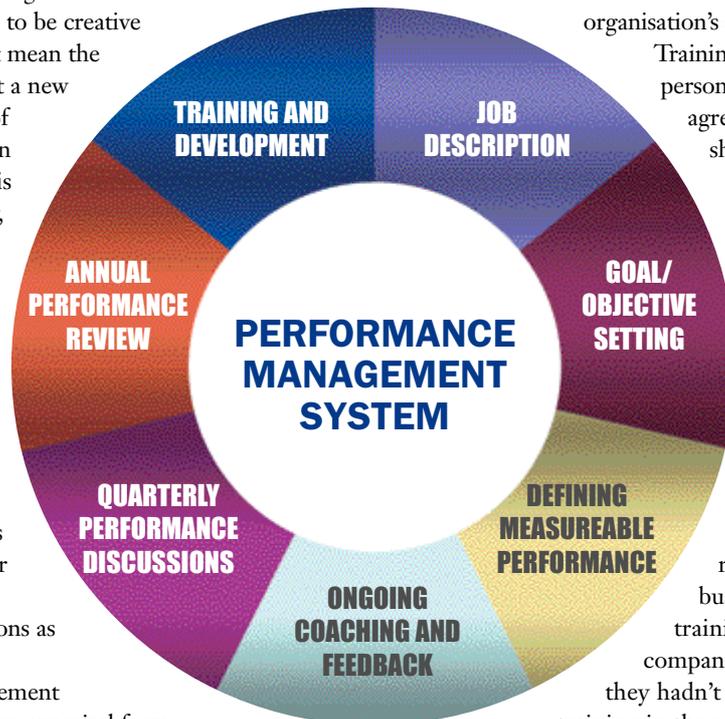
WWI	1922 to 1927
Post-war/the Great Depression	1928 to 1941
Baby Boomers	1942 to 1953
Generation Jones	1954 to 1965
Generation X	1966 to 1977
Generation Y	1978 to 1998

Google recognises the increasing trend to allow employees freedom in their jobs to be creative and entrepreneurial. This might mean the employee taking a risk to try out a new idea or approach in the course of their work. Managers might then need to suggest how to tailor this to ensure its success. In this way, they recognise their contribution to the firm's growth and success.

Performance reviews

As well as ad hoc feedback, quarterly and annual performance reviews should be formally arranged regularly during the year. Both employees and managers should prepare for this meeting and use previous reviews or performance discussions as the framework for the meeting.

In many performance-management systems, an employee fills in a pre-appraisal form that outlines their objectives for the following year. These should be discussed, expanded upon and agreed at the performance review. These should be



measurable and trackable and tie in with the organisation's own objectives.

Training and development programmes and personal development plans should be agreed with employees. The focus should be on addressing gaps between the knowledge, skills and abilities required and those actually displayed by the employee.

A 2005 CIPD survey on training and development revealed that 78% of respondents had received some form of training in the previous year. Of these, 94% believed it helped them to do their job better.

However, the survey also revealed that employees in small businesses were less likely to receive training: 73% of respondents from companies with less than 99 employees said they hadn't received any employer-provided training in the previous year.

Recognising the positives

Recognising positive performance isn't simply a matter of saying 'well done'. It includes effective compensation and benefits linked to deliverable results.

Employees need to recognise their career paths and be kept aware of promotional prospects. This can be as simple as having an informal chat on a regular basis about those prospects, opportunities for training towards promotion, and helping to fund that training. Employees want to know where good performance will lead them and what's in it for them.

Bonuses are the most common example of rewards. Incentives aligned with employees' goals and those of the organisation can serve as motivating factors. However, it's important to recognise employees' creativity and entrepreneurship as well. For example, another of the 'Best Companies to Work For', the Crowne Plaza Hotel, rewards employees who come up with ideas to improve service and profitability.

It goes without saying that an effective performance-management system relies on good communication. Employees who receive regular advice and assistance in their work will be happy in their jobs. Happy employees increase client satisfaction as well as profits. With the right performance-management system, a business of any size can achieve its goals in the same way as the largest multinational. **G**

Paul Davis is principal of Davis Business Consultants and is a fellow of the Chartered Institute of Management Accountants.

TALK THE TALK: TOP TEN MANAGEMENT BUZZWORDS

Blue-sky thinking. *Context:* "Let's start with a blank sheet of paper and do some blue-sky thinking and see what happens." *Meaning:* this is similar to thinking 'outside the box' and is supposed to be a situation where you come up with ideas, taking into account no preconceptions and not dismissing ideas instantly.

Brain dump. *Context:* "Have a brain dump and see what you come up with." *Meaning:* brainstorm.

Low-hanging fruit. *Context:* "We started off by removing the low-hanging fruit, before looking at the tougher problems." *Meaning:* the bits that can be done quickly and easily but still have an effect.

Take ownership. *Context:* "I think it's up to you to really take ownership of this piece of work." *Meaning:* "You need to get a grip and be responsible for this piece of work."

Out of the box. *Context:* "It'd be great if you could think out of the box and generate some radical ideas." *Meaning:* "Don't just come up with the same old obvious solutions. Try and be creative when brainstorming ideas."

Going forward. *Context:* "I think it's important that, going forward, you continue to manage the project proactively." *Meaning:* in the future.

Mission critical. *Context:* "Handling the pressure of the project OK? I mean, it is mission critical!" *Meaning:* "If we don't deliver with this project, we're screwed. It's pretty important!"

Leverage (the proposition). *Context:* "See if you can leverage the proposition with them over point 2b, sub-para 5, clause 2." *Meaning:* getting some value out of a certain situation for you/your project goals.

Numerality. *Context:* "Have you checked that for numerality?" *Meaning:* "Make sure your top-ten lists actually have ten items."

From: www.saidwhat.co.uk/bizphrases.php.

SAVING grace?

We're all familiar with the residency requirement for SSIA's – if anyone is not resident in Ireland for more than three years, they lose the benefit of the SSIA uplift. But is this a breach of a person's right to freedom of movement under EU law? Frank Mitchell grabs his passport

Readers will be familiar with the residency requirement applying to SSIA's, the effect of which is that if a person becomes non-resident in Ireland for more than three consecutive years, they will lose the benefit of the SSIA uplift. But does this constitute a breach of that person's fundamental right to freedom of movement under EU law?

Before examining the relevant legislation and case law, it is worth encapsulating the EU law breach argument in one sentence. The sentence in question comes from the famous *Bosman* decision, wherein the European Court of Justice ruled that transfer fees payable after the expiry of a football player's contract were a barrier to Mr Bosman's freedom of movement within the community. The court summarised a lengthy line of authorities in the area and stated: "the provisions of the treaty relating to freedom of movement of persons are intended to facilitate the pursuit by community citizens of occupations of all kinds throughout the community, and preclude measures which might place community citizens at a disadvantage when they wish to pursue an economic activity in the territory of another member state".

Applying this aspect of the court's decision in *Bosman*, we must ask: has a person who has opened an SSIA account and then exercised his/her right to freedom of movement been placed at a disadvantage compared with someone who has not exercised that freedom? The answer must clearly be 'yes' – they have been disadvantaged, as they will not receive the

20% uplift that those who have remained in Ireland will receive.

Those unfamiliar with EU law may be inclined to view this argument as occupying a middle ground somewhere between the speculative and the ridiculous, but let us see if that is the case.

The wild rover

Freedom of movement comes in many guises in the *Treaty Establishing the European Communities*. As a consequence of the limited space available here, we will address just one of these: the freedom of movement for workers. Article 39 provides that:

- 1) Freedom of movement for workers shall be secured within the community.
- 2) Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the member states as regards employment, remuneration and other conditions of work and employment."

In *De Groot*, the ECJ considered a provision in Dutch national law that deprived Dutch taxpayers of the benefits of progressive taxation where they had earned income in another member state. It was argued that this provision acted as a disincentive to obtaining work in other member states: by choosing to work in another member state, Mr De Groot paid more Dutch tax on his Dutch income than another Dutch citizen who worked only in the Netherlands. The ECJ had this to say: "Provisions which preclude

MAIN POINTS

- SSIA scheme
- Freedom of movement within EU
- ECJ case law



PIC: GETTY IMAGES

Euro-pig: replacing next year's *You're a Star*

or deter a national of a member state from leaving his country of origin to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned.”

The court found that Mr De Groot was put at a disadvantage compared with someone who had stayed in the Netherlands and earned all of their income there. It considered that the disadvantage was liable to discourage a Dutch national from leaving the Netherlands in order to take up employment in another member state.

It is important to note that there was nothing to prevent Mr De Groot from working in another member state – it was merely that Dutch tax law would treat him less favourably if he did so.

Men behind the wire

What will constitute a ‘barrier’ to working in another member state has been very widely defined. In *Dieter Kraus*, the court defined a barrier as anything that was “liable to hamper or render less attractive the exercise by community nationals ... of fundamental freedoms guaranteed by the treaty”.

It is clear, then, that taxation provisions that put someone at a fiscal disadvantage for leaving Ireland and taking up employment in another member state can constitute a breach of article 39.

That is, however, by no means the end of the story. We need to consider whether there are any restrictions on the scope of article 39 and whether, in the event that there is a breach, the national provisions can be justified.

In the wake of *Bosman*, several individuals, relying on a literal interpretation of the decision, brought what might be most generously described as speculative claims before the ECJ. The most tentative of these was brought by an Austrian national, Mr Graf. He was employed by an Austrian firm which, under national law, was obliged to pay compensation to individuals who, through no fault of their own, were made redundant. Mr Graf decided to resign and go to work for another firm in Germany. He claimed compensation but was refused on the basis that he had voluntarily quit his occupation. Mr Graf claimed that this constituted an obstacle to his seeking work in another member state, since the prospect of losing the right to compensation discouraged him from moving.

The court gave Mr Graf’s claim short shrift, as the claim for compensation was not simply dependent on whether Mr Graf stayed with his firm or not, but was based on a “future and hypothetical event”, namely whether he would ever be made redundant.

The SSIA scheme is clearly distinguishable from this aspect of the *Graf* case, as the government payment under the SSIA scheme is not a “future and

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hypothetical event” – rather, it is an absolute certainty, provided the qualifying person complies with the terms of the scheme. Another obvious point of distinction is that, in *Graf*, the worker would lose his chance of compensation if he simply left his job or moved to another company in Austria. The holder of an SSIA, on the other hand, will have their absolute and guaranteed right to the SSIA uplift revoked only by leaving Ireland for a prolonged period. (Of course, where the individual has gone to work outside the EU, then there can be no breach of his/her EU rights.)

Bunch of thyme

However, proving that easy cases also make bad law, there is one paragraph of the *Graf* decision that is potentially damaging: “Provisions which, even if they are applicable without distinction, preclude or deter a national of a member state from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom. However, in order to be capable of constituting such an obstacle, they must affect access of workers to the labour market.”

The court does not explain what is meant by the term “affect access of workers to the labour market”. It cannot be saying that the obstacle itself must be connected with an employment, as the ‘obstacle’ in Mr Graf’s case certainly did derive from his employment. While at first glance, this condition may appear to radically limit the scope of the *Bosman* decision, on closer examination it is difficult to see how this is so.

For instance, if the government were to propose a scheme whereby any third-level graduate who wished to work in another member state had to pay €5,000 to the government, that would undoubtedly act as a disincentive to moving to France to work and it would consequently affect access to the labour market in other member states. Similarly, if the government offered to pay all third-level students €5,000 on condition that they stayed in Ireland for five years after graduation, that would affect access to the labour market; it would certainly act as a disincentive to look for work in other member states. I would argue that the residency requirement in the SSIA is no different to this hypothetical example: it acts as a disincentive to seeking work in other member states and is, therefore, capable of affecting a worker’s access to the labour market.

Another superficially attractive argument in opposition to the case being made in this article is the potential cost of expanding the SSIA. In other words, could the state justify the residency requirement by arguing that it is necessary that the SSIA holders are revenue-producing workers contributing to the Irish economy. Apart from the fact that the SSIA is not limited to people who are economically active in Ireland – it can be availed of by anyone over 18, whether working or not – the ECJ case law would not support such an argument.

The case law is clear that a breach of article 39 may be justified by a member state if the measure complained of pursues a legitimate objective compatible with the treaty and is justified by pressing concerns of public interest. However, it was made equally clear in *ICI* that a loss of tax revenue can never be relied upon to justify a restriction on the exercise of a fundamental freedom.

While the ECJ has held in *Bachmann* and other cases that the need to safeguard the cohesion of the tax system itself may justify rules that are liable to restrict fundamental freedoms, I do not believe that this justification is applicable to the SSIA scheme.

In *Bachmann*, the Belgian state proved that the deductibility of pension contributions paid to Belgian insurance providers was, in effect, funded by the taxation of amounts paid out under those contracts. As such, the court found that the Belgian state could justify not allowing nationals to deduct pension contributions paid to pension companies based in other member states, since the sums eventually paid out under those pensions would not be liable to Belgian tax.

The ECJ has held, time and again, that in order to justify a breach of a fundamental freedom on the grounds of the cohesion of the tax system, the state must be able to point to a direct link between the benefit being sought (in our case the SSIA tax credit) and the taxation measure that funds that benefit. To date, the Irish government has never indicated that any such measure or relationship exists.

Easy and slow

In my view, there is a strong case to be made that the residency requirements in the SSIA scheme – to the extent that they will affect an individual who goes to work in another member state – breach article 39. While a full forensic analysis of this argument is impossible in the space available, the most obvious defences can, I believe, be refuted.

Anyone who has gone to work in another member state and lost the benefit of the SSIA, but has continued to pay into their SSIA, should consider making a complaint on the matter to the European Commission. The commission will then investigate the claim (at no cost to the individual), and if they believe that there has been a breach, they will commence enforcement proceedings against the state (again, at no cost to the individual).

The Revenue Commissioners themselves would almost certainly refuse any such claim by simply pointing to the fact that the legislation requires five years of uninterrupted residence or ordinary residence. If it is alleged that the Irish legislation is in breach of EU law, then the Revenue Commissioners will, quite understandably, want that matter adjudicated upon by the courts. **G**

Frank Mitchell is a Dublin-based barrister specialising in taxation.



LOOK IT UP

Cases:

- *Dieter Kraus v Land Baden-Wuerttemberg* (case C-19/92)
- *FWL De Groot v Staatssecretaris van Financien* (case C-385-00)
- *Hanns-Martin Bachmann v Belgian State* (case C-204/90)
- *ICI v HM Inspector of Taxes* (case C-264/96)
- *Terhoeve v Inspecteur van de Belastingdienst* (case C-18/95)
- *Union royale belge des sociétés de football association v Jean-Marc Bosman* (case C-415/93)
- *Volker Graf v Filzmoser Maschinenbau GmbH* (case C-190/98)

Legislation:

- *EU Treaty*, article 39

BUY & SELL

Profit is the watchword of any business and, in relation to property development, this means getting the greatest sale price in totality for a completed development. Mel Ferguson turns the sod

Business people have always sought to make the greatest gain or most profit from their raw materials and the resources available to them. In relation to property developers, this would mean gaining the greatest sale price in totality for a completed development. This can either be achieved by a small number of very expensive units or a large number of less expensive ones. As the local authorities and An Bord Pleanála have increased guidelines allowing for greater density of development, most developers now engage in the construction of medium to high-rise apartment developments, where appropriate. In order to make these units attractive to purchasers, the developer must ensure that:

- 1) The management structures that are put in place will work and will not be unduly onerous on any party, which would discourage them from purchasing;
- 2) The management structures will survive following completion of the development and the departing of the developer;
- 3) As long as the developer is 'on site', he will be able to control the managed areas and the estate;
- 4) Upon exit from the development, the developer will have no further liability or limited liability only in relation to the development; and
- 5) The scheme that is set up complies with all company and conveyancing law requirements and is legal and valid.

Estate of the nation

Similar to old estate schemes, developers will be seeking to create common titles within a development, and this is typically done through the

use of leases and leases of easements. The management structure is usually dealt with through the incorporation of a management company, which the developer will retain control of until hand-over and which ultimately is intended to come under the control of the several purchasers within the development. Accordingly, the developer will be concerned to achieve two goals:

- 1) The construction of units that are attractive for sale to purchasers, and
- 2) Compliance with all legal and statutory requirements.

In a development consisting solely of apartments, historically it was usual for the developer to dispose of the several apartments with the creation of new leasehold interests. The obvious benefit and purpose of this was that the burden of the lessee's covenants contained in such leases would pass on to assignees of the original lessees, pursuant to section 11 of the *Conveyancing Act 1881*. Also, once notice of any assignment was given to the lessor, the original lessee would be released from the burden of the covenants in the lease. This would assist in the orderly management of an estate. Such leases were, for that reason, historically used in Irish housing estates.

However, since 16 May 1978 (the date of commencement of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*), a lease of lands that could be enlarged into fee simple, pursuant to the *Landlord and Tenant (Ground Rents) Acts 1967-2004*, shall be void. The act specifically does not apply to leases of separate and self-contained flats in premises divided into two or more such flats.

MAIN POINTS

- **Commercial conveyancing**
- **Leases and leases of easements**
- **Control of the management company**



PIC: REX FEATURES

Unfortunately, there is no Irish statutory definition of what constitutes a 'flat', although the definition contained in England's *Housing Act 1980* would be akin to what we consider to be an apartment or duplex. It is, in any event, generally accepted that duplex-type apartments would be considered flats for the purpose of the 1978 act. Accordingly, in the case of houses, the title must be dealt with in one manner, with the positive obligations (such as those to pay insurance and service charges) dealt with under a separate leasehold title. Typically, this takes the form of a lease of easement, which is merely a lease of the several easements you would ordinarily expect in a housing or apartment estate (for example, rights of way, wayleaves for services, rights to enjoy common areas) and contains the covenants you would usually expect to find in a lease. The lease of easements would be greatly similar to the apartment leases. As Suzanne Bainton pointed out in her article in the March 2007 *Gazette* (p38ff), the law in this regard may be amended on enactment of the *Land and Conveyancing Law Reform Bill 2006*.

The covenants to be contained in any lease should be sufficient to pass title and bind lessees to the service charge and management structures. In addition, developers will want to ensure that any project-specific conditions contained in a planning permission (such as how windows are to be dressed or what works can be undertaken without permission) are specifically repeated as leasehold covenants.

The service-charge provisions should be drafted so as to enable the developer to recover the full cost incurred in providing services to the estate, but, at

the same time, being reasonable enough to be capable of future operation and attractive to purchasers. It is not uncommon for the service charge for the first year to be subsidised or suppressed so as not to scare away purchasers.

Service with a smile

The actual purchasers will ultimately obtain control of the management company and the service-charge budget and, at that time, can determine what services they wish to add or cease to provide. In the meantime, however, it is in the developer's interests that the estate is maintained to a high level and, for this purpose, may include services that are not otherwise desirable. In a mixed-use scheme, it will be important (in order to appear reasonable) that services that only benefit particular users are only paid for by those users, while services that benefit all are contributed to by all. For instance, internal apartment-block services do not benefit householders and, accordingly, in a mixed scheme, only the apartment owners (or, where appropriate, the apartment owners in a particular block) should contribute to those costs. The householders should not have any liability to contribute to those costs. It is always useful to provide a budget with initial draft documents or brochures identifying to purchasers the services being provided and how costs are apportioned between them.

When a development is being set up, a contract is entered into between the developer and a management company for the sale of the reversion in any apartment leases or leases of easements to that management company. Each purchaser within the development would obtain membership of the

management company and, ultimately, when the developer would cease to have his interest in such a company, all the purchasers would have equal voting rights. In the meantime, however, as there is a contractual relationship there, the management company needs to confirm titles to any party purchasing after the date of the contract for sale to it – accordingly, the developer would be anxious to retain control of the management company. This is done by allowing the developer to have weighted voting rights. Typically, 30 or 50 votes are retained by each subscriber member, all of whom have been nominated by the developer. This enables the developer to retain control of the day-to-day running of the management company and, in addition, to prevent any demands or proceedings being made against him without his consent. The management company agreement, and typically the apartment leases and leases of easements, may also contain a provision that would allow the developer immunity from liability in relation to the estate, once the transfer of the common areas to the management company has been completed.

Common sense

The common areas in an estate may or may not be valuable to the developer. They may have capacity for possible future development or provide access or services to adjoining land. The developer will be anxious to retain control of the common areas until he is sure that he will not require any services or easements thereafter.

Purchasers, however, will be anxious to obtain control of the common areas, allowing them to be ‘masters of their own destiny’ in relation to service charges. Similarly, the developer will be anxious to absolve himself from liability for any defects or difficulties that might arise as time passes from

‘It is in the developer’s interests that the estate is maintained to a high level’

LOOK IT UP

Legislation:

- *Conveyancing Act 1881*, s11
- *Housing Act 1980* (England)
- *Land and Conveyancing Law Reform Bill 2006*
- *Landlord and Tenant (Ground Rents) Acts 1967-2004*
- *Landlord and Tenant (Ground Rents) (No 2) Act 1978*

completion of construction. There was previously concern that stamp duty would arise at *ad valorem* rates if a developer wished to retain units within a development in which he has been involved – another reason why, historically, developers might have delayed in the hand-over of common areas. This concern has been addressed by the Revenue Commissioners, and structures are now in place (and available for download from the Law Society website) to enable titles to undivided units to be retained without *ad valorem* stamp duty arising.

In addition, developers can retain rights of way and accesses for possible future development, even though they might be uncertain as to the details of such a development. This form of ‘transfer subject to reservations’ would be appropriate, except where there might be future development potential on the common areas. As Suzanne Bainton mentioned in her article, the National Consumer Agency has recommended that certain legal obligations be imposed on developers (and their solicitors). It remains to be seen whether these will be adopted into legislation or practice. **G**

Mel Ferguson is a partner in Sheehan & Company, Solicitors.

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Valentine's Eve get-together

At the Meath Bar Association annual meeting in Navan were (*front, l to r*): Niamh Tuite, Aine Keenan, Andrew Donnelly, Ken Murphy (director general of the Law Society) Philip Joyce (president of the Law Society), Paul Brady (president, Meath Bar Association), Patricia Houlihan (Secretary of the Meath Bar Association) and Louise Campbell (support services executive). (*Centre, l to r*): Margaret McCann, Dermot Dempsey, Mary Campbell, Peter Higgins, Adrian Bowen, Oliver Shanley, Daria Fitzsimons, Liam Keane and Audrey O'Reilly. (*Back, l to r*): Hugh Thornton, Rory Harmon, Michael Keavney, Brendan Steen, Kevin Martin, John Lacy, Pat Cosgrove and Nat Lacy



The green and the white

At the Autumn PPCI ball in Leopardstown Pavilion on 16 February were trainees Aisling de Paor and Lyn Brennan



When's it due?

Neil Rooney and Colm Mullen at the Autumn PPCI ball in Leopardstown Pavilion



Guys and dolls

Staff from sponsors of the Autumn PPCI ball, Maples & Calder, including their PPCI trainees

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Summer Fruit, oil by Louis le Brocqy HRHA



Claddagh collection

Galway Bar Association held its annual meeting on 14 March in the Galway Bay Hotel, during which President of the Law Society Philip Joyce, director general Ken Murphy and support services executive Louise Campbell met with Galway solicitors and their president, Elizabeth Cazabon



Mick O'Dwyer makes PALS in Bray

Sporting legend Mick O'Dwyer cut the tape for the official opening of the new office of Partners at Law Solicitors in Bray. Also present at the March opening was Dublin GAA footballer Mark Vaughan



Shiny happy people

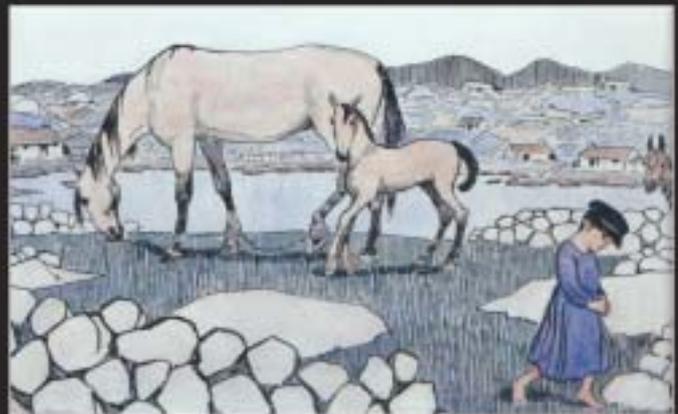
Enjoying the convivial atmosphere of the Autumn PPC1 Ball in Leopardstown Pavilion on 16 February were (l to r): Louise O'Neill, Kara Groarke, Jim Falvey and Gwen Considine



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"Connemara Mare and Foal" by Jack B Yeats



A long way from Clare to here

Clare Bar Association meeting with the president and the director general on Tuesday 13 March last in Ennis. *(Front, l to r):* Louise Campbell (Law Society), David Casey (president, Clare Law Association), Philip Joyce (president of the Law Society), Sinéad Nunan (secretary, Clare Bar Association), Lorraine Burke (treasurer) and Ken Murphy (director general of the Law Society). *(Back, l to r):* Sheila Lynch, Gerry Flynn, Donal Creaton, Marina Keane, Catherine Murphy, Rory Casey, Ann Walsh, Michael Houlihan, Mary Nolan, Bernard Mullen, Helen Rackard, Isobel O’Dea and John P Shaw



PIC: PHOTOZONE

The ‘ayes’ have it!

The ‘Waterford Law Society Award Debate’ for legal students took place at the Waterford Institute of Technology (WIT) on Wednesday 28 February. *(Front, l to r):* Dr Albert Keating (senior lecturer, WIT), Morette Kinsella (president, Waterford Law Society) and Helen Bowe O’Brien (Waterford Law Society). *(Back, l to r):* John Goff (Waterford Law Society), Colm Murphy (winning speaker), Deirdre Adams, Ronan McKeon, Sinead Heffernan, Pat McKee, Mary Scott, Roisin O’Shea, Carol Walsh (all contestants), and lecturers Cyril Cawley and Amanda Hayes

Law school celebrates!

The law school in Cork celebrated its inaugural ball on 1 March in the city’s Imperial Hotel. The stylish affair was attended by almost 100 trainees. Dinner committee member Finghin O’Driscoll proposed the toast to mark the auspicious occasion and was ably supported by fellow members PJ Kiely, Sinead Kane, Leah Nagle, Catherine Anne Butt, Miriam Guinane and Michelle O’Connell. The generous sponsors were Ronan Daly Jermyn, Anglo Irish Bank and Allied Irish Bank.



Broad smiles at the law school’s inaugural ball: Claire Coleman, Sinead Turner and Clare Flavin



Enjoying the inaugural ball were *(l to r):* Karen Walsh, Diane Reidy, Marianne Quill and Deirdre Treacy

ON THE MOVE

Brian Montague



A&L Goodbody has appointed Brian Montague as chief executive officer. Brian has joined the firm from Eircom, where

he was group human resources director. The firm has 62 partners and employs 215 other legal staff.

Daragh Bohan



McEvoy Partners has appointed Daragh Bohan as partner with responsibility for their banking and financial services

group. Daragh joins McEvoy Partners from William Fry. He qualified as a solicitor in 1994.

John Darby



John Darby has been appointed as partner in the corporate division of McEvoy Partners. John joined the firm in 2005 as an associate. Previously, he was a solicitor with McCann Fitzgerald for ten years. He qualified with a BCL from UCD in 1997.



student spotlight

Moot court team for Washington

The Law Society Jessup Moot Court team has won the national finals of the 2007 Phillip C Jessup International Law Moot Court Competition. They went on to represent Ireland at the international finals to be held in Washington DC at the end of March. The Law Society team comprises four autumn PPCI students – Nicholas Blake-Knox (Arthur Cox), Therese Lyne (A&L Goodbody), Cormac O’Culain (Reddy Charlton McKnight) and Regan O’Driscoll (Matheson Ormsby Prentice).

The trainees worked very hard to achieve their place in the final and fought off stiff competition in the national rounds from both Kings Inns and Trinity College. Two team members, Therese Lyne and Cormac O’Culain, were also



Champion speakers

Regan O’Driscoll (Matheson Ormsby Prentice), Cormac O’Culain (Reddy Charlton McKnight), Elaine Dewhurst (coach, course executive, Law Society), Nicholas Blake-Knox (Arthur Cox) and Therese Lyne (A&L Goodbody)

singled out as best individual speakers at the national rounds. All will travel to Washington DC, with their coach Elaine Dewhurst (course executive, Law Society), to battle it out against teams from over 80 countries at the

week-long event.

The Jessup Moot Court Competition is the largest of its type in the world. It is administered each year by the International Law Students’ Association, in cooperation with the American Society of

International Law. It is sponsored by the international law firm, Shearman & Sterling LLP.

The international finals are judged by celebrated scholars and practitioners of international law (including judges of the International Court of Justice). The students represent two fictitious nations through written submissions (known as memorials, in line with international practice) and oral advocacy, in a hypothetical dispute before the International Court of Justice.

The Jessup case this year has a strong European flavour, concerning issues relating to the powers of international organisations, accession agreements, diplomatic privileges and immunities, and certain aspects of international trade law.

Taxing time for trainees in moot competition

The final of this year’s Trainee Solicitor Moot Court Competition took place on 6 March. Aidan O’Reilly (autumn PPCI) and Ciarán Claffey (winter PPCI) for the appellants took on Máire Barr (summer PPCI) and Nicholas Blake-Knox (autumn PPCI) for the respondents.

The competition involves the presentation of legal argument by each student in respect of a fictional case. It affords students an opportunity to experience and participate in a court-type environment and to exercise and improve their advocacy skills. This year’s case related to issues of negligent misstatement in respect of a



Leader of the band

Ciarán Claffey and Aidan O’Reilly receive the moot competition trophy from Law Society President Philip Joyce

trainee solicitor who had mishandled the tax affairs of his client. (They really should

make IT38s easier to use!)

Putting the participants through their paces were Mr

Justice Nicholas Kearns (Supreme Court), Mr Justice Joseph Finnegan (Supreme Court), Mr Justice Michael Peart (High Court), President of the Law Society Philip Joyce, Director General Ken Murphy and Director of Education TP Kennedy.

After a tense hour of rigorous questioning and heated debate, the judges retired to consider their verdict. On their return, they declared in favour of the appellants. Máire Barr was chosen as the best overall advocate. Reserved judgment from absentee judge, Stuart Gilhooly, is expected any day soon. **G**

books



Principles of Irish Torts

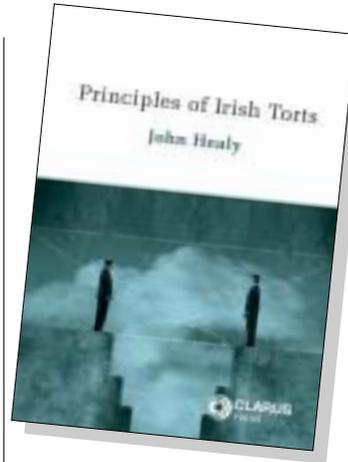
John Healy. Clarus Press (2006), Griffith Campus, South Circular Road, Dublin 8. ISBN: 1-90553-606-2. Price: €75.

Regular readers may recall that the last time I reviewed a book in this publication (*Gazette*, October 2006, p49), I attracted the ire of the book's author after some mild criticism. It may seem self-evident, but book reviews should not slavishly follow what appears now to be the accepted practice of extolling only the virtues of the book without any reasoned criticism of its shortcomings. I make no apologies for telling readers the truth before they spend their hard-earned shilling.

All of which means that if a book does tick all the boxes, the review is at least worth the paper it's written on. And this is such a book. The publisher very fairly indicates that this is primarily a student textbook and that would seem to be its overwhelming aim. However, it

would be foolish to assume that practitioners would have no use for it. In fact, I think the opposite applies, and many litigation solicitors could learn a lot by dipping in and out of this extensive coverage of the extremely wide subject of torts.

John Healy is a practising barrister and a lecturer who, I know, specialises in the area of tort law. What we, as busy practitioners, tend to forget is that nearly every personal injury, defamation, professional negligence, nuisance, trespass to the person or trespass to land action arises out the commission of a tort. Perhaps we feel that we don't need to know what creates a cause of action, happy enough to leave that to our colleagues at the Bar. Well, that's not good enough. Before advising any client and embarking on an expensive



course of action, a solicitor should be sufficiently well-versed to know the likely outcome of that course of action without having to rely on a barrister to set them right.

What John Healy sets out to do is briefly examine the very first principles and history of tort law and then provide a chapter-by-chapter analysis of each different element arising

under this complex, but always interesting, aspect of legal practice. While negligence features heavily, as it must do, such diverse subjects as defamation, the much less-heralded economic tort, and trespass to the person are examined in depth. As ever, I sought out my favourite subject, and the author was not found wanting in his handling of the *PLAB Act 2003* and the *Civil Liability and Courts Act 2004*.

All in all, this book will not change your practice or your life but it is very good value at €75 and I guarantee that you will learn something. And not just that you are glad you have passed your tort exam! **G**

Stuart Gilbooly is a partner in the Dublin law firm HJ Ward & Co and chairman of the Gazette Editorial Board.

Competition Law

Anna-Louise Hinds. Thomson Round Hall (2006), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-446-2. Price: €49 (paperback).

Two factors spring to mind upon being invited to review this book. First, many readers may not know that the dearth of textbooks in Ireland between the 1930s and 1960s was considered to be such a serious hindrance to legal practitioners that the government designated the Law Reporting Council of Ireland as the body in the 1940s to remedy the matter. Several books were published by the Law Reporting Council, but there remained a dearth of legal textbooks. Now we have a cornucopia.

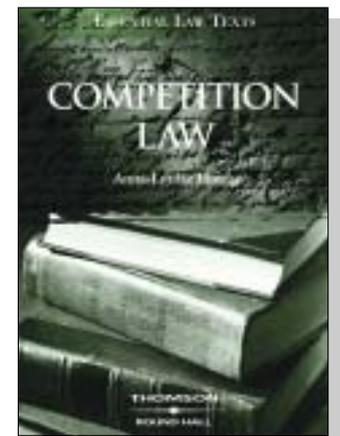
The second factor is that the cornucopia of textbooks now comes at a price. Authors are not willing to provide their services (as in the past) for no return, and publishers are not charities. So the prices for textbooks may amount to €300-400 each.

Anna-Louise Hinds's book on competition law is an exception. First, it is fairly priced at €49, but then it does not purport to be an exhaustive monograph. On the subject of competition law, I remember one of the most senior members of the Bar stating, probably around 25

years ago, that he knew nothing about European Union law. He said it almost in a boastful manner. Today, he would be in serious trouble.

We all know the significance of competition law in the context of the European Community. Many readers will be aware of the decentralisation process whereby national competition bodies and courts share the enforcement of the *EC Treaty's* competition law provisions.

The stated objective of this book is to provide a concise but comprehensive overview of the



existing law on competition in the EC and Irish jurisdictions. The book covers the fundamental provisions of competition law and the *EC Treaty*, dealing, among other things, with article 81 EC (prohibiting agreements

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restrictive of competition) and article 82 EC (prohibiting an abuse of a dominant position). The equivalent provisions of the Irish *Competition Act 2002* (sections 4 and 5) are also examined in some detail.

The titles of the chapters indicate the specific issues

addressed in the book: article 81 EC (restrictive agreements and practices), article 82 EC (prohibition on abuse of a dominant position), EC merger control, state aid and competition law, public undertakings, exclusive rights and state monopolies in EC

competition law, enforcement of EC competition law, overview of Irish competition law, and further chapters on Irish law that mirror the provisions of articles 81 and 82. There are also chapters on Irish merger control law and enforcement of competition law in Ireland.

This book is a timely and welcome synthesis of competition law, a worthy addition to the Essential Law Texts service published by Thomson Round Hall. **G**

Dr Eamonn G Hall is the chief solicitor of Eircom.

Reflections on Law and History

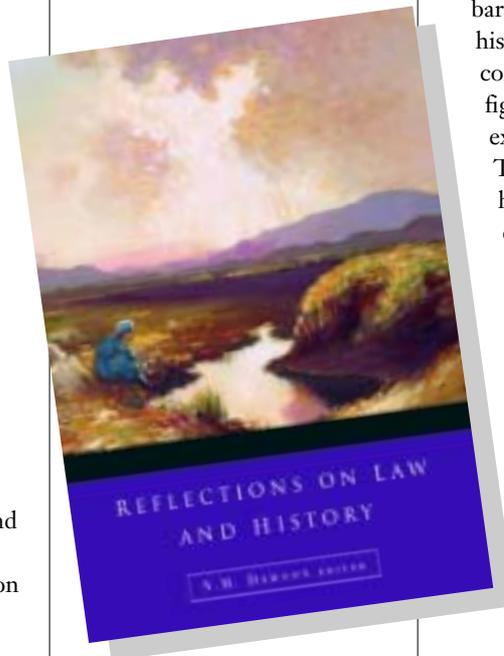
Norma M Dawson (ed). Four Courts Press (2006), 7 Malpas Street, Dublin 8. ISBN: 1-85182-937-7. Price: €55.

This is the latest volume of collected discourses to be published by the Irish Legal History Society (ILHS) since its inauguration in 1988. This volume comprises 14 papers, ten of which were first read at ILHS meetings and the other four, on the theme of criminal justice, were submitted for publication by the ILHS.

The contributors to this volume are a distinguished group, comprising either historians or lawyers (or both), who address a varied range of topics. The names likely to be most familiar to *Gazette* readers are former Chief Justice Ronan Keane, Frank Callanan SC and W Neil Osborough (emeritus professor of jurisprudence and legal history at UCD).

Justice Keane's contribution concerns the origins of the constitutional requirement (found in both article 26.2.2 and article 34.4.5) that there be one judgment only delivered on the question of the validity of a law having regard to the provisions of the Constitution. The paper critically examines the rationale for that rule – that it enhances the authority of the decision and leads to greater certainty – which is not found particularly convincing by the author in his conclusion that “the negative consequences of the rule – the suppression of dissenting views and the unfortunate consequences that

flow from seeking to accommodate diverse opinions in a single judgment – are obvious”. Such a critique from such an eminent jurist who was a High Court judge (1979-96) and a Supreme



Court judge (1996-04, including as chief justice, 2000-04) is insightful for a number of reasons and perhaps of particular interest to disciples of the realist school of jurisprudence.

Frank Callanan's paper is entitled 'TM Healy: the politics of advocacy'. Having written the most recent seminal biography of Healy (1996), the author is clearly in his element this more brief look at the man as a barrister but always an essentially political animal. In

setting the scene, the paper begins with a 1910 quote (from the *Leader*) of Francis (an older chip off the same block as our very much still with us Conor) Cruise O'Brien that Healy “had the mind, nay the soul, of a barrister. Special pleading is his religion.” Always a controversial historical figure, this paper is an excellent introduction to TM Healy in all facets of his personality and character.

Prof Osborough's paper is also a personality piece about the quest for the missing last will of Christopher Wandesford, who finished his political and legal career assuming the office of Lord Deputy of Ireland in the months before his death in 1640. Prof Osborough has been a particular stalwart in the founding of the ILHS and the sustaining of the quality of its output. This contribution is illustrative of that quality. Wandesford would not be well known to anyone but the specialist historian, but Prof Osborough's paper takes one right into 17th century Ireland through the medium of this story of one man and his lost last testament, thus offering us a very readable ‘snapshot’ of the wider history of that period.

The same personality ‘snapshot’ of the 17th century is offered in Dr James McGuire's paper, ‘A lawyer in politics: the career of Sir Richard Nagle, c1636/99’.

Professor (now emeritus) Desmond Greer of QUB, another stalwart of the ILHS, contributes a paper relating to the enforcement of the ‘truck acts’ in Co Donegal at the very end of the 19th century – these (so called) ‘truck’ laws prohibiting workers/ outworkers/homeworkers being paid in kind rather than in cash. The specific case of *Rose Squire v Sweeney & Sons of Burtonpoint and Dungloe* and the pressures on the prosecutor to abandon the criminal proceedings is particularly notable.

This volume of *Reflections* is, like its predecessors, great value for any lawyer interested in a relaxing and brief escape into our legal history. Each contribution can be comfortably read at one sitting and in its aftermath the reader is rewarded with the warm glow of having been immersed in true scholarship that was at the same time entertaining. The consistently high standard of the text and footnotes is clearly attributable to the editor, Prof Norma Dawson (QUB), who is also currently a vice-president of the ILHS. **G**

Michael V O'Mabony is a former member of the Gazette Editorial Board.

BRIEFING

practice notes



MONEY-LAUNDERING REPORTING BY THE LAW SOCIETY: NOTICE TO ALL PRACTISING SOLICITORS

1. What is the Law Society's money-laundering reporting obligation?

Where the Law Society suspects that an offence under section 31 (see paragraph 3(a) below) or section 32 (see paragraph 3(b) below) of the *Criminal Justice Act 1994* or an offence of financing terrorism has been or is being committed by a solicitor, the Law Society is obliged by law to report that suspicion to the Garda Síochána and the Revenue Commissioners.¹ Section 32 applies to a practising solicitor when acting in connection with certain categories of transactions, generally those relating to property, business entities, financial assets, securities, companies and trusts.² In a situation where section 32 does not apply to a solicitor, the obligation on the Law Society to report in respect of a suspected offence under section 32 does not apply. Whether or not section 32 applies to a solicitor has no bearing on the obligation of the Law Society to report in respect of a suspected offence under section 31 or a suspected offence of financing terrorism: in relation to these offences, the obligation to report applies regardless of the nature of the work in which the solicitor is involved.

2. What constitutes suspicion for the purpose of the money-laundering reporting obligation?

There is no definition of 'suspicion' in the legislation. The suspicion is not required to be a reasonable one. Suspicion requires a lesser factual basis than belief, but it must have some factual

foundation. Whether or not there was a factual foundation for a suspicion would be tested at the time when the suspicion was formed. It would not be tested retrospectively with the benefit of hindsight. Suspicion does not have to have a basis in admissible evidence. It can legitimately take into account matters that should be excluded in the trial of a case in court. There are no financial thresholds specified and the obligation to report applies regardless of the amounts involved.

3. What offences does the money-laundering reporting obligation cover?

- a) An offence under section 31 is the offence of money laundering. In the context of the Law Society's reporting obligation, the offence of money laundering requires that the solicitor knew or believed or was reckless as to whether the property in question represented the proceeds of criminal conduct.
- b) Again, in the context of the Law Society's reporting obligation, an offence under section 32 is:
 - i) The contravention by the solicitor of section 32, which deals with measures to be taken by practising solicitors to prevent money laundering and the offence of financing terrorism (namely, identification measures, identification evidence retention, and establishment of internal procedures, instructions and training); or
 - ii) The provision of false or

misleading information by the solicitor for the purposes of sections 32(3) to (5) when required to do so under section 32. Sections 32(3) to (5) are concerned with the taking of measures to establish the identity of persons for whom certain persons and bodies, generally financial institutions and professional advisers concerned with financial, land and business services, propose to provide specific services, principally services relating to finance, land and business.

The offence of financing terrorism is provided for under section 13 of the *Criminal Justice (Terrorist Offences) Act 2005*. In the context of the Law Society's reporting obligation, the offence of financing terrorism involves the solicitor unlawfully and wilfully providing, collecting or recovering funds, intending them to be used, or knowing that they will be used, in whole or in part to carry out specified terrorism-related activities.

4. What types of activities might give rise to a money-laundering report by the Law Society?

In practice, any suspected criminal activity involving identifiable proceeds of criminal conduct, including tax evasion and mortgage fraud, on the part of a solicitor might give rise to a money-laundering report by the Law Society. A money-laundering report might also be required in relation to a suspected breach of the provisions of section 32 relat-

ing to solicitors' anti-money-laundering obligations.

5. What are the Law Society's responsibilities in discharging the money-laundering reporting obligation?

The obligation of the Law Society is to make a money-laundering report where it is suspected that a relevant offence has been or is being committed by a **solicitor**. In this context, it is only offences that may have been committed by solicitors with which the Law Society is required to be concerned. The Law Society's obligation does not apply to offences that may have been committed by clients of solicitors.

The Law Society is under no obligation to investigate solicitors for the purposes of money-laundering reporting or with a view to uncovering suspicious activities.

Where the Law Society discloses in good faith information in the course of making a money-laundering report, the disclosure shall not involve the Law Society in liability of any kind.³

Where a money-laundering report has been made by the Law Society, a person who, knowing or suspecting that such a report has been made, makes any disclosure that is likely to prejudice an investigation arising from the report into whether an offence under section 31 or section 32 or an offence of financing terrorism has been committed shall be guilty of an offence.⁴ This offence of prejudicing an investigation is often referred to as 'tipping-off'. The existence of this offence means that the Law Society must

ensure a high standard of confidentiality in administering its reporting procedures.

6. What is the role of the Law Society's Money-Laundering Reporting Committee?

The Law Society has a Money-Laundering Reporting Committee, which carries out the functions generally vested in the money-laundering reporting officer in other organisations with money-laundering reporting obligations. The money-laundering reporting obligations of the Law Society have been delegated to this committee with a duty to report to the

Council of the Law Society (on a 'no-names basis') on the performance of such obligations. The Money-Laundering Reporting Committee is a stand-alone committee with the sole function of making money-laundering reports.

7. How does the Law Society meet the money-laundering reporting obligation in practice?

The Law Society has an internal procedure whereby suspicion that a money-laundering offence or an offence of financing terrorism has been or is being committed by a solicitor requires the submission

of an internal money-laundering report in prescribed form to the Registrar of Solicitors. This report is then submitted to the Money-Laundering Reporting Committee, which decides in each case whether or not a money-laundering report should be made to the Garda Síochána and the Revenue Commissioners. In practice, as might be expected, any suspicion is most likely to arise during an accounts inspection or when dealing with a complaint about a solicitor.

Footnotes

1 Section 57(2) of the *Criminal*

Justice Act 1994. In this practice note, a report made pursuant to the Law Society's obligation under section 57(2) is referred to as a 'money-laundering report'.

2 Regulation 3 of, and paragraph 2 of the schedule to, the *Criminal Justice Act (Section 32) Regulations 2003*.

3 Section 57(7) of the *Criminal Justice Act 1994*.

4 Section 58(2) of the *Criminal Justice Act 1994*.

John Elliot,
Registrar of Solicitors and
Director of Regulation

CORRECTIVE AFFIDAVITS: REVENUE COMMISSIONERS' POLICY

The Probate, Administration and Trusts Committee is aware that, in a growing number of cases, the Revenue Commissioners are refusing to accept corrective affidavits (Form CA26).

The committee would like to remind practitioners that the policy of the Revenue Commission-

ers, which is being enforced, is to seek evidence of **material errors or omissions** in the original affidavit discovered subsequent to the lodgment of that affidavit. Only where the Revenue Commissioners Affidavits Section is "satisfied on the basis of documentary evidence etc"

that such material errors or omissions have taken place will the corrective affidavit be accepted.

Therefore, when submitting a corrective affidavit (in duplicate), the solicitor should provide documentary evidence of such material error or omission with the affidavit.

Practitioners are referred to section 46 of the *Capital Acquisitions Tax Consolidation Act 2003* (as amended) in respect of their obligations in relation to lodgment of corrective affidavits.

Probate, Administration and
Trusts Committee

FAMILY LAW CONSIDERATIONS IN RESPECT OF OPTION AGREEMENTS

An option to purchase land passes an equitable interest in the property to the prospective purchaser (Wylie and Woods, *Irish Conveyancing Law*, paragraph 8.04). Accordingly, it would seem clear that an option comes within the definition of 'conveyance' in the *Family Home Protection Act 1976*, being a "conveyance" of an "interest" (defined in the act as

including equitable interests) or, alternatively, "an enforceable agreement (whether conditional or unconditional) to make any such conveyance".

If a spouse does not consent to an option for the sale of a family home and, following the exercise of the option, refuses to consent to the subsequent contract for sale, the option will be of no value

to the prospective purchaser.

It would also appear that an option would fall within the definition of a 'disposition' (being any disposition howsoever made, other than a disposition made by a will or codicil) within the meaning of section 37 of the *Family Law (Divorce) Act 1996* and section 35 of the *Family Law Act 1995*, and therefore liable to be

held to be a 'reviewable disposition' within the meaning of those two sections.

Accordingly, it would appear that a spouse's consent and the usual supporting statutory declaration should be sought whenever any person who is married enters into an option to sell any interest in land.

Conveyancing Committee

INVITATION FOR SUBMISSIONS: Working Group on a Court of Appeal

The Government has established a Working Group under the chairmanship of the Honourable Mrs. Justice Susan Denham, Judge of the Supreme Court, to:

- review and consider the necessity for a general Court of Appeal for the purposes of processing certain categories of appeals from the High Court
- address and consider such legal changes

as are necessary for the purposes of establishing such a Court of Appeal, and (c) make such other recommendations as are appropriate for the purposes of ensuring greater efficiencies in the practice and procedures of the Superior Courts.

The Group now invites written submissions from any interested person, organisation or

group in relation to the matters set out above. Submissions should be confined to these matters.

The deadline for receipt of submissions is **Thursday, 12th April 2007**.

All submissions received will be subject to the provisions of the Freedom of Information Act, 1997, as amended.

Submissions in writing can be forwarded to: **Ms. Helen Priestley, Working Group on a Court of Appeal, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7. Tel: (01) 8886462** Or emailed to: CourtOfAppealWG@courts.ie

GUIDE TO CONDUCT – INTERNATIONAL PRACTICE

Many solicitors are now involved in international practice to some extent. The Law Society publication, *A Guide to Professional Conduct of Solicitors in Ireland* (2nd edition), deals with the matter of conduct in international practice.

This section has recently been reviewed and updated with the assistance of the members of the EU and International Affairs Committee. This is published below for the assistance of solicitors.

11.1 Relevance for all lawyers

Proper professional conduct is relevant not only in national practice but also in international practice. Solicitors in this jurisdiction have contact through their practices with lawyers in other jurisdictions. Proper conduct in these situations has been outlined in codes adopted by the International Bar Association and by CCBE, the association of bars and law societies of Europe.

The International Bar Association's *International Code of Ethics*, the most recent edition of which dates from 1988, provides a basic code of ethics to guide lawyers when undertaking professional work outside their home jurisdictions and when providing services to or requesting services from lawyers in other jurisdictions.

The current code of the CCBE, *The Code of Conduct for European Lawyers*, was adopted in 1999 and is recognised as the expression of consensus of all the bars and law societies of the EU and the EEA on the rules that apply to lawyers from the EU and the EEA in carrying on cross-border practices, including in respect of: (i) all professional contacts with lawyers

of member states other than the lawyer's own, and (ii) the professional activities of the lawyer in a member state other than his or her own, whether or not the lawyer is physically present in that member state.

Both codes have as their basis the principles of good conduct common to all lawyers.¹

11.2 Relations between lawyers

A solicitor should recognise all other lawyers as professional colleagues and act fairly and courteously towards them.

11.3 Complaints against lawyers in another jurisdiction

A solicitor should not commence any form of proceedings against any solicitor/lawyer in another jurisdiction concerning a matter of professional conduct without first informing the bar or law society to which the other lawyer belongs, for the purpose of allowing that body an opportunity to assist in reaching a settlement of the matter. However, if a settlement is not reached within a reasonable period, the solicitor may institute such proceedings as he deems necessary. This recommendation is subject to the client's position not being prejudiced by this procedure.²

11.4 Foreign agents' fees

A solicitor who instructs a lawyer outside the jurisdiction is **personally liable** to pay all fees reasonably and properly incurred by that lawyer **unless there has been an express agreement that the solicitor is not to be made personally liable**. The alternative is for the solicitor to advise the client to employ a foreign lawyer directly and to give assistance to the client in locating a lawyer.³

11.5 EU Directive on Services

The EU *Directive on Services* covers a situation where a lawyer with an office established in one member state (the home state) provides legal services in another (the host state) on an occasional or temporary basis without actually establishing an office there.

When engaged in activities relating to the representation of a client in legal proceedings or before public authorities, the lawyer is subject to the rules of professional conduct of the host state. In pursuing other activities, however, the lawyer is subject to the rules of professional conduct of the home state, but without prejudice to respect for the rules of the host state. The latter's rules are applicable only if they are capable of being observed by the lawyer and the extent to which their observance is "objectively justified to ensure, in the state, the proper exercise of a lawyer's activity, the standing of the profession and respect for the rules concerning incompatibility".⁴

11.6 EU Directive on Establishment

In December 1998, the EU adopted a directive, referred to as the *Establishment Directive*, which aims to facilitate a lawyer from one member state practising on a permanent basis in another member state.

The directive deals with the matter of rules of professional conduct. It provides that a lawyer practising under his home state professional title in a host state shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the host state in respect of all

the activities the lawyer pursues in its territory.

Footnotes

- 1 *International Code of Ethics*, International Bar Association, 1988. See appendix 3. *Code of Conduct for European Lawyers*, CCBE, 1999. This code of conduct was originally adopted in the CCBE plenary session held on 28 October 1988, and subsequently amended during the CCBE plenary sessions on 28 November 1998, 6 December 2002 and 19 May 2006. See appendix 2.
- 2 *Code of Conduct for Lawyers in the European Community*, CCBE, 1999, clause 5.9. See appendix 2.
- 3 *Code of Conduct for Lawyers in the European Community*, CCBE, 1999, clause 5.7. See appendix 2. *International Code of Ethics*, International Bar Association, 1988, rule 19. See appendix 3. 'Foreign Agents Fees 50,000 – You Pay', Practice Note, *Gazette*, April/May 1996.
- 4 Council Directive No 77/249 (EEC). SI No 58 of 1979. *European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979*. SI No 197 of 1981. *European Communities (Freedom to Provide Services) (Lawyers) (Amendment) Regulations 1981*. SI No 226 of 1986. *European Communities (Freedom to Provide Services) (Lawyers) (Amendment) Regulations 1986*.
- 5 EU *Directive on Establishment* (98/EC), article 6(1) and article 7.

Guidance and Ethics Committee

P. LARKIN

ATHLEAGUE, ROSCOMMON
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ENVIRONMENTAL & AGRICULTURAL CONSULTANTS

- LEGAL SUPPORT SERVICES
 - LICENSED AUCTIONEERS & VALUERS
- PERSONAL ATTENTION ASSURED



ADVERTISING SPECIALISMS: NOTICE TO ALL SOLICITORS

Subsection 71(2)(d) of the *Solicitors Act 1954* provides that a solicitor shall not publish or cause to be published an advertisement that contains an express or implied assertion that the solicitor has specialist knowledge in any area of law or practice which is superior to that of other solicitors.¹

Regulation 4(a)(iv) of the *Solicitors (Advertising) Regulations 2002* similarly provides that an advertisement intended to publicise or otherwise promote a solicitor in relation to the solicitor's practice shall be in such a form as shall not contain an express or implied assertion by a solicitor that he has specialist knowledge in any area of law or practice superior to other solicitors.

Both subsection 71(2)(d) and regulation 4(a)(iv) make reference to regulations under subsection 71(8) of the *Solicitors Act 1954* regarding the designation of solicitors as having specialist knowledge. No such regulations have been made.

Solicitors should note that an advertisement that contains an express or implied assertion that the solicitor has specialist knowledge in any area of law or practice will not be regarded as

contravening these provisions provided that:

- 1) Such assertion does not include any assertion that such specialist knowledge is **superior to that of other solicitors**, and
- 2) None of the other mandatory requirements relating to advertisements provided for by subsections 71(2) to (10) of the *Solicitors Act 1954* and the *Solicitors (Advertising) Regulations 2002* is breached and, in particular, that the prohibition on advertisements which are false or misleading in any respect is not breached.²

The attention of solicitors is particularly drawn to the fact that the permitting of specialist advertising in no way dilutes the restrictions on personal injury advertising.³

Attention is also drawn to regulation 11(b) of the *Solicitors (Advertising) Regulations 2002*, which, in summary, provides that where an advertisement includes factual information on the legal services provided by a solicitor or on any areas of law to which those services relate (such as, by way of examples

only, 'company law', 'family law', 'personal injuries', 'property law'), the words descriptive of any particular category of legal services or any particular area of law to which any such category of legal services relates shall not be given prominence (whether by way of appearance, size, context or location) over the words descriptive of any other category or categories of legal services or over the name and address of the solicitor contained in the advertisement.

If any information comes to the attention of the Society regarding an advertisement alleged or appearing to make a false or misleading claim for a solicitor of specialist knowledge in any area of law or practice, or to claim specialist knowledge superior to other solicitors, or to breach any other mandatory requirements relating to advertisements, where appropriate, the matter will be investigated by the Society and, where appropriate, following investigation, regulatory or disciplinary action may be taken, which may include the issue of a reprimand or referral to the Solicitors Disciplinary Tribunal.

In summary, a solicitor may publish advertisements claim-

ing specialist knowledge in any area of law or practice provided that:

- 1) False or misleading claims of specialist knowledge are not made, and
- 2) Specialist knowledge **superior to other solicitors** is not claimed, and
- 3) All other mandatory requirements relating to advertisements, including the restrictions on personal injury advertising, are complied with.

Footnotes

- 1 All references to subsections of section 71 of the *Solicitors Act 1954* are to those subsections as substituted by section 4 of the *Solicitors (Amendment) Act 2002*.
- 2 As provided for by subsection 7(2)(e) of the *Solicitors Act 1954* and regulation 4(a)(v) of the *Solicitors (Advertising) Regulations 2002*.
- 3 As provided for by subsections 71(2)(h) and (i) of the *Solicitors Act 1954* and regulations 4(viii) and (ix) of the *Solicitors (Advertising) Regulations 2002*.

John Elliot,
Registrar of Solicitors and
Director of Regulation

CALCUTTA RUN 2007

Saturday 26th May
Fun run/walk at Blackhall Place

Hope the training is going well! Sponsorship cards are available from www.calcuttarun.com or from your firm's representative. Remember, our target is €250k so your target is €150 or more. This will go a long way towards helping homeless children in Calcutta and Dublin.

PHOTO: CIAN REDMOND



Here is the third four weeks' brisk walk/jog programme

WEEK 9, 9 APRIL

1. Walk 20 min, jog 5-7 min, walk 10 min
2. Walk 20 min, jog 5-7 min, walk 15 min
3. Walk 25 min, jog 7 min, walk 15 min

WEEK 10, 16 APRIL

1. Jog 5 min, walk 25 min, jog 5 min
2. Jog 5 min, walk 25 min, jog 7 min
3. Walk 20 min, jog 10 min, walk 10 min

WEEK 11, 23 APRIL

1. Walk 30 min, jog 10 min
2. Jog 10 min, walk 30 min, jog 5-7 min
3. Jog 10 min, walk 30 min, jog 5-7 min

WEEK 12, 30 APRIL

1. Jog 10 min, walk 30 min, jog 10 min
2. Walk 60 min
3. Walk 30 min, jog 10-12 min, walk 10 min

Always make sure you are warmed up before you jog!

For more information, contact your firm's Calcutta Run representative or visit www.calcuttarun.com

PRACTICE DIRECTION

PRACTICE DIRECTION OF THE CHIEF JUSTICE: APPEALS AND CASES STATED

1. The appeal process

a) The appellant or other party having carriage of proceedings before the Supreme Court is under an obligation to ensure that all steps in the proceedings before the court are taken within a reasonable time or the time prescribed by any rule or practice direction. A respondent or other party is under a similar obligation in relation to steps to be taken in the proceedings by him or her. Any party who is affected by a delay by another party in taking steps in proceedings before the court should, if the delay cannot be resolved by agreement between the parties, make such application to the court as may be necessary within a reasonable time.

b) Failure to comply with a practice direction of the court may affect the issue of costs.

c) If, for any reason, due to settlement between the parties or otherwise, an appeal is not being proceeded with, the appellant should promptly inform the office of the Supreme Court.

2. Notice of appeal

a) Where an extension of time is required for the late service or lodgment of a notice of appeal, the consent of the intended respondent to such extension should first be sought. Consent should not be withheld where there are no significant grounds for doing so.

b) The grounds of appeal should be set out clearly and succinctly. Unnecessary repetition or the inclusion of alternative versions of the same point of appeal should be avoided.

3. Books of appeal

a) All documents in the books of appeal must be legible and complete. Care should be taken to ensure that pages are not partially or entirely omitted in the course of copying.

b) Only documents relevant to the appeal should be included.

c) Exhibits adduced in evidence at the trial, for example, medical reports, maps and photographs, must also be included in the books of appeal.

d) Exhibits relevant to the appeal referred to in affidavits should be indexed by reference to content and not only by exhibit number or letter.

4. Documents index

a) In any case where more than ten documentary exhibits are lodged, the books of appeal must also be accompanied by a list (referred to in this direction as '**the documents index**') specifying precisely the exhibits to which it is intended to refer during the course of the oral submissions.

b) The documents index must identify the exhibits clearly – for example, 'letter from James O'Brien to Anne Murphy dated 10 January 2007' – and not solely by reference to exhibit numbers and letters.

c) These exhibits must be lodged in a separate book with the other books of appeal.

5. Transcript index

a) In accordance with long-standing practice, a transcript of legal argument is not required or necessary (except and only insofar as there is a specific issue as to what took place at the hearing).

b) In any case where more than one volume of transcript of evidence is lodged with the appeal, the appellant must lodge a document (referred to in this practice direction as '**the transcript index**') indicating precisely the volumes of transcript and pages thereof to which it is intended to refer during the course of the oral submissions.

c) The transcript index must be lodged not later than **four weeks** before the hearing date.

6. The certificate of readiness

a) As soon as all necessary papers have been lodged, a certifi-

cate of readiness will be issued by the office to the appellant. The certificate must be returned promptly to the office and not later than **three weeks** after issue.

b) The solicitors for the appellant or party having carriage of a case stated shall not sign the certificate of readiness in relation to the books of appeal unless, where it is required, the documents index is annexed to the certificate.

7. Submissions

a) When a date for the hearing of an appeal or case stated is allocated, unless alternative directions are given on foot of a specific application to the court by any of the parties in that regard, written submissions must be lodged in the office of the Supreme Court by the appellant or party having carriage of a case stated not later than **four weeks** before the hearing date.

b) The respondents' submissions are to be lodged within **one week** thereafter.

c) In addition to written submissions being lodged in the office of the Supreme Court, electronic copies should be transmitted to the court at the following email address: supremecourtsubs@courts.ie. The subject of the email should contain the name of the case.

d) Submissions should be served on all other parties to the appeal and transmitted prior to or on the date of lodgment of the submissions in the office.

e) Parties who are not professionally represented are not required to provide written submissions but may do so if they wish, by serving and lodging submissions in written form.

8. Books of authorities

a) An agreed book containing any authorities taking the form of citations from the Constitution, statutes, statutory instruments, treaties, directives and regulations of the European Union, internation-

al conventions, decided cases or extracts from text books or learned journals, intended to be relied upon by either party during the course of the oral arguments (referred to in this direction as '**the book of authorities**') must be lodged by the appellant or party having carriage of a case stated as soon as possible after the receipt by him of the written submissions of the respondent.

b) Authorities should, as far as practicable, be from the official reports or official websites of the court concerned, including those of the Court of Justice of the European Communities.

c) It is not necessary to lodge copies of authorities in support of well-established principles of law that are not in dispute between the parties (for example, those relating to the presumption of the constitutionality of an act of the Oireachtas). Authorities should be limited to those on which counsel intend to rely or refer to in the course of submissions, written or oral.

d) Where it has not been possible for the appellant or party having carriage of the case stated to agree the contents of the book of authorities with the other party or parties, a certificate to that effect must be annexed to the book of authorities.

9. For mention date

The appeal or case stated will be listed for mention on the Thursday of the penultimate week before the date fixed for hearing for the purpose of confirming that the written submissions, book of authorities and, where applicable, transcript index and documents index, have been lodged as required by this direction.

This practice direction replaces the direction dated 23 April 2002 and will take effect from 12 March 2007.

*John L Murray, Chief Justice,
28 February 2007*

legislation update



18 January – 20 March 2007

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – 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

Citizens Information Act 2007

Number: 2/2007

Contents note: Amends the *Comhairle Act 2000* in order to extend its functions to the provision, among other things, of a personal advocacy service specifically aimed at people with disabilities. Changes the name of Comhairle so that it shall be known, in the English language, as the Citizens Information Board or, in the Irish language, as An Bord um Fhaisnéis do Shaoránaigh.

Date enacted: 21/2/2007

Commencement date: 21/2/2007 for section 3 (change of name of board from Comhairle to Citizens Information Board); commencement order(s) to be made for all other sections (per s10(3) of the act)

Courts and Court Officers (Amendment) Act 2007

Number: 4/2007

Contents note: Amends the *Courts and Court Officers Act 1995*, as amended, to provide for an increase in the number of judges of the High Court, the Circuit Court and the District Court.

Date enacted: 5/3/2007

Commencement date: 5/3/2007

Criminal Law (Sexual Offences) (Amendment) Act 2007

Number: 6/2007

Contents note: Amends the *Criminal Law (Sexual Offences) Act 1993* by the substitution of a new section for section 6 (inserted by section 250 of the *Children Act 2001*) to provide that a person who solicits or importunes a child (whether or not for the purposes of prostitution) for the purposes of the commission of an act that would constitute an offence (a) under sections 2 and 3 of the *Criminal Law (Sexual Offences) Act 2006* or (b) referred to in section 2 of the *Criminal Law (Rape) (Amendment) Act 1990* shall be guilty of an offence. The new section 6 also provides that a person who solicits or importunes a person who is mentally impaired (whether or not for the purposes of prostitution) for the purposes of the commission of an act that would constitute an offence (a) under section 5 of the *Criminal Law (Sexual Offences) Act 1993* or (b) under section 2 of the *Criminal Law (Rape) (Amendment) Act 1990* shall be guilty of an offence, and provides for related matters. Amends the *Child Trafficking and Pornography Act 1998* to provide for the offence of meeting a child or travelling to meet a child for the purpose of doing anything that would constitute the sexual exploitation of the child.

Date enacted: 7/3/2007

Commencement date: 7/3/2007

Electricity Regulation (Amendment) (Single Electricity Market) Act 2007

Number: 5/2007

Contents note: Amends the *Electricity Regulation Act 1999*

to provide for the establishment and operation of a single competitive wholesale electricity market on the island of Ireland and its islands, and provides for related matters.

Dated enacted: 5/3/2007

Commencement date: Commencement order(s) to be made (per s1(2) of the act)

Health Insurance (Amendment) Act 2007

Number: 3/2007

Contents note: Amends the *Health Insurance Act 1994* (as amended by the *Health Insurance (Amendment) Act 2001*) to repeal the three-year exemption from risk equalisation for new entrants to the health insurance market and to confirm that a risk equalisation scheme shall apply to registered undertakings and to such undertakings that have ceased to be registered undertakings.

Date enacted: 22/2/2007

Commencement date: 22/2/2007

Health (Nursing Homes) (Amendment) Act 2007

Number: 1/2007

Contents note: Provides a statutory framework, in primary legislation, for the Nursing Home Subvention Scheme, which was introduced in 1993 on foot of the *Health (Nursing Homes) Act 1990* and the *Nursing Homes (Subvention) Regulations 1993* (SI 227/1993). Amends the *Health (Nursing Homes) Act 1990* and consequentially repeals section 3 of the *Health (Miscellaneous Provisions) Act 2001*, amends schedule 7 to the *Health Act 2004* and revokes the *Nursing Homes (Subvention) Regulations 1993* (SI 227/1993).

Date enacted: 19/2/2007

Commencement date: 19/2/2007 for section 10; commencement order(s) to be made for all other sections (ss1-9, 11) (per s11(3) of the act)

National Oil Reserves Agency Act 2007

Number: 7/2007

Contents note: Establishes the National Oil Reserves Agency (NORA) plc on a statutory basis, under the aegis of the Minister for Communications, Marine and Natural Resources, with responsibility for the maintenance of strategic supplies of oil in line with the state's oil-stockholding obligations to the EU and the International Energy Agency, and provides for related matters.

Date enacted: 13/3/2007

Commencement date: Commencement order(s) to be made (per s1(2) of the act)

SELECTED STATUTORY INSTRUMENTS

Children Act 2001 (Commencement) Order 2007

Number: SI 64/2007

Contents note: Appoints 1/3/2007 as the commencement date for all sections of the act not already in operation, other than sections 7(1)(a), 10(2), 13(2), 16, insofar as it relates to the insertion of section 23D of the *Childcare Act 1991*, and 77.

Companies (Auditing and Accounting) Act 2003 (Commencement) Order 2007

Number: SI 61/2007

Contents note: Appoints 1/3/2007 as the commencement date for section 37(a), (b), (c)

and (e) of the *Companies (Auditing and Accounting) Act 2003*. Section 37 amends section 194 ('Duty of auditors if proper books of account not being kept') of the *Companies Act 1990* in relation to the requirements at section 194(5) for auditors to furnish further information and provide access to books and to documents to the Director of Corporate Enforcement.

Criminal Evidence Act 1992 (Section 13) (Commencement) Order 2007

Number: SI 52/2007

Contents note: Appoints 12/2/2007 as the date on which a provision of the *Criminal Evidence Act 1992*, which allows a witness to give evidence through a live television link in cases involving physical or sexual abuse, comes into operation for the District Court sitting in District no 8 and for the Circuit Court sitting in the South Eastern Circuit.

Criminal Justice Act 2006 (Commencement) Order 2007

Number: SI 25/2007

Contents note: Appoints 1/2/2007 as the commencement date for part 14 (ss167-175, 'Criminal law codification advisory committee') of the *Criminal Justice Act 2006*.

Criminal Justice Act 2006 (Commencement) (No 2) Order 2007

Number: SI 65/2007

Contents note: Appoints 20/2/2007 as the commencement date for section 148 of the *Criminal Justice Act 2006*, insofar as it relates to the insertion of subsections (1) and (9) of section 159B of the *Children Act 2001*. Appoints 1/3/2007 as the commencement date for part 12 (ss120-158, 'Amendment of *Children Act 2001*') and part 13 (ss159-166, 'Anti-social behaviour by children') of the *Criminal Justice Act 2006*, inso-

far as these parts are not already in operation, other than section 132, insofar as it relates to the insertion of section 76A(1)(c) of the *Children Act 2001*, and section 144.

Criminal Justice (Legal Aid) (Amendment) Regulations 2007

Number: SI 41/2007

Contents note: Provide for an increase in fees payable under the Legal Aid Scheme to solicitors for attendance in the District Court and for appeals to the Circuit Court, and for an increase to solicitors and barristers in respect of essential visits to prisons and other custodial centres (other than garda stations) and for certain bail applications, as follows: 3% with effect from 1/12/2006,

2% with effect from 1/6/2007, 2.5% with effect from 1/3/2008 and 2.5% with effect from 1/9/2008.

European Communities (Amendment) Act 2006 (Commencement) Order 2007

Number: SI 38/2007

Contents note: Appoints 30/1/2007 as the commencement date for the act.

European Communities (Amendment) Act 2006 (Commencement) Regulations 2007

Number: SI 39/2007

Contents note: Provide that the *European Communities (Amendment) Act 2006* shall be deemed to have been in operation between 1/1/2007 and 29/1/2007.

European Communities (Award of Contracts by Utility Undertakings) Regulations 2007

Number: SI 50/2007

Contents note: Implement directive 2004/17, as amended by directive 2005/51, governing the procedures for awarding works, supplies and services contracts by contracting entities operating in the water, energy, transport and postal services sectors and the standard notices to be used by these contracting entities when publishing notices in the *Official Journal* of the EU.

Commencement date: 3/3/2007, the day after the date on which the publication of this SI was notified in *Iris Oifigiúil* (per regulation 1(2) of the regulations)

European Communities (Companies) (Amendment) Regulations 2007

Number: SI 49/2007

Contents note: Give further effect to directive 2003/58/EC amending directive 68/151/EEC (*First Company Law Directive*). Provide for the certification of electronic copies of company documents and particulars obtained from the Companies Registration Office. Provide for the voluntary filing of certified translations of company documents filed obligatorily in Irish or English. Extend existing information disclosure requirements concerning letters and order forms to such communications in electronic form and to company websites.

European Communities (European Public Limited-Liability Company) Regulations 2007

Number: SI 21/2007

Contents note: These regulations, together with SI 22/2007, give full effect to regulation (EC) 2157/2001 on the statute for a European company (SE). The text of regulation

District Court (Bench Warrants) Rules 2007

Number: SI 73/2007

Contents note: Substitute a new form 22.2 (bench warrant on foot of a summons) in the *District Court Rules 1997* (SI 93/1997) to provide a recital that it is being issued in respect of a date other than the return date, where applicable.

Commencement date: 22/3/2007

District Court (Mental Health) Rules 2007

Number: SI 97/2007

Contents note: Insert a new order 84A, 'Mental Health Act 2001', in the *District Court Rules 1997* (SI 93/1997) to provide procedures and forms for applications under section 25 ('Involuntary admission of children') of the *Mental Health Act 2001*.

Commencement date: 2/4/2007

District Court (Mental Health Appeals) Rules 2007

Number: SI 19/2007

Contents note: Amend order 100 of the *District Court Rules 1997* (SI 93/1997) by the insertion of a new rule 6, 'Appeals under the *Mental Health Act 2001*', to provide procedures and forms for an appeal by a registered proprietor of an approved centre against a decision by the Mental Health Commission under section 65(1) of the *Mental Health Act 2001*.

Commencement date: 21/2/2007

District Court (Small Claims) Rules 2007

Number: SI 82/2007

Contents note: Substitute a new order 53A of the *District Court Rules 1997* (SI 93/1997) to facilitate maintaining records electronically rather than by manual small claims register.

Commencement date: 27/3/2007

2157/2001 is published as a schedule to the regulations.

Commencement date: 22/1/2007

European Communities (European Public Limited-Liability Company) (Forms) Regulations 2007

Number: SI 22/2007

Contents note: These regulations, together with SI 21/2007, give full effect to regulation (EC) 2157/2001 on the statute for a European company (SE).

Commencement date: 22/1/2007

European Communities (Markets in Financial Instruments) Regulations 2007

Number: SI 60/2007

Contents note: Give effect to directive 2004/39 on markets in financial instruments, as amended by directive 2006/31 as regards certain deadlines, and to directive 2006/73 as regards organisational requirements and operating conditions for investment firms and defined terms for directive 2004/39.

Commencement date: 1/11/2007

Finance Act 2006 (Commencement of Section 36) Order 2007

Number: SI 20/2007

Contents note: Appoints 23/1/2007 as the commencement date for section 36 of the *Finance Act 2006*, which provides for the introduction of a scheme of capital allowances for expenditure incurred on the construction and refurbishment of qualifying mental health centres on broadly the same terms and conditions as already apply in the case of the relief for qualifying private hospitals.

Fluoridation of Water Supplies Regulations 2007

Number: SI 42/2007

Contents note: Provide for the fluoridation of public water supplies by sanitary authorities on behalf of the Health Service Executive. Revoke all previous fluoridation of water supplies regulations.

Commencement date: 1/7/2007

Garda Síochána Act 2005 (Commencement) (Section 8) Order 2007

Number: SI 16/2007

Contents note: Appoints 1/2/2007 as the commencement date for section 8 of the *Garda Síochána Act 2005*. Section 8 provides a new statutory basis for the prosecution of offences by members of the Garda Síochána.

Hepatitis C Compensation Tribunal (Insurance Scheme for Relevant Claimants) Regulations 2007

Number: SI 31/2007

Contents note: Establish an insurance scheme to enable certain persons diagnosed positive for hepatitis C or HIV to be provided with certain classes of insurance that would otherwise be either unavailable to them or available only upon payment of a higher premium.

Commencement date: Date to be appointed under section 7 of the *Hepatitis C Compensation Tribunal Act 1997* (as amended by section 3 of the *Hepatitis C Compensation Tribunal (Amendment) Act 2006*) as the establishment day for the purposes of the relevant insurance scheme (per regulation 1(2) of the regulations).

Institutes of Technology Act 2006 (Commencement) Order 2007

Number: SI 36/2007

Contents note: Appoints 1/2/2007 as the commencement date for the act.

Investment Funds, Companies and Miscellaneous Provisions Act 2006 (Commencement) Order 2007

Number: SI 23/2007

Contents note: Appoints 29/1/2007 as the commence-

ment date for sections 11, 12, 16 to 22 and 24 to 34 of the act.

Non-life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007

Number: SI 74/2007

Contents note: Require insurers to give clients 15 working days notice in writing of a renewal of the policy and the terms of the renewal and a no-claims bonus certificate as a separate document in addition to the renewal notification.

Commencement date: 1/7/2007

Planning and Development Regulations 2007

Number: SI 83/2007

Contents note: Substitute a new class 2 in part 1 of schedule 2 of the *Planning and Development Regulations 2001* (SI 600/2001) to provide exemptions for micro-renewable technologies.

Commencement date: 28/2/2007

Road Traffic Act 2006 (Commencement) Order 2007

Number: SI 86/2007

Contents note: Appoints 5/3/2007 as the commencement date for sections 6, 7 and 18 of the act. **G**

Prepared by the Law Society Library

Solicitors Disciplinary Tribunal

This report of the outcome of a Solicitors Disciplinary Tribunal inquiry is published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of Daniel J Shields, a solicitor practising under the style and title of VP Shields & Sons Solicitors at Westbridge, Loughrea, Co Galway, and in the matter of the *Solicitors Acts 1954-2002*

[5713/DT473/04]
Law Society of Ireland (applicant)
Daniel J Shields (respondent solicitor)

On 16 January 2007, the Solicitors Disciplinary Trib-

unal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with his undertakings given to the complainant's solicitors on 1 and 3 June 1993 in a timely manner.

The tribunal ordered that the respondent solicitor:

- Stand admonished,
- Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement. **G**

Solicitors' Benevolent Association

143rd report and accounts

Year: 1 December 2005 to 30 November 2006

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.

The amount paid out during the year in grants was €442,626, which was collected from members' subscriptions, donations, legacies and investment income. Currently, there are 46 beneficiaries in receipt of regular grants and approxi-

mately one half of these are themselves supporting spouses and children.

There are 18 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices, 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 approving of 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 Michael G Irvine, past president of the Law Society of Ireland, Rory McShane, past president of the Law Society of Northern Ireland, Ken Murphy, director general, John Bailie, chief executive and 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,
- Donegal Bar Association,
- Limavady Solicitors' Association,
- Roscommon Bar Association,
- Tipperary and Offaly Bar Association,
- Faculty of Notaries Public in Ireland,
- Sheriffs' Association,
- Southern Law Association.

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. 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 at page 28 of the *Law Directory 2007*.

RECEIPTS AND PAYMENTS ACCOUNT YEAR ENDED 30 NOVEMBER 2006

	2006	2005
	€	€
RECEIPTS		
Subscriptions	310,371	288,372
Donations	24,299	38,957
Net investment income	65,288	65,800
Bank interest	3,441	2,362
Repayment of grants	—	28,420
Refund of dividend withholding tax	—	25,814
	403,399	449,725
PAYMENTS		
Grants	(442,626)	(421,414)
Bank interest and charges	(830)	(1,940)
Administration expenses	(28,315)	(24,327)
Currency loss	—	(140)
	(471,771)	(447,821)
(DEFICIT)/SURPLUS FOR THE YEAR BEFORE SPECIAL EVENTS	(68,372)	1,904
Royalties from NI <i>Land Registration Manual</i>	—	33,861
Lawyers Diaries and Christmas Cards	—	353
<i>Irish Conveyancing Precedents</i>	—	808
Other income	505	—
Currency gain	223	—
(DEFICIT)/SURPLUS FOR THE YEAR BEFORE LEGACIES	(67,644)	36,926
Legacies	753	1,000
(DEFICIT)/SURPLUS FOR THE YEAR	(66,891)	37,926

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First Trust, 31/35 High Street, Belfast BT1

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Law Society of Ireland, Blackhall Place, Dublin 7; Law Society of Northern Ireland, Law Society House, 90/106 Victoria Street, Belfast BT1 3JZ

Revenue charity no: CHY892

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

Thomas A Menton, Chairman



News from Ireland's online legal awareness service
Compiled by Flore Bouhey for FirstLaw

CRIMINAL LAW

Road traffic

Case stated – words and phrases – “exercising” or “having” control of vehicle – whether accused prejudiced by arresting garda not using exact form of words in section of act creating offence – whether District Court correct in dismissing charge against accused – Road Traffic Act 1961, section 49(1)(a).

The accused appeared before the District Court charged with driving under the influence of alcohol, contrary to section 49 of the *Road Traffic Act 1961*, as amended. In an appeal by way of case stated, the District Court judge sought the opinion of the High Court on the following question: “was I correct in dismissing the charge when the arresting garda had said that he had formed the opinion the accused was incapable of ‘exercising’ proper control of a mechanically propelled vehicle, rather than stating that he had formed the opinion that the accused was incapable of ‘having’ proper control of the vehicle, which is the exact wording used in section 49(1)(a) of the *Road Traffic Act 1961*”.

Mr Justice de Valera answered the case stated in the negative, holding that the difference in meaning between the use of the words ‘exercising’ and ‘having’ in the context of section 49(1)(a) of the 1961 act and in the context of the circumstances of the offence and the subsequent arrest was non-existent. It was impossible to put any construction on the use of the words other than that the driver was incapable by reason of the intoxicant of hav-

ing proper control of the vehicle. Where the use of slightly different wording from that of the section involved did not materially alter the section’s meaning, the accused was not prejudiced by the alteration and it was not a sufficient ground to dismiss the charge.

Director of Public Prosecutions (prosecutor) v Cronin (accused), High Court, Mr Justice de Valera, 13/11/2006, 2006 1343 SS [FL13319]

FAMILY LAW

Adoption

Constitution – personal rights – family rights – balancing of constitutional rights – child – welfare – consent – revocation – attachment of child to adoptive parents – whether failure in duty of natural parents – whether child in lawful custody of adoptive parents – Guardianship of Infants Act 1964 (No 7), section 14 – Constitution of Ireland, article 40.4.2.

The plaintiffs’ daughter was born in July 2004. In September 2004, they signed a consent form to her being adopted by the second defendants, which adoption was arranged by the first defendant. They revoked their consent to the adoption and sought her return some 18 months after the adoption. They instituted High Court proceedings seeking her production to them on the basis, among other things, that the constitutional presumption that the appropriate place for the upbringing and education of a child is within the family unit mandated her return to them. The High Court granted a conditional order for the production of the

child. The defendants resisted the application for the making absolute of the order on the basis, among other things, that the child had developed emotional attachment to the adoptive parents and that removing her from them would breach the child’s personal constitutional right to the preservation of her welfare.

Mr Justice MacMenamin refused to make the order for the production of the child to the plaintiffs absolute, holding that there was a failure of duty of the natural parents sufficient to rebut the constitutional presumption that the natural family was the best place for the child, by reason of the elapse of time in seeking to have their child restored to them, which allowed the child to develop emotional attachment and bonding to the adoptive parents such that the breaking of the bond of attachment at the child’s age could have long-term serious emotional and psychological consequences for her. The constitutional right of the child to the protection of her health and welfare should be vindicated. Those facts also amounted to compelling reasons why the child’s custody should not be altered under section 14 of the *Guardianship of Infants Act 1964*.

N and anor v The Health Service Executive (HSE) and anor and An Bord Uchtála, High Court, Mr Justice MacMenamin, 23/6/2006, 2006 No 181 SS [FL13368]

Right to marry

Whether section 3(2) of the Deceased Wife’s Sister’s Marriage Act 1907, which prohibits a man from marrying the

divorced wife of his brother, is inconsistent with the Constitution as now in force – Deceased Brother’s Widow’s Marriage Act 1921 – Family Law (Divorce) Act 1996.

The first-named plaintiff was previously married to the second-named plaintiff’s brother. However, following the separation of the first-named plaintiff and her husband, she commenced a relationship with the second-named plaintiff. The first-named plaintiff subsequently obtained a decree of divorce and the plaintiffs decided to get married. The plaintiffs instituted these proceedings after they learned that they were prohibited by law from marrying each other. The plaintiffs sought a declaration that section 3(2) of the 1907 act, as amended by section 1(2)(b) of the 1921 act, which prohibited the marriage of a man with a divorced wife of his brother or half-brother, was repugnant to the provisions of the *Constitution of Ireland*. The plaintiffs submitted that those provisions of law were not carried over by article 50 of the Constitution.

Laffoy J ruled in favour of the plaintiffs, holding that the plaintiffs established that the prohibition contained in section 3(2), which would render their marriage to each other during the lifetime of the first plaintiff’s former husband unlawful, constituted a restriction on their constitutional right to marry and, further, that that restriction was not justified as being necessary to support the constitutional protection of the family and the institution of marriage or the requirements of the common good.

Consequently, the impugned provision was inconsistent with the plaintiffs' right to marry under article 40.3.1 of the Constitution and they were entitled to a declaration to that effect.

***O'Shea and O'Shea (plaintiffs) v Ireland and the Attorney General (defendants)*, High Court, Ms Justice Laffoy, 17/10/2006, 2003 No 13349 P [FL13331]**

IMMIGRATION

Constitutional law – Irish-born child residency scheme – refusal of application for residency on basis that no evidence of continuous residence in state since birth of child – whether interest of Irish citizen child taken into consideration – whether interference with constitutional rights of citizen child – whether breach of right to private life – European Convention on Human Rights, articles 8 and 14 – European Convention on Human Rights Act 2003, section 3 – Bunreacht na hÉireann, articles 40.3 and 41.

The second and third applicants had applied for residency in the state under an administrative scheme established by the respondent (the IBC05 scheme) on the basis that they were the parents of the first applicant, who was born in the state prior to 2005 and was, accordingly, an Irish citizen. That application was refused on the basis of a failure to show that they had been continuously resident in the state since the birth of the child. They were granted leave to seek an order of *certiorari* quashing that

refusal, on the ground that it was in breach of the personal or fundamental rights, including the welfare, of the child under the Constitution and articles 8 and 14 of the *European Convention on Human Rights*.

Ms Justice Finlay Geoghegan granted the applicants the relief sought, holding that:

- 1) There was nothing in any of the documents relating to the IBC05 scheme that expressly or by implication stated that they did not apply to a person who was not continuously resident in the state with the child since the date of birth.
- 2) While the respondent retained a discretion to determine IBC05 applications, he was under a statutory obligation under section 3 of the 2003 act to determine them in a manner compatible with the state's obligations under the *European Convention on Human Rights* and was bound to act in a manner consistent with the state's guarantee to defend and vindicate, as far as practicable, the personal rights of the citizen child, including the right to live in the state and to be reared and educated with due regard for his welfare.
- 3) The respondent was in breach of the rights of the citizen child under article 40.3 of the Constitution, having committed himself to consider applications for permission to remain in the state based upon the parentage of a citizen child and to then refuse such an applica-

tion without any consideration of those rights.

- 4) A citizen child who had lived in the state since his birth had a private life in the state, in the sense of personal and social relationships that resulted from living in the state, which demanded respect from the respondent. Accordingly, the respondent's decision to refuse the application without considering the right to private life, in the sense of the constitutionally protected personal rights of the child, was an interference with its rights to respect for its private life within the meaning of article 8.1 of the *European Convention on Human Rights*.
- 5) In deciding whether there was good and sufficient reason in the interests of the common good to refuse the application, the respondent should ensure that his decision, in the particular circumstances of the citizen child and parent, was not disproportionate to the ends sought to be achieved.

Obiter dictum: the applicants' entitlements to fair procedures required that they be specifically written to by the respondent seeking documentation evidencing residency in the state and giving them an opportunity of producing it within a specified period of time.

***B (DO) v Minister for Justice, Equality and Law Reform*, High Court, Miss Justice Finlay Geoghegan, 14/11/2006, 2006 No 102 JR [FL13357]**

TORT

Personal injuries – road traffic accident – seatbelts – whether second defendant liable to contribute to first defendant's liability for failure to ensure that plaintiffs were wearing seatbelts – Road Traffic (Construction, Equip-

ment and Use of Vehicles) (Amendment) (No 3) Regulations 1991, SI 359/1991.

The three infant plaintiffs were seriously injured in a car crash. The first defendant accepted that the accident happened as a result of the negligence of the driver of her vehicle. The second defendant was the driver of the car in which the plaintiffs were travelling, and was joined to the proceedings by the first defendant on the basis that she was negligent in failing to ensure that the plaintiffs were wearing seatbelts. Two issues arose for consideration: firstly, the plaintiffs' contributory negligence and, secondly, the extent to which the second defendant should be held through her negligence to have contributed to the injuries by not ensuring that the seatbelts in the rear were being worn.

Peart J awarded the plaintiffs damages, holding that the plaintiffs could not be found guilty of contributory negligence in the particular circumstances of the accident. The necessary causative link between the breach of the duty of care owed by the second defendant to the plaintiffs and the injuries sustained by them was absent, and she could not be found liable to contribute to the first defendant's liability to the plaintiffs on foot of the notice of contribution/ indemnity.

McNeilis (plaintiff) v Armstrong (defendant)*, High Court, Mr Justice Peart, 31/7/2006, 2001 No 1910P, 2001 No 1893PP, 2001 No 19055P [FL13305] **G*

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

Recent developments in European law

EMPLOYMENT

Case C-484/04, *Commission v United Kingdom*, 7 September 2006. The *Working Time Directive* (93/104/EC) requires member states to take the measures necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period and, in each seven-day period, of a minimum uninterrupted rest period of 24 hours plus the 11 hours daily rest. In Britain, the directive was transposed by the 1998 *Working Time Regulations*. In order to help people understand the regulations, the Department of Trade and Industry published a set of guidelines. The guidelines set out that "employers must make sure that workers can take their rest, but are not required to make sure that they do take their rest". The commission took the view that the guidelines endorse and encourage a practice of non-compliance with the directive, and thus initiated proceedings before the ECJ. The court held that the purpose of the directive is to lay down minimum requirements to improve the living and working conditions of workers by ensuring that they are entitled to minimum rest periods. Those principles constitute important rules of EC social law from which every worker must benefit as a minimum requirement necessary to ensure protection of his safety and health. In order to ensure that the rights given to workers are fully effective, member

states are under an obligation to guarantee that the right to benefit from effective rest is observed. A member state that indicates that an employer is not required to ensure that workers actually exercise such rights does not guarantee compliance with either the directive's minimum requirements or its essential objective. In providing that employers must give workers the opportunity to take the minimum rest periods provided for, without obliging them to ensure that the periods are actually taken, the guidelines are liable to render the rights enshrined in the directive meaningless and are incompatible with its objective.

Case C-13/05, *Sonia Chacón Navas v Eurest Colectividades SA*, 11 July 2006. The applicant was employed by Eurest, a catering company. In October 2003, she was certified as unfit to work on grounds of sickness and could not return to work in the short term. In May 2004, she received written notice of her dismissal and an offer of compensation. She brought a legal action against Eurest. The Spanish court referred questions of the ECJ on the interpretation of directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. The directive lays down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation. The ECJ held that the framework laid

down by the directive for combating discrimination on the grounds of disability applies to dismissals. The directive does not define the term 'disability' and does not refer to national law for the definition of that concept. Thus, the concept must be given an autonomous and uniform interpretation. The concept of disability for the purpose of the directive must be understood as a limitation that results, in particular, from physical, mental or psychological impairments and that hinders the participation of the person concerned in professional life. By use of the term 'disability' in the directive, a term was deliberately chosen that differs from 'sickness'. The two concepts cannot therefore be simply treated as being the same. The importance attached to measures for adapting the workplace to the disability demonstrates that it envisages situations in which participation in professional life is hindered over a long period of time. In order for a limitation to fall within the concept of 'disability', it must be probable that it will last for a long time. There is nothing in the directive to suggest that workers are protected by the prohibition of discrimination on grounds of disability as soon as they develop any type of sickness. A person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down by the directive for combating discrimination on grounds of disability. The directive precludes

dismissal on grounds of disability that, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post. Finally, the court held that sickness cannot as such be regarded as a ground in addition to those in relation to which the directive prohibits discrimination.

FREE MOVEMENT OF PERSONS

Case C-406/04, *Gérald De Cuyper v Office national de l'emploi*, 18 July 2006. The applicant, a Belgian national, was granted unemployment allowances, having previously been employed in Belgium. In 1999, he produced a declaration in which he stated that he was living in Belgium. In 2000, inspectors from the Office National de l'Emploi (ONEM) investigated the accuracy of those declarations. Mr De Cuyper admitted that he had not lived in Belgium since January 1999, but was resident in France. On the basis of the investigation, he was refused unemployment allowances, as he no longer satisfied the requirement of actual residence prescribed under Belgian law. ONEM also demanded repayment of the allowances paid since January 1999. The applicant contested this. The ECJ held that the allowance was a social security benefit to which regulation 1408/71 applied.

This remains the case even if, under national law, the recipient is exempt from registering as a job-seeker and consequently from the requirements of being available for work. The fact that the unemployed person has obtained that exemption does not mean that he is exempt from the requirement to remain available to the employment services. Those services may wish to monitor his employment and family situation. The court then considered whether a member state can make such an allowance conditional on residence in its territory. Every citizen has the right to move and reside freely within the territory of the member states, but that right is not unconditional. It is conferred subject to the limitations and conditions laid down by the treaty and the measures adopted to give it effect. Regulation 1408/71 provides for only two situations in which a member state is required to allow recipients of an unemployment allowance to reside in another member state while retaining their entitlement to it – where the unemployed person goes to another member state looking for employment or where the unemployed person lived in another member state during this last job. Mr De Cuyper's position is not covered by either of these situations. National legislation that places at a disadvantage certain of its nationals because they have exercised their freedom to move and reside in another member state is a restriction on the freedoms conferred on every citizen of the EU. However, in this case, the residence clause reflects the need to monitor the employment and family situation of unemployed persons. ONEM inspectors may need to check whether the recipient of a benefit has undergone changes that may have an effect on the benefit granted. This justifica-

tion is thus based on objective considerations of public interest independent of the nationality of the persons concerned. The monitoring to be carried out, as far as concerns unemployment benefit, is of a specific nature that justifies the introduction of arrangements that are more restrictive than those for monitoring in respect of other benefits.

INTELLECTUAL PROPERTY

Case T-191/04, *MIP Metro Group Intellectual Property GmbH & Co KG v Office for Harmonisation in the Internal Market (OHIM)*, 13 September 2006. In 1998, the applicant applied to OHIM for registration of the sign 'METRO' as an EC trademark. Tesco Stores filed a notice of opposition on the basis on an earlier word mark whose term of protection expired on 27 July 2000. On 12 June 2000, OHIM informed Tesco that it had to submit a certificate of renewal of the earlier mark within four months. The deadline was extended and expired on 13 March 2003. Proof of renewal was not provided within that time limit. On 12 June 2003, OHIM rejected Tesco's opposition on the basis that it has not proved that its earlier right was still in force. Tesco appealed that decision to the OHIM Board of Appeal. The board set aside the earlier decision, finding that, on the date when the opposition was filed and even on the date evidence of renewal was requested, the earlier mark was still in force. Accordingly, Tesco did not have to prove renewal of its trademark. Metro brought an action against that decision before the CFI. It looked at the rules concerning grounds for refusal and opposition proceedings. The purpose of these rules is to make it possible to refuse registration of a new

mark that may conflict with an earlier one, as there is a likelihood of confusion between them. The court found that no conflict can arise between the mark applied for and an earlier mark that has expired during the opposition proceedings, given that the mark applied for may be registered only after the end of the opposition proceedings. There was no period during which both marks co-existed. The protection that the board of appeal recognised the earlier mark as having is not justified by the need to protect its function of identifying origin. In those circumstances, the CFI annulled the decision of the board of appeal.

SERVICES

Case C-452/04, *Fidium Finanz AG v Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)*, 3 October 2006. German legislation provides that any person intending to commercially engage in banking or to provide financial services in Germany has to obtain written authorisation from the BaFin. Such authorisation was refused to companies that did not have their central administration or a branch in Germany. The applicant is a company incorporated under Swiss law, with its registered office and its central administration in Switzerland. It gives credit to clients established abroad. Approximately 90% of the credit it grants is given to people resident in Germany. Credit is offered on a website run from Switzerland. Loans were granted without obtaining information about the clients from the German central credit-reporting agency. Fidium did not have the authorisation to carry on such activity in Germany. In 2003, the BaFin prohibited it from carrying on activities on a commercial basis that target customers established in Germany.

Fidium brought proceedings arguing that this decision restricts the free movement of capital. The German court made a reference to the ECJ, asking whether the activity of granting credit on a commercial basis is a provision of services or whether it falls within the free movement of capital. The two sets of treaty rules have a different scope. The freedom to provide services can be relied on only by EC citizens. The ECJ considered the relationship between the two freedoms. Fidium Finanz is established in a non-member state. Thus, it can only rely on the EC provisions governing the free movement of capital. The court held that the activity of granting credit on a commercial basis concerns, in principle, both the freedom to provide services and the free movement of capital. The German requirement of approval and the fact that it is impossible to get such approval if the company does not have its main administration or a branch in Germany impeded access to the German financial market for companies established in non-member states. Such rules affect primarily the freedom to provide services. A company established in a non-member state is not entitled to rely on that freedom. The German legislation may reduce cross-border financial traffic by making financial services offered by companies established in non-member states less accessible for German clients. However, this restriction is merely an unavoidable consequence of the restriction imposed as regards the provision of services. In those circumstances, it is not necessary to examine the compatibility of those rules with the provisions of the treaty governing the free movement of capital. A company such as Fidium Finanz is not entitled to rely on the fundamental freedoms of the treaty. **G**

LOST LAND CERTIFICATES

Registration of Deeds and Title Acts 1964 and 2006

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

Property Registration Authority,
Chancery Street, Dublin 7
(Published 6 April 2007)

Regd owner: Charles Ryan; folio: 4017F; lands: Crowsgrange and barony of St Mullins Upper; **Co Carlow**

Regd owner: Charles Ryan; folio: 1824F; lands: Crowsgrange and barony of St Mullins Upper; **Co Carlow**

Regd owner: Francis Connolly, Cohaw, Cootehill, Co Cavan; folio: 2628F; lands: Cohaw, Pottlereagh; **Co Cavan**

Regd owner: Patrick McHugh, Adrerra, Bawnboy, Co Cavan; folio: 20525; lands: Tirmawannagh; **Co Cavan**

Regd owner: Michael E O'Donoghue and Bridget T Donoghue, Rathardrum, Virginia, Co Cavan; folio: 112L; lands: Rathardrum; **Co Cavan**

Regd owner: Philip Oliver Tierney, Aghadreenagh, Cavan; folio: 7055; lands: Cargagh; **Co Cavan**

Regd owner: Joseph Lynch and Catherine Lynch; folio: 27633F; lands: townland of Kilcolumb and barony of Islands; area: 12.794 hectares; **Co Clare**

Regd owner: Anthony McMahon; folio: 8275F; lands: townland of Feighroe and barony of Islands; area: 0.9710 hectares; **Co Clare**

Regd owner: John Crowley; folio: 53090; lands: plot of ground situate in the townland of (1) Glanminnane, (2) Laharan, in the barony of Duhallow and in the county of Cork; **Co Cork**

Regd owner: Denis Sullivan (deceased) and Mary Sullivan; folio: 59324; lands: plot of ground situate in the townland of Gorteunard in the barony of Duhallow and in the county of Cork; **Co Cork**

Regd owner: Carmel Treacy and Mary Treacy; folio: 32749; lands: plot of ground situate in the townland of Corbally in the barony of Imokilly and in the county of Cork; **Co Cork**

Regd owner: Vera Brain; folio: 55088;

LAW SOCIETY Gazette

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- **Lost land certificates** – €132 (incl VAT at 21%)
- **Wills** – €132 (incl VAT at 21%)
- **Title deeds** – €132 per deed (incl VAT at 21%)
- **Employment/miscellaneous** – €132 (incl VAT at 21%)

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All notices must be paid for prior to publication. **CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND.** Deadline for *May Gazette*: 18 April 2007. For further information, contact Catherine Kearney or Valerie Farrell on tel: 01 672 4828 (fax: 01 672 4877)

lands: plot of ground situate in the townland of Coomkeen in the barony of Carbery West (west division) and in the county of Cork; **Co Cork**

Regd owner: John O'Connell; folio: 9676F and 14514F; lands: plot of ground situate in the townland of Hoddersfield in the barony of Kerrycurrihy and in the county of Cork; **Co Cork**

Regd owner: Arthur Friel, 41 Main Street, Dungloe, Co Donegal; folio: 34631; lands: Dunglow; **Co Donegal**

Regd owner: Bobby Donnelly; folio: DN72272L; lands: property being flat no 12 on the first floor of the building known as 'Cremorne', situate to the east of Greenmount Road in the parish of Rathfarnham and district of Rathmines; **Co Dublin**

Regd owner: Ellen Mary Murphy; folio: DN75760F; lands: property known as 8 Marley Walk, situate in the townland of Haroldsgrange and barony of Rathdown; **Co Dublin**

Regd owner: Declan and Grainne McKeever; folio: DN6068F; lands: property situate in the townland of Killakee and barony of Uppercross; **Co Dublin**

Regd owner: Annie Joan McManus; folio: DN74429L; lands: property known as no 117 South Circular Road, Kilmainham, situate in the parish of St Jude and South Central District; **Co Dublin**

Regd owner: Catherine Eivers; folio: DN31614F; lands: property situate in the townland of Hilltown and barony of Nethercross; **Co Dublin**

Regd owner: Eileen Mulligan and Brian Hyland; folio: DN134145F; lands: property known as 33 Hansfield, Castaheany, Navan Road, situate in the townland of Huntstown and barony of Castleknock; **Co Dublin**

Regd owner: Denis Madden and Marjorie Madden; folio: DN31080L; lands: property situate to the south of Rathbeale Road in the town of Swords in the townland

of Commons West and barony of Nethercross; **Co Dublin**

Regd owner: P & D Cutting Formes Limited (limited liability company); folio: DN72315F; lands: property situate in the townland of Kilnamanagh and barony of Uppercross; **Co Dublin**

Regd owner: Jody Walshe and Deirdre Walshe; folio: DN84606L; lands: property known as apartment 33, third floor, Maple, and car park space no 154, Herbert Park, land situate in the parish of Donnybrook and district of Pembroke; **Co Dublin**

Regd owner: Christopher Butterly; folio: DN5134; lands: property situate in the townland of Rush and barony of Balrothery East; **Co Dublin**

Regd owner: John Kent; folio: DN83139L; lands: property known as flat no 1, Cannon Mews East, Beggars Bush, situate in the parish of St Bartholomew and district of Pembroke; **Co Dublin**

Regd owner: Mary Conneely; folio: 73870F; lands: townland of Carrownlisheen and barony of Aran; **Co Galway**

Regd owner: Raymond Dolan and Claire Dolan; folio: 53385F; lands: townland of Gort and barony of Kiltartan; **Co Galway**

Regd owner: William Potter and Kathleen Potter; folio: 170F; lands: townland of Farmhill and barony of Tiaquin; **Co Galway**

Regd owner: Dymrna Mullarkey; folio: 58900F; lands: townland of Milltown (Dunmore By) and barony of Dunmore; **Co Galway**

Regd owner: Thomas Noble Fleming; folio: 30928F; lands: townland of Castletown (Tiaquin By), Derreen Lower and Ballyedmond and barony of Tiaquin and Ballymoe; **Co Galway**

Regd owner: Mary Ann Browne; folio: 18953; lands: townland of Dromin and barony of Iraghticonnor; **Co Kerry**

Regd owner: Thomas Comerford and Christine Comerford; folio: 10197F; lands: townland of Cloon Beg and barony of Trughanacmy; **Co Kerry**

Regd owner: James Cullen; folio: 9179; lands: townland of Hodgestown and barony of Clane; **Co Kildare**

Regd owner: John McEvoy and Linda McEvoy; folio: 10377F; lands: townland of Newtown and barony of Salt North; **Co Kildare**

Regd owner: Olive Taylor; folio: 5299; lands: townland of Crockanure Glebe and barony of Offaly East; **Co Kildare**

Regd owner: Thomas Keane; folio: 16185; lands: townland of Daars North and barony of Naas North; **Co Kildare**

Regd owner: Michael Bolger (Fairview Limited); folio: 17633; lands: Kildalton and barony of Iverk; **Co Kilkenny**

Regd owner: Michael Delaney; folio: 6636; lands: Gortnagap and barony of Crannagh; **Co Kilkenny**

Regd owner: Paul Murphy; 13431F; lands: Clogrenan and barony of Slievemargy; **Co Laois**

Regd owner: Timothy Oxley; folio: 15538; lands: Oldtown and barony of Clarmallagh; **Co Laois**

Regd owner: Mary Farrell; folio: 70L; lands: parish of St Nicholas and county borough of Limerick; **Co Limerick**

Regd owner: Michael Flynn and Hannah Flynn; folio: 15728F; lands: townland of Drombane and barony of Clanwilliam; **Co Limerick**

Regd owner: Denis Kiely; folio: 66L; lands: parish of St Munchins and county borough of Limerick; **Co Limerick**

Regd owner: Dermot Prendergast and Jackie Prendergast; folio: 49657F; lands: Sluggary and barony of Pubblebrien and county of Limerick; **Co Limerick**

Regd owner: Cornelius Rourke; folio: 5658; lands: townland of Abbeyfeale East and barony of Glenquin; **Co Limerick**

Regd owner: William Rowley; folio: 26064; lands: townland of Cummeen and barony of Coshma; **Co Limerick**

Regd owner: PJ O'Riordan; folio: 44934F; lands: Friarstown and barony of Clanwilliam; **Co Limerick**

Regd owner: PJ O'Riordan; folio: 6356; lands: Friarstown and barony of Clanwilliam; **Co Limerick**

Regd owner: Louise Regan and Francis Regan; folio: 37966; lands: townland of Corragooley and barony of Costello; area: 1.9526 hectares; **Co Mayo**

Regd owner: Thomas Fallon and John Fallon; folio: 4275; lands: townland of Mace Middle and Mace Upper and barony of Clanmorris; area: 4.3706 hectares and 4.3403 hectares; **Co Mayo**

Regd owner: Ann Bourke; folio: 50021; lands: townland of Knockshanbally and barony of Gallen; area: 0.5260 hectares; **Co Mayo**

Regd owner: Liam Scott; folio: 49586F; lands: townland of Laghtadawannagh and barony of Tirawley; area: 2.0234 hectares; **Co Mayo**

Regd owner: Seamus McCabe and Eileen McCabe, Lough Egish, Co Monaghan; folio: 176F; lands: Knocknmaddy; area: 0.2099 hectares; **Co Monaghan**

Regd owner: Mary Brigid Feehan (deceased); folio: 18286; lands: Derries, Ballina and barony of Ballycowan; **Co Offaly**

Regd owner: William Madden (deceased); folio: 11329; lands: Ballymacoolaghan and barony of Garrycastle; **Co Offaly**

Regd owner: Thomas Flanagan; folio: 16712; lands: Lurgan; area: 4.0645 hectares; **Co Roscommon**

Regd owner: Thomas Flanagan; folio: 12793; lands: Knockadrynan; area: 5.4730 hectares; **Co Roscommon**

Regd owner: Patrick Mearns; folio: 5044F; lands: townland of Corramore and barony of Athlone South; **Co Roscommon**

Regd owner: Joseph O'Connor; folios: 7795 and 7875; lands: townland of Knockately and barony of Corran; **Co Sligo**

Regd owner: John Bourke; folio: 16480; lands: townland of Lahardan Upper and Lahardan Lower and barony of Eliogarty; **Co Tipperary**

Regd owner: Matthew Kavanagh & Son Limited; folio: 13633F; lands: Bohercrowe, Co Tipperary; **Co Tipperary**

Regd owner: Stanley Mounsey; folio: 19460; lands: townland of Clashnevin and Knockahunna and barony of Upper Ormond; **Co Tipperary**

Regd owner: James Murray and Geraldine Murray; folio: 22881; lands: townland of Capparoo and barony of Ormond Upper; **Co Tipperary**

Regd owner: Michael Ryan; folio: 17600F; lands: townland of Glennariesk and barony of Kilnamanagh Upper; **Co Tipperary**

Regd owner: Michael Quinlan; folio: 12386; lands: plot of ground situate in the townland of Dysert in the barony of Decies-within-Drum in the county of Waterford; **Co Waterford**

Regd owner: John Joseph Larkin, Boyana, Moate, Co Westmeath; folio: 12773; lands: Boyanagh; **Co Westmeath**

Regd owner: Robert Mullins and Lynda Cawley, Mulliganstown, Delvin, Co Westmeath; folio: 20238F; lands: Mulliganstown; **Co Westmeath**

Regd owner: Nicholas Roche; folio: 20068F; lands: Shanowle and barony of Shelmaliere West; **Co Wexford**

Regd owner: John Timmons (deceased); folio: 889; lands: Tomacurry and barony of Scarawalsh; **Co Wexford**

Regd owner: Gordon Watkins and Pascal Watkins; folio: 6946; lands: townland of Cookstown and barony of Rathdown; **Co Wicklow**

WILLS

Campbell, John (deceased), late of 23 Kingsfurze, Naas, Co Kildare, who died on 5 March 2007. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Eoin O'Connor & Co, Solicitors, 16 South Main Street, Naas, Co Kildare; tel: 045 875 333, fax: 045 875 637, email: info@eoconnorsolicitors.ie

Donoghue, Mary (deceased), late of 21 Marrens Park, Ballymote, Co Sligo, who died on 7 October 2006. Would any person having knowledge of the whereabouts of any will made by Mary Donoghue please contact Damien Tansey & Associates, Solicitors, Law Chambers, 3 Wine Street, Sligo, Ireland; tel: 071 916 2032, fax: 071 916 9115

Doyle, James (deceased), late of Leagh, Sleaty, Carlow. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 9 January 2007, please contact Aisling O'Hanlon of William Fleming & Partners, Solicitors, Belmont House, Belmont, Kilkenny Road, Carlow; tel: 059 914 6620, fax: 059 914 6632

Ellis, Michael (deceased), late of O'Briens Bridge, Co Clare. Would any person having knowledge of a will executed by the above-named deceased, who died on 5 December 1999, please contact Dermot G O'Donovan & Partners, RiverPoint, Lower Mallow Street, Limerick; DX 30 11; tel: 061 314 788, fax: 061 310 441

Fenelon, James (deceased), late of Morett Emo, Portlaoise, Co Laois. Will any person having knowledge of a will made by the above-named deceased, who died on 22 May 2006, please contact Joseph Brophy & Co, Solicitors, Tullamore, Co Offaly; tel: 057 934 1957, fax: 057 934 1730, email: info@brophysolsr.ie

Grace, Michael (deceased), late of 5 Willbrook Lawn, Rathfarnham, Dublin 14. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 16 February 2006, please contact Patrick Hogan & Co, Solicitors, Dunlo Street, Ballinasloe, Co Galway; tel: 090 964 2110, fax: 090 964 2107

Hearn, Colm (deceased), late of 83 St Begnets Villas, Dalkey, Co Dublin. Would any person having any knowledge of a will made by the above-named deceased, who died on 15 December 2006, please contact Gerald Griffin, solicitor, St Paul's, North King Street, Dublin 7; tel: 01 617 4846, fax: 01 617 4898; email: geraldgriffin@eircom.net

Larkin, Elizabeth (also known as Betty or Lily) (deceased), widow, late of 3B Ashlawn, Loughrea, Co Galway and formerly of Skehanagh, Peterswell, Co Galway. Would any person having knowledge of a will made by the above-named deceased, who died on 22 January 2007, please contact Larkin Solicitors, The Square, Gort, Co Galway; tel: 091 631 022

McGrath, Michael (deceased), late of Hillcrest, Knockagarry, Mitchelstown, Co Cork. Would any person having knowledge of a will made by the above-named deceased, who died on 12 December 2006, please contact Healy Crowley & Co, Solicitors, 9 O'Rahilly Row, Fermoy, Co Cork; tel: 025 32066, email: info@healycrowleysolsr.com; ref: BF/M1442

McMahon, Susan (otherwise Nolan) (deceased), late of Dunheeda, Kingscourt, Co Meath. Would any person having knowledge of a will made by the above-named deceased, who died on 25 January 2007, please contact Dara Murtagh, FN Murtagh & Co, Solicitors, Kingscourt, Co Cavan; tel: 042 966 7503

McRedmond, Mary (deceased), late of Drominboy, Lisnagry, Co Limerick. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, who died on 8 September 2005, please contact Tynan Murphy Yelverton, 16 William Street, Limerick; tel: 061 415 888, fax: 061 415 253

Martin, Anne (otherwise Annie) (deceased), late of Main Street, Skerries Road, Rush, Co Dublin. Would

any person having knowledge of the whereabouts of a will made by the above-named deceased, who died on 19 January 2007, please contact Frances Cunneen, Dermot McNamara & Co, Solicitors, Main Street, Rush, Co Dublin; tel: 01 843 8766, email: frances@dermotmcnamara.ie

O'Meara, Patrick (deceased), aged 92 years, late of 42 Beresford Street, Dublin 7. Would any person having knowledge of a will made by Patrick O'Meara please contact Bowler Geraghty & Co, Solicitors, 2 Lower Ormond Quay, Dublin 1

Ryan, Barbara Mary (deceased), late of 2 Templeroan Green, Templeogue, Dublin 6W. Would any person having knowledge of a will made by the above-named deceased please contact Maura Corcoran of Hayes McGrath, Solicitors, 91 Lower Baggot Street, Dublin 2; tel: 01 662 0700, fax: 01 662 0750, email: mcorcoran@hayesmcgrath.ie

Synnott, Maeve (deceased), late of 19 Venetian Hall, Howth Road, Dublin 5 and formerly of 70 Dunluce Road, Clontarf, Dublin 3. Would any person having knowledge of a will made by the above-named deceased, who died on 10 February 2006, please contact BCM Hanby Wallace, Solicitors, 88 Harcourt Street, Dublin 2; tel: 01 418 6900, email: akenny@bcmhw.com

Tinnion, John (also known as Jack) (deceased), late of 50 St Declan's Road, Marino, Dublin 3. Would any person having knowledge of a will made by the above-named deceased, who died on 18 October 2006, please contact Corrigan & Corrigan, Solicitors, 3 St Andrew Street, Dublin 2; tel: 01 677 6108, email: info@corrigan.ie

Walsh, Mary, (deceased), late of Largaun, Balla, Co Mayo and St Edmondsbury Hospital, Lucan, Co Kildare. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died at Swinford in Co Mayo in March 2007, please contact Samantha Geraghty, solicitor of Messrs P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, fax: 094 925 1833, email: sgeraghty@poconsol.ie

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Seven-day publican's on-licence for sale. Contact: DP Barry & Co, Solicitors, The Diamond, Donegal Town, Co Donegal; tel: 074 972 1666, fax: 074 972 2707

Articles for sale: fireproof safes – four fireproof Chubb-type safes for sale – three and four drawer – in good condition. No longer needed due to refurbishment. Usual price €2,500/€3,000 each – will sell for circa €1,100 each. Contact either Mary or John during office hours – 052 21123/21966

TITLE DEEDS

Rossiter, Maureen (deceased), late of Ivy House, Esmonde Street, Gorey, Co Wexford. Would any person having knowledge of the original title documents relating to the above property please contact Doyles Solicitors, Westgate, Wexford (REF: JOH); tel: 053 912 3077, fax: 053 912 3071, email: johanlon@doylesolicitors.ie

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Carmel McCarthy and Mary Wilkinson of 'The Orchard', Dundalk Road, Carlingford, Co Louth

Take notice that any person having an interest in the freehold or any superior interest in the property known as: all that and those the property known as 181 Lower Kimmage Road, held under lease dated 26 August 1932 between John Ward of the one part and Bridget McAnaney of the other part for a term of 164 years from 1 September 1932, subject to a yearly rent of £20 and therein described as "the hereditaments and premises known as no 3 Donard Buildings, situate in the west side of Kimmage Road in the barony of Upper Cross and county of Dublin".

Take notice that the applicants, Carmel McCarthy and Mary Wilkinson, intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is 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 such notice being received, the applicants, Carmel McCarthy and Mary Wilkinson, intend to proceed with the application before the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are

unknown and unascertained.

Date: 6 April 2007

Signed: *Leman Solicitors (solicitors for the applicants), 10 Herbert Lane, Dublin 2*

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1994* and in the matter of the *Landlord and Tenant (Grounds Rents) (No 2) Act 1978*: an application by Alasdair Browne and Noreen Cleary-Browne

Take notice that Alasdair Browne and Noreen Cleary-Browne intend to submit an application to the county registrar for the county of Wicklow for the acquisition of the freehold interest and any intermediate interest in the following property: all that and those the property known as 1 Davitt Road, Bray, in the county of Wicklow.

Take notice that any person having an interest in the freehold estate of the aforesaid property and any party asserting 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 within 21 days from the date of this notice.

In default of any such notice being received, Alasdair Browne and Noreen Cleary-Browne 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 of



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e-mail: rberdaguer@berdaguerabogados.com
Web site: www.berdaguerabogados.com

Wicklow for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 6 April 2007

Signed: *Carrigan & Co (solicitors for the applicants), Thurles, Co Tipperary*

TD Fitzpatrick

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Email: trevorf@o2.ie

In the matter of *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by **Jeffrey Keith Clancy**

Premises at 8A Kelly's Row, Dublin 1 and part of the premises known as 22 Upper Gardiner Street, Dublin 1, held under an indenture of lease dated 27 September 1960 made between Eileen Mary Baker of the one part and Reginald Keith McDonald of the other part for a term of 900 years from 1 January 1960, subject to the yearly rent of one shilling and to the covenants on the lessee's part and conditions therein contained.

Take notice that the applicant intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and all, if any, intermediate interest in the premises herein described, and any person having an interest in the freehold estate or any intermediate interest or estate between the freehold and the leasehold interest held by the applicant in the property are hereby called upon to furnish evidence of their title to the solicitors for the applicant within 21 days from 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 all such directions as might be appropriate, whether pursuant to section 8 of the *Landlord and Tenant (Ground Rents) Act 1967* or otherwise, on the basis that the person or persons beneficially entitled to the superior interest or interests, including the freehold version of the property, are unknown or unascertained.

Date: 6 April 2007

Signed: Martin Moran & Co (solicitors for the applicant), 12 Stephen's Lane, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by **Brian Murphy and Garrett Peers**

Take notice that any person having interest in the freehold estate of the following property: 4 Leinster Square, Rathmines, Dublin 6, more particularly described in an indenture of lease dated 4 September 1928 between Godfrey Robert Wills Sandford and Howard Rundell Guinness of the first part, Amy Henrietta Wills-Sandford Wills of the second part, and Charles Joseph Priest, Frederick James Priest, Edward Percy Maybury Butler and Herbert Wood of the third part, for the term of 153 years from 25 March 1928, subject to the covenants on the lessee's part and conditions therein contained.

Take notice that Brian Murphy and

Garrett Peers intend to submit an application to the county registrar for the county/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 property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days of the date of this notice.

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

Date: 6 April 2007

Signed: Partners at Law (solicitors for the applicants), 8 Adelaide Street, Dun Laoghaire, Co Dublin

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

Take notice that any person having an interest in the freehold estate or any superior interest in the property known as: all that and those the premises and dwellinghouse erected thereon, situate, lying and being on the Bandon Road in the parish of St Finnbar and city of Cork, and commonly known as number 41 Bandon Road, Cork, being part of the hereditaments and premises comprised in and demised by an indenture of lease dated 16 December 1974 between Anne Callanan of the one part and Catherine Mary McMullen of the other part for a term of 90 years from 29 September 1974 (less the last three days thereof), subject to the yearly rent of £60 and to the covenants and conditions on the part of the lessee therein contained.

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

In default of any such notice being received, Darragh Tobin 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 Cork for directions as may be appropriate on the basis that the persons or persons beneficially entitled to the superior interests including the

freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 6 April 2007

Signed: John Henchion & Co (solicitors for the applicant), Waterloo Road, Blarney, Co Cork

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 **Marjorie Elizabeth Turner**

Take notice any person having an interest in the freehold estate or superior interest in the property known as 'Ard Lui', 49 Cowper Road, Rathmines, in the city of Dublin, held under indenture of sublease dated 3 October 1898 and made between William Beckett of the one part and Margaret C Richardson of the other part for the term of 150 years from 25 March 1891, subject to the annual rent of £10.

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

In default of any such notice being received, Marjorie Elizabeth Turner 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 the aforesaid property are unknown or unascertained.

Date: 6 April 2007

Signed: Rutherford's (solicitors for the applicant), 41 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by **Marjorie Elizabeth Turner**

Take notice that any person having an interest in the freehold estate or superior interest in lock-up garage number 2, to the rear of the property known as 'Kingston', Cowper Road, Rathmines, in the city of Dublin, held under indenture of lease dated 23 July 1891 and made between the Right Honourable Georgina Baroness Mount Temple of the one part and William Beckett of the other part for the term of 150 years from 25 March 1891, subject (with other property) to the annual rent of £58.

Take notice that Marjorie Elizabeth Turner Limited intends to submit an application to the county registrar for

the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the party below named within 21 days of the date of this notice.

In default of any such notice being received, Marjorie Elizabeth Turner 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 the aforesaid property are unknown or unascertained.

Date: 6 April 2007

Signed: Rutherford's (solicitors for the applicant), 41 Fitzwilliam Square, Dublin 2

In the matter of an application pursuant to the *Landlord and Tenant (Ground Rents) Acts 1967-2005* re: the premises known as **19/20 Chancery Street, Dublin 7, and in that matter of an application by **Chancery Inns Limited****

Take notice that any person having any interest in the freehold estate (or any intermediate interest) of the property known as 19/10 Chancery Street in the city of Dublin, formerly known as 19/20 Pill Lane in the city of Dublin, being premises demised by an indenture of lease made 26 March 1787 for the term of 999 years from 25 March 1787 at the annual rent of £25.17s.5d (hereinafter 'the lease').

And further take notice that Chancery Inns Limited intends to submit an application to the county registrar for the city of Dublin at Aras Uí Dhálaigh, Inns Quay, in the city of Dublin, for the acquisition of the fee simple and any intermediate interest in the aforesaid property and that any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the said property to the solicitors for the applicant within 21 days from the date of this notice.

In default of any such notice being received, Chancery Inns 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 city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown and/or unascertained.

Date: 6 April 2007

Signed: Smyth O'Brien Hegarty (solicitors for the applicant), 24 Lower Abbey Street, Dublin 1

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 Glenkerrin Homes

Take notice that any person having any interest in the freehold estate or any intermediate interest in property situate at the rear of number 12 Ardee Road, in the barony of Upper Cross and city of Dublin, more commonly known as Rowans Bakery, Williams Park, Rathmines, Dublin 6, being the hereditaments and premises comprised in and demised by a lease dated 14 June 1939 made between William James Fenn Wyatt of the one part and John M Smith of the other part for the term of 470 years from 14 June 1939, subject to the yearly rent of £10 thereby reserved and the covenants on the part of the lessee and the conditions therein contained.

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

In default of any such notice being received, Glenkerrin Homes 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 interests including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 6 April 2007

Signed: O'Donnell Sweeney Eversheds (solicitors for the applicants), One Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Myles and Anne O'Neill

Take notice any person having an interest in the freehold estate or any intermediary interest in the dwelling-house and premises in the town of Ferns in the barony of Scarawalsh in the county of Wexford, being part of the property demised by an indenture of lease dated 28 April 1919 and made between Marion Eleanor Jervish White of the one part and George Thomas Chapman of the other part for the term of 99 years, subject to the yearly rent of £24.2 shillings, but indemnified against £21.2 shillings thereof by the remainder of the premises the subject of the lease.

Take notice that Myles O'Neill and Anne O'Neill intend to submit an application to the county registrar for

the county of Wexford for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party ascertaining that they hold a superior interest in the aforesaid property are called upon to furnish evidence of tagging to the aforesaid property to the below named within 21 days of the date of this notice.

In default of any such notice being received, Myles O'Neill and Anne O'Neill intend to proceed with the application before the county registrar of the county of Wexford at the end of 21 days from the date of this notice and will apply to the county registrar of the county of Wexford for such orders or directions as may be appropriate on the basis that a person or persons beneficially entitled to this interest including the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 6 April 2007

Signed: M.J. O'Connor (solicitors for the applicants), Drinagh, Co Wexford

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: in the matter of the application of Martin Rafferty of 115 Cork Street in the city of Dublin

Take notice that any person having an interest in the freehold estate or an intermediate interest in all that and those the premises at 115 Cork Street in the city of Dublin, being portion of the premises comprised in an indenture of lease dated 20 January 1966 and made between Fry & Company Limited of the one part and John Deignan of the second part for a term of 114 years from 1 January 1966, subject to the payment of the annual rent of £20 and to the covenants and conditions therein contained.

Take notice that Martin Rafferty intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises 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, Martin Rafferty intends to proceed with the application before the county registrar for the 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 the aforesaid premises are unknown or unascertained.

Date: 6 April 2007

Signed: Joseph T Deane & Associates (solicitors for the applicant), St Andrew's House, 28/30 Exchequer Street, Dublin 2

NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE LAW SOCIETY GAZETTE

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

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

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Assistant solicitor required for partner of general practice in Galway City. Reply in confidence with covering letter and CV to Barry Gavin, WB Gavin & Co, 4 Devon Place, The Crescent, Galway; DX 4550

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Conveyancing/commercial solicitor required to join Galway city-centre practice, with a strong background and excellent knowledge of practices and procedures involved. Contact: Margaret Tansey; tel: 091 564 236, email: bsb@bsblake.com

Solicitor required for long-established Co Mayo practice. Dealing mainly with litigation, conveyancing and probate, the successful candidate will have excellent career possibilities with a competitive remuneration package. Applications with CV in confidence to Edward Fitzgerald & Son, Solicitors, Main Street, Ballinrobe, Co Mayo

Solicitor required for general/conveyancing practice: must be careful and

meticulous and computer-literate; good advancement prospects for right person. Apply to Geraldine Conaghan, MacBride Conaghan Solicitors, Moville, Co Donegal

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Solicitor's practice for sale. Well-managed, long-established general practice for sale. South Dublin suburbs. Principal retiring but willing to work part-time at outset if required. Large will cabinet, good turnover. Would suit a partnership, branch office or sole practitioner. Ref: ST/2091. Contact: Sonya Tighe, Moore Stephens Caplin Meehan, Chartered Accountants, Blackhall Green, Blackhall Place, Dublin 7; tel: 01 646 9000 or email: stighe@msscplmeehan.ie



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As a qualified tax professional operating within an accountancy or specialist tax practice, you will have a proven track record in delivering tailored tax solutions to challenging tax assignments. You must have excellent leadership skills and the confidence and ability to execute business development activities to drive the continued growth of this leading team. You will be managing a team of tax professionals and will play a pivotal role in ensuring the delivery of quality tax services to clients.

You must possess strong knowledge of all direct taxes as this role encompasses a range of challenging assignments including: property investment both in Ireland and abroad, development of land transactions, succession planning, disposing of family businesses, pension planning, trusts both in Ireland and offshore and stamp duty issues arising from company/group reconstructions.

It is expected that the successful candidates will have strong career advancement prospects. This is an excellent opportunity to work within a stimulating environment where your talents will be recognised and thirst for experience satisfied.

Manager

As a qualified solicitor, you will be a team player and demonstrate a strong desire to attain greater responsibility, increase your knowledge and deepen your expertise in all areas of tax.

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As the role develops, you will gain greater experience working on Capital Acquisitions Tax, Capital Gains Tax, Income Tax, Corporate Tax and other projects including onshore and offshore property transactions.

Forward your CV in the strictest confidence to: Ciara O'Toole, Recruitment Manager at: recruitment@ie.ey.com or for further information please visit ey.com/ie/careers

NEW OPPORTUNITIES FOR APRIL 2007

PRIVATE PRACTICE - FOCUS ON LITIGATION

Litigation Solicitor - Senior Associate to Partner Level

FP0221

Our client is a fast-expanding practice with a strong domestic client base. Dealing with high-quality corporate/commercial and commercial property transactions, the firm has an outstanding opportunity for a senior litigation solicitor to lead up and develop its litigation practice.

Litigation Solicitor - Associate

FP0223

Our client is one of Dublin's leading law firms with a reputation for excellence. An opportunity has arisen in the litigation department for an excellent solicitor. This is a great chance to work in a collegial environment with high quality work.

Litigation Solicitor - Assistant to Associate

FP0212

This prestigious Dublin-based law firm is seeking a commercial litigation practitioner. You will be acting for individuals and corporate clients, dealing with interesting and challenging workload. This represents an exceptional career opportunity for the successful candidate.

Litigation Solicitor - Assistant

FP0211

This top 5 firm is seeking a solicitor to join the Litigation Department. You will be dealing with a high quality caseload, primarily Dispute Resolution and ADR. You will also handle some Insurance and general Commercial Litigation cases.

IN-HOUSE

Legal Counsel - Insurance/Assurance, Dublin

IH-INE0021

Our client is a major player in the general insurance and life assurance market in Ireland. You will be a solicitor or barrister with experience of company commercial, banking and/or financial services law within the Irish domestic market and a practical understanding of the Life Assurance and Pensions business.

Head of Legal - International Financial Services Company, Dublin

IH-INE0023

This international financial services company seeks an experienced solicitor or barrister to lead up the legal function in Ireland. Prior experience in funds would be desirable but not essential. You will be expected to achieve commercial objectives and be responsible for risk management.

Legal Counsel - Semi-State Body, Dublin

IH-INE0025

An exciting opportunity has arisen for an excellent lawyer to provide legal support across a range of activities (including Project Development and Operations) as well as advising on employment law and related regulatory issues. The successful candidate will be a solicitor or barrister with expertise in the areas of commercial law, construction law, projects or a related area.

Legal Counsel - Telecommunications, Dublin

IH-INE0026

Our client, one of the main players in the global telecommunications arena, seeks a highly experienced solicitor to provide practical and commercial legal advice and assistance to the business. Experience in the resolution of business issues and the drafting and negotiating of complex commercial contracts is essential. IT/IP/Telecoms experience, either in-house or on secondment will be a distinct advantage.

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Email: sarahk@thepanel.com, denise@thepanel.com



THE Legal PANEL

PRIVATE PRACTICE

Newly Qualified Banking Lawyer

Ref: DA 13588 to €60,000

Top 5 legal practice requires a banking lawyer to work in one of the largest banking and financial services departments in Ireland. This is a great opportunity to develop specialist knowledge in the area and responsibilities include advising on all regulatory issues, dealing with all securitisation and structured finance legal queries and provision of legal corporate banking services. Ideally they are looking for a newly qualified solid with banking or financial services experience. A professional attitude and good communication skills are required. As a leading firm, there will be a very competitive remuneration package and the role would suit a high-calibre candidate who is driven and keen to progress.

Newly Qualified Corporate/Commercial Lawyer

Ref: DA 16682 to €55,000

One of the top 20 firms, with strong corporate/commercial fields and experts in dealing with domestic and international clients, require a lawyer to join their expanding team. The successful candidate will be required to work on high profile and complex cases, M&A's, private equity and venture capital transactions. They will also deal with joint ventures and provide general advice to high level clients. On the commercial side they will be required to draft licensing agreements, contracts and all relevant policies and procedures. Ideally they require a strong individual with excellent communication skills who has trained in this area. There is a great opportunity to develop in this area and work in a leading firm with great team support. An excellent remuneration package will be on offer to the successful candidate.

Newly Qualified Tax Lawyer

Ref: DA 19798 to €60,000

A Newly Qualified Tax Lawyer is sought for a top 5 legal practice. As a leading firm and experts in this area, this is a great opportunity to gain specialist knowledge and work with a high level client base. The role involves provision of legal and tax advice regarding corporate transactions, ranging from domestic company acquisitions and MBOs to complex cross-border mergers and asset financings, assisting in tax matters in M&A, corporate investments, capital markets, Stamp Duty and Tax. The successful applicant will have good tax experience and ideally experience in international transactions and private equity.

Newly Qualified Funds Lawyer

Ref: DA J19799 to €65,000

A leading investment firm with a large in-house legal team currently requires a Funds Lawyer to work in their central Dublin offices. This is a responsible position dealing with a range of international blue chip firms providing legal advice regarding all regulatory and licensing agreements and commercial arrangements, international legal regulations and relevant products and securities legislation. Ideally candidates will be qualified as a solicitor or barrister and have had some exposure to the area of funds. This firm has an excellent reputation, a high profile legal department and offers unsurpassable experience for the right candidate.

Construction Lawyer

Ref: SK J19602

€60,000 - €80,000

One of Dublin's most respected firms is currently recruiting a Construction Lawyer. The position is in the Commercial Property Department. You will have a strong commercial property background with experience in some or all of the following: construction law issues, drafting bespoke construction contract documentation, drafting amendments to standard forms and negotiating and completing agreements.

Litigation Solicitor x 2 (1 x Commercial, 1 x Healthcare)

Ref: SK J19603

€negotiable

One of Ireland's leading full service law firms whose clients include multinationals, owner managed businesses, government and public bodies are looking to recruit 2 experienced Litigation Lawyers in the Commercial and Healthcare departments. Both roles report to the department heads and require candidates who are actively looking to join a progressive and professional organisation.

Commercial Property

Ref: SK J20230 to €90,000

Our client is a mid tier firm with high profile clients. Roles will include high end commercial developments and dealing with developers. The ideal candidate will have a strong commercial property background. Applicants should have excellent interpersonal skills and the ability to work on their own initiative.

Head of Legal & Compliance - Asset Management

Ref: SK J20536

€100k - €120k + benefits

Our client, one of Europe's leading Financial Services organisations, is looking to recruit a qualified lawyer to head up their legal and compliance departments. You will have relevant experience ideally from the banking/financial services sector. This is a stand alone role that requires the candidate to assume overall responsibility for all issues relating to IFSRA, including managing the relationship between the company and the regulator both in Ireland and mainland Europe. You will also act as internal legal counsel for all other corporate matters and report to the Managing Director. Exposure to CLO transactions a distinct advantage. This is a fantastic opportunity to join this growing organisation and to work closely with the board of directors.

Legal Counsel (Commercial) - Leasing

Ref: SK J19643

€75,000 - €90,000 + benefits

Our client, an international leasing company, is keen to recruit for the position of Legal Counsel for the commercial side of their business. You will assume responsibility for the Legal and Company Secretarial functions, manage all corporate legal aspects of Group restructurings and post-acquisition integration and provide advice to the members of the various boards of directors. You will be an experienced qualified Solicitor or Barrister, with strong company secretarial experience. This will suit a candidate who is keen to take on a challenging role within a fast paced and dynamic organisation.

In House Counsel - Blue Chip Plc

Ref: SK J20137

Our client is a leading telecommunications organisation based in Dublin. As a qualified Barrister or Solicitor your role will involve but not be limited to advising on contractual, corporate, commercial, e-commerce, consumer and product liability issues. Drafting, negotiating and reviewing a wide range of contracts, drafting terms and conditions for new products and services. You will be an experienced lawyer coming either directly from the Commercial Department in a Private Practice or you will have good industry experience. This is an excellent opportunity for candidates wishing to pursue a career within a blue chip organisation.

Projects Lawyer - Energy Sector

Ref: SK J20391

€negotiable

One of the Ireland's most respected employers are currently recruiting for a Project Lawyer to join their legal team. Reporting to the Head of Legal, you will have gained experience in the areas of construction contracts, acquisitions and disposals, finance and corporate finance. In addition, you will service existing managerial demand for frontline negotiation, drafting of and support for project commercial contracts. This is an exceptional opportunity to work within an extremely professional environment and to develop legal management skills in an exciting global business.

In-house Lawyer - Professional Services

Ref: DA 17221 to €70,000

Well-renowned consultancy firm with a range of excellent clients both global and domestic currently require an in house lawyer. This is a specialist firm which will offer great experience in the areas of investments, pensions and trusts. The role involves the provision of advice to high level clients on all matters pertaining to the above as well as the drafting and reviewing of legal documentation for investments, contracts and agreements. A professional attitude and excellent client facing skills are essential. This firm is renowned for their excellent package and benefits and has a great reputation for flexibility.

Assistant Legal Counsel - Funds

Ref: DA 17428 to €70,000

Our client, a leading international funds firm with offices in the IFSC, currently requires an Assistant Legal Counsel to work in a busy, professional, commercial environment. Dealing with a range of blue chip clients on all legal matters relating to financial services, the role includes drafting all legal contracts and documents - ISDA master agreements, credit facility letters, charge agreements etc, as well as ensuring compliance regulations are adhered to. This is an excellent opportunity to develop highly sought after experience and there is a very competitive remuneration and benefits package on offer to the successful applicant.



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PRACTICE

Construction / Commercial Property Solicitor x 2

Top tier firm seeks two solicitors at varying levels of experience. This is an ideal role for lawyers looking to take a step up in their career and get involved in better quality work. Successful candidates will work on interesting projects and will build on the existing client base. Partner, associate as well as junior level solicitors are invited to apply.

Tax Lawyer

One of Dublin's leading law firms seeking to recruit a Solicitor or Barrister with strong experience in Tax. This is an interesting and varied position that has no compliance or tax return filing duties. It provides an excellent opportunity for a qualified tax person (A.I.T.I.) with relevant experience to be exposed to complex national and international tax planning opportunities. Great opportunity to get into a department at growth stage.

Banking Solicitor – Junior to Senior

Sigmar Legal has several openings in top tier law firms for Banking Solicitors from newly qualified up to senior associate level. Positions include advice on all areas of banking law including Asset Finance; General and Domestic Banking; Projects; Construction; Securitisation and Capital Markets. Previous experience in a commercial law firm as a banking solicitor required.

Corporate Energy Solicitor

Strong firm with an excellent reputation requires a Solicitor who has Corporate Energy experience or a solicitor who has an interest in developing energy expertise through involvement in advising and legal transaction work on behalf of industry leaders in the energy sector. City Centre based.

IN HOUSE

In House Lawyer – Research / Medical / Commercial

This position will suit a solicitor / barrister with broad commercial experience interested in working for a statutory body. This is a broad & varied role – the person will advise on research, ethics, compliance, commercial agreements, property transactions and corporate governance. Initially it will be a 6 month contract with a view to permanency.

In House Counsel

Based in Dublin, you will work for our client who are leaders in their field. This is a role which offers plenty of autonomy yet has support from the UK arm of the firm. You will have extensive drafting skills and come from a top tier law firm, looking to take the first step in-house. Commercial experience desirable.

Legal Executives – Corporate

Highly successful Dublin based law firm requires legal executives (Corporate) to join their expanding team. Typical duties will be Legal and non-legal research, Company incorporation, Document management, Assisting in due diligence exercises, Document legalisation, Assisting with transaction completion activities etc. Great name to get on your CV.

Company Secretary Assistant Manager – Senior Appointment

Our client seeks a top class and fully qualified Company Secretary with previous supervisory experience. You will work for a leading law firm where the Company Secretarial team is an integral part of the organisation. The team has a broad client base ranging from start-up companies to public limited listed companies and provide advice and consultancy on all aspects of company law.

To apply for any of the above positions please contact **Aoife Ni Riain, Jill Mullhern or Cathy Ni Luanaigh on 01 4744609 or legal@sigmar.ie**

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Corporate Finance

If you're considering a move to London, then we understand that you need to make sure you're moving to the right firm for you. If you want to be more involved in major deals, take direct client contact to the highest levels and receive credit for your ideas and the flexibility to develop them, then maybe Herbert Smith LLP is the firm for you. As well as the prestige of working in an elite London law firm, sophisticated transactional experience, and excellent levels of client contact we can offer you the opportunity to expand and strengthen your experience through real exposure to deals as soon as you join the team.

In our commitment to further developing our top tier corporate and finance practices we are looking for ambitious and bright lawyers to join our London office. In return for relocating we not only offer work of the highest quality, often on headline grabbing deals, but also the first rate training you would expect from a law firm in the Global Elite, whose industry awards are testament to the commitment we place in our people.

Our partners are regularly in Dublin and would be delighted to meet with you informally so you can find out more about what Herbert Smith might be able to offer you. For further details contact Sharon Swan at Laurence Simons International, on DDI: +1 477 3066 or via E: sharon.swan@laurence-simons.com



www.herbertsmith.com

Assistant Solicitor Wexford €Excellent

Our client, a well established, highly regarded practice in County Wexford, has an excellent opportunity for an Assistant Solicitor to join their team. The practice has enjoyed continued success in maintaining and building business with key clients across the region.

The Role

- Advise on residential and commercial property transactions and landlord/tenant matters, property finance and probate matters and some litigation.
- Offers career progression and good work/life balance.

The Person

- The successful candidate should be a self starter who has an approachable and friendly personality.
- Must have residential conveyancing and probate experience with drafting & client interaction skills.

Interested candidates should contact **Alannah O'Reilly** in the strictest of confidence on **01 662 1000** or email their CV to a.o'reilly@brightwater.ie



35 Merion Square, Dublin 2. Email: dublin@brightwater.ie
Tel: 01 662 1000 Web: www.brightwater.ie

Legal Partner Required

The Job

A Leading Accountancy and Business Solutions Firm is currently seeking an **experienced legal professional** to work in partnership with the firm on all business and commercial legal matters. The position offers a unique chance to work in partnership with one of the leading accountancy firms in the North East of Ireland, and to be part of building the firm's already considerable client base. Working alongside senior partners, it is an exciting opportunity for a proactive self-starter with excellent experience and a proven track record in the areas of conveyancing, contract law, business and succession law.

The Role

Your role will be to develop practical solutions for the firm's business and client services teams; negotiate suitable negotiation strategies and contract negotiations and advise the firm's management and practitioners on general legal issues. You will be experienced in advising on a wide range of legal issues surrounding drafting, reviewing, and negotiating our commercial contracts and other legal documents for clients and third parties.

Experience & Qualifications

Ideally you will have appropriate experience gained within an established and reputable law firm. You may have already moved to your first in-house role – although this is not essential. As a first-class lawyer, you will have a strong academic background, excellent document briefing skills, strong communication and analytical skills and be able to demonstrate a high level of commercial awareness.

To Apply

Apply in full confidence by sending a copy of your CV, together with a letter of application to: **Recruitment** c/o The Keane Partnership 5 Fitzwilliam Place, Dublin 2



Head of Conveyancing Department wanted.

Extensive experience in both residential and commercial conveyancing required.

Will be ambitious and self-motivated as will be managing a small busy hardworking team.

Excellent salary and incentives for suitable candidate.

Apply in writing only, including CV.

Moran & Ryan, Solicitors,
Arran House, 35 Arran Quay, Dublin 7.
Email: sconnolly@moranryan.com

WATERFORD CITY ASSISTANT SOLICITOR

Assistant Solicitor required for our large busy general practice.

The applicant must have a good background experience in Conveyancing or Litigation to include District Court and Family Law. The applicant must also be Computer Literate and have good Inter-personal, Communication and Organisational Skills.

Attractive salary available to reflect the position and experience of the successful Candidate.

Apply in confidence with C.V. to
Martin Bolger, Office Manager.

NOLAN FARRELL & GOFF

SOLICITORS & NOTARIES
NEWTOWN
WATERFORD

TELEPHONE:- 051 - 859999; FAX NO:- 051 - 873804;
E-MAIL: mbolger@nfg.ie

DUBLIN

CORPORATE FINANCE DUBLIN

Leading Irish firm with one of the strongest reputations in Europe for its corporate finance work. Work with recognised experts and develop your skills in this niche area. Ref: 12009. **€60,000***

REAL ESTATE DUBLIN

With a solid reputation for its commercial property work across Ireland, this is your opportunity to take on a new property role, working as part of an established team. Ref: 11993. **€60,000***

PROJECTS DUBLIN

Our client is seeking an additional projects lawyer to work on large-scale Irish and European projects. Candidates with experience of PFI are of particular interest. Ref: 12023. **€70,000***

BANKING DUBLIN

Make your mark with this top-tier practice. Our client is interested in ambitious candidates looking to specialise in commercial or retail banking. Ref: 11973. **€55,000-€60,000**

IT / IP DUBLIN

Specialist role within the IT/IP team of this major Irish law firm. Candidates can expect a diverse range of experience including technology, IP, e-commerce and general outsourcing. Ref: 14590. **€60,000***

STRUCTURED FINANCE DUBLIN

Interested in structured finance or asset finance? Our client is the market leader and due to expansion it is looking to add to its Dublin based team. Ref: 11953. **€65,000***

GENERAL CORPORATE DUBLIN

Opportunity to join one of the highest ranked corporate teams in Ireland. Working on general corporate advisory matters and large mergers & acquisitions. Ref: 13323. **€70,000***

EU / COMPETITION DUBLIN

Niche role with this recognised EU/competition practice. Our client is looking for candidates with a background in this field who are seeking a new challenge. Ref: 12109. **€70,000***

INSURANCE DUBLIN

Rare position for a lawyer seeking to develop their career in insurance law. On offer is the chance to work closely with major global financial bodies across the world. Ref: 291370. **€65,000-€75,000**

COMMERCIAL DUBLIN

Mid-tier Dublin practice with a solid reputation. Our client is interested in speaking with general commercial candidates, ideally with experience of commercial contracts. Ref: 13309. **€70,000***

FUNDS DUBLIN

Superb position for a funds lawyer looking to make the move inhouse. Our client is a leading Irish financial body with affiliates across Ireland and Europe. Ref: 12123. **€80,000***

PSL DUBLIN

Challenging and rewarding PSL role with this top-tier Dublin firm. Our client is seeking an experienced PSL to assist with the contentious units of the firm. Ref: 13309. **€65,000***

LONDON

ASSET FINANCE LONDON

This Top 5 finance practice seeks generalist banking lawyers and specialist asset finance lawyers for its thriving practice. Great training on offer in a supportive team. Ref: 286740. **€60,000-€70,000**

PROJECTS LONDON

This firm is seeking high-calibre lawyers to join its rapidly expanding projects team in London. This is an excellent opportunity with great prospects. Ref: 413900. **€63,000-€80,000**

FINANCE LONDON

This Top 15 pan-European practice seeks a finance lawyer to deal with a mix of acquisition finance, property finance and general banking. Great client base. Ref: 428400. **€60,000-€75,000**

PENSIONS LONDON

This London law firm boasts an impressive pensions practice. A commercially aware candidate is now sought to take on an advisory and transactional role. Ref: 387950. **€65,000-€75,000**

CORPORATE LONDON

Excellent transactional work offered at leading City firm. Tremendous support and managed autonomy characterise this role. Fantastic opportunity. Ref: 257870. **€65,000-€85,000**

CORPORATE LONDON

The London office of this established US firm has a vacancy in its corporate team. The group covers the full spectrum of corporate transactions important to businesses. Ref: 263750. **€70,000***

PROPERTY LONDON

An opportunity with a large player in the commercial property sphere. You will be involved with advising on all aspects of commercial property and real estate law. Ref: 442930. **€60,000***

FUNDS LONDON

Excellent opportunity to join an investment funds practice described by legal guides as a leader within its field. Deals with complete cycle, formation, investment and exit. Ref: 471290. **€63,000***

FINANCIAL SERVICES LONDON

Rare opening for lawyer with training contract with high quality F&R regulatory background. Superb team with impressive experience in regulatory and enforcement work. Ref: 512420. **€55,000***

CAPITAL MARKETS LONDON

Join an international powerhouse. Work in a team of recognised experts for household name clients. DCM, securitisation or derivatives experience highly sought after. Ref: 496280. **€60,000***

INSOLVENCY LONDON

Rare opportunity to join Magic Circle practice. Work in a team renowned for the high quality work it produces. Excellent academics and solid experience a must. Ref: 344930. **€65,000***

CORPORATE LONDON

Of all the US law firms in London, this team has consistently handled the largest deals on the most regular basis. Headline M&A practice boasts highly respected partners. Ref: 272960. **€70,000***

TAYLOR ROOT IN DUBLIN

David Thomson and Erica MacKinnon will be available to meet with you in Dublin on **26th and 27th April**. If you are considering a move to London, or overseas, please contact them to arrange a confidential meeting to discuss your requirements.



Erica
MacKinnon

David
Thomson

Contact Erica MacKinnon or David Thomson
on +44 (0)131 226 0640.
E: ericamackinnon@taylorroot.com
E: davidthomson@taylorroot.com

For more roles visit
www.taylorroot.com

Careers Register, part of the CPL group, is delighted to announce the addition of a Legal and Compliance Desk. We have over 30 years of experience in the Irish market and our clients include many of Ireland's most prestigious companies. We have an exceptional candidate network and an unrivalled track record in financial recruitment.

Miko Campbell (B.A., M.B.A.) is responsible for the Legal and Compliance Desk. Miko is a recruitment professional with over ten years experience in law firms both in Dublin and New York.



Careers Register is proud to announce a:

Legal and Compliance Desk

Legal Counsel In-house

A dynamic and growing company, is seeking a Legal Counsel to be based in its global headquarters in Dublin. The successful candidate will take an active and commercial role in providing strategic corporate legal advice and protecting the intellectual property and trademarks of the company. This is an excellent opportunity for a team player and highly motivated individual to work in a start-up environment.

City Centre

Commercial Lawyer

An excellent opportunity for a commercial lawyer to join a growing and dynamic firm in North County Dublin. The successful candidate will have excellent legal skills and interpersonal skills. This is an opportunity to progress your career in a fast growing business.

North Dublin

To discuss these opportunities in the strictest confidence please contact Miko Campbell at (01) 500 5985 or at miko.campbell@careers-register.com

www.careers-register.com



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A Bright New Future...

Moving to South Bank House has provided Mason Hayes+Curran with a bright new future, a future that requires talented lawyers who understand business and not just the law.

With new facilities allowing us to provide world-class client service, from friendly and open meeting spaces, to state-of-the-art technology, the firm is poised to grow rapidly in the next few years. This investment in our environment extends past client areas and includes staff areas, such as a gym, café, library and training room.

With opportunities across all areas of the business, we are actively recruiting for:

Financial Services Lawyers

Financial services lawyers required with experience preferably in asset finance and acquisitions finance.

Please contact Kevin Hoy on: 01 614 6612 or khoy@mha.ie

Real Estate Lawyers

Lawyers with commercial real estate experience required.

Please contact Dealan Curran on: 01 614 6040 or dcurran@mha.ie

If you feel that you would fit into a modern and thriving practice such as Mason Hayes+Curran please get in touch. All communications will be treated in the strictest of confidences.



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Dublin

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www.mha.ie





Norton Rose – More opportunities, More London

We are moving to our new, purpose-built offices at More London in May 2007. If it's also time for you to make a move, why not join us? We are currently looking to recruit associates for both our Banking and Corporate practices.

Banking practice

We have a leading reputation in the international banking sector and act for corporations and financial institutions on a wide range of complex transactions including syndicated loans, structured finance, acquisition finance, asset finance, project finance, securitisation, derivatives, shipping finance work, telecoms finance and international securities work.

Corporate practice

Our leading corporate finance team regularly features in the top ten of the M&A and IPO league tables. We have extensive experience in large and complex transactions, working primarily for international corporates and financial institutions. Our practice covers capital markets, financial services, investment funds, insurance, M&A, private equity and US corporate finance.

Our partners will be interviewing candidates in Ireland during May. So if you are interested in joining Norton Rose or just want to find out more about us, why not arrange an appointment through our Recruitment Consultant, Yvonne Keane on +353 1 941 5614 or email: ykeane@keanemcdonald.com



Where will the future take you?

Dublin In-House

European Corporate Counsel

€125,000

Serving as legal counsel to the board of directors and chief regulatory counsel for Europe, you will be responsible for the legal and company secretarial functions of the bank, providing strategic & commercial legal advice, guidance & services to the Bank and its business lines. You will be an experienced qualified solicitor or barrister having worked in-house or in private practice, ideally with pan-European experience. Ref: 20020

in House Legal Counsel

€125,000

This is an outstanding opportunity for an experienced in-house legal counsel to join a leading financial services company. The successful candidate will be reporting directly to CEO. The main responsibilities of the in-house position include derivatives, products coverage and commercial lending. This role is an excellent opportunity which will offer a highly competitive salary for the right candidate. Ref: 20024

in House Solicitor

€65,000

Our client is one of Ireland's leading insurance companies. They currently have an excellent opportunity for an ambitious in-house solicitor to join their busy team. The successful candidate will be responsible for the provision of a professional legal and compliance service in support of the company's business objectives. Our well respected client is offering a superb package for the right individual. Ref: 20002

Funds Lawyer

€75,000

Our client is a leading player in fund administration (for Hedge funds, private equity funds, property funds, fund to funds in all these asset classes). They are currently seeking to recruit an experienced funds lawyer to join their rapidly expanding team. This is an excellent opportunity to join a large multinational funds company that is out performing the bulk of its competitors. Ref: 20026

Dublin Practice

Commercial Partner - Equity

€150,000 + Equity

Our well respected client, based in Dublin city centre, has enjoyed rapid growth over the last number of years. They are currently seeking a commercial partner to build and develop their busy commercial department. Applicants will be commercially astute, adept at business development and carry strong interpersonal and communication skills. In return, our client is willing to consider immediate equity. Ref: 20012

Head of Private Client

€120,000

Managing a busy team, the successful candidate will lead from the front in offering a professional service to the firm's private clients. This position will be an exciting marketing/practice development role, which will involve exploiting synergies across other practice areas of the firm. The ideal individual must have a wealth of experience in dealing with all aspects of residential property. Ref: 20003

Employment Lawyer

€65,000 - €80,000

An exciting opportunity has arisen for an experienced employment lawyer to join one of Ireland's most prestigious employment law teams. The successful candidate will have experience with some or all of the following areas: employment contracts/off handbooks, restrictive covenants, personal policies & procedures, trade disputes and employment equality/discrimination. Excellent package on offer. Ref: 20034

Commercial Property Dept Residential

€75,000

Experienced residential conveyancing solicitor with an ambition to transfer to commercial property is required to join a leading commercial property department. This is a unique opportunity and will suit a confident lawyer who seeks a new challenge. This position will offer outstanding potential to develop a profile in the commercial property market. Ref: 20029



Connaught/Munster

Employment Lawyer

€51,200 - €75,000

Our client, a reputable practice situated in Galway city, is currently seeking an experienced employment lawyer to join their team. The successful candidate will have experience in employment contracts/HR handbooks, collective agreements, personnel policies & procedures, trade disputes and employment equality/discrimination. This is a very unique opportunity to relocate out of Dublin and enjoy a high-calibre legal career. Ref: 20944

Commercial Solicitor

€60,000 +

Our client is a dynamic and progressive firm of solicitors, based in County Cork. The firm prides itself on offering a prompt, efficient, high-quality legal service and commercial law is central to the firm's strategy. The partners are now seeking to hire an experienced commercial solicitor to join their highly respected team. This is an exceptional opportunity for a strong practitioner looking for career progression. Ref: 21445

Commercial Conveyancing Solicitor

€125,000 - €150,000

An experienced solicitor is required for the busy commercial conveyancing department of an expanding Limerick practice. The ideal candidate will have a broad range of conveyancing experience. This may suit a candidate who has residential conveyancing experience but who wishes to diversify into commercial work. This is a unique opportunity to secure a varied role in a thriving commercial department. Ref: 20972

Litigation Solicitor

€15,000 - €19,000

An experienced and motivated litigation solicitor is required to join a well-respected Cork city centre practice which is rapidly expanding. This role is interesting and varied and will include work in family law, employment law and personal injury claims. This is an excellent opportunity for the successful candidate to take their career to the next level with this prestigious firm. Excellent package available. Ref: 20387

Commercial Property Solicitor

€61,000

Commercial law is central to this firm's strategy so you will join a thriving team which has enjoyed impressive growth. Due to continuing expansion, this firm seeks a commercial lawyer for their dynamic and progressive team. You will be expected to play a front line role in managing client relationships and on-going business development. Particular emphasis is placed on attracting high-calibre candidates from Dublin and London firms. Ref: 20562

General Practice Solicitor

€110,000 - €125,000

A general practice solicitor is required for a busy practice in North Cork. The practice is within a half an hour commute from Cork city with convenient parking facilities available. As the practice is general in nature the assistant solicitor will be encouraged to get involved in all aspects of the firm's work, covering conveyancing, litigation, probate and family law. Superb benefits on offer for the right candidate. Ref: 20298

Ireland

Paul Fahey t 01 619 0400

London

Annette

Commercial Litigation Cork

Our client, a large firm in the city centre are looking for an experienced commercial lawyer for its expanding litigation department. Ideal candidate will have a proven track record in all matters of commercial litigation, personal injury and be comfortable with a high volume caseload. Exciting opportunity to join a leading firm with excellent career prospects. (ref 122252)

Conveyancing Donegal

Top tier practice requires two experienced solicitors to join their conveyancing department. Ideal candidates must have a proven track record in all matters relating to residential and commercial conveyancing with the ability to handle large caseloads from start to finish. This is an excellent opportunity to join a progressive practice with a proven track record in its field. Salary and benefits are commensurate with experience. (ref 120611)

Banking Dublin

Prestigious mid tier corporate practice is seeking Assistant or Associate Solicitors to join their expanding banking team. Performing all aspects of corporate lending, acquisition finance, project finance, property and construction finance and asset finance you will have extensive experience and good business acumen. Excellent remuneration and career prospects offered in this very progressive firm. (ref 122572)

Compliance (In House) Dublin/London

Experienced compliance specialist required to join this leading multi-national financial services company. Experience of compliance issues throughout EMEA essential along with management and development skills at a Director or senior level. Outstanding career opportunities. (ref 121722)

Corporate Dublin

Following a period of sustained growth and in-line with business projections this corporate practice is seeking experienced solicitors. Working in a fantastic new purpose built environment, your experience may not be in corporate law, but you will possess good business acumen. (ref 122571)

Financial Services Dublin

Prestigious law firm requires lawyers to join one of Ireland's leading Financial Services teams. Advising a wide range of clients including financial institutions, regulators and domestic and international corporations on a wide range of international financial services and banking law. (ref 122252)

IP/IT Dublin

Opportunity to join this leading practice within one of Ireland's top tier law firms. Representing international and domestic blue-chip clients in a broad range of IP and IT issues this is an outstanding opportunity to work alongside renowned practitioners in a fantastic office environment. (ref 122252)

General Practice Dublin

General practice in Dublin city centre requires an experienced solicitor to join their team. This role will involve a mix of general litigation and residential conveyancing and is an excellent opportunity for candidates looking for a role with long term prospects. Salary and benefits are commensurate with experience. (ref 122251)

General Practice Kildare

Small firm require an experienced solicitor to join its expanding general practice. Ideal candidate will have vast experience in criminal litigation and conveyancing. Must be able to work independently as well as part of a team and feel comfortable handling large caseloads. This is an excellent opportunity to be part of a focused, vibrant office where hard work will be rewarded. Salary and benefits are commensurate with experience. (ref 122251)

Commercial Lawyer Waterford

Leading commercial firm require an experienced commercial solicitor to its busy practice. Ideal candidate will have a proven track record in handling a wide variety of commercial files and comfortable in handling large caseloads. This is an excellent opportunity to become an integral part of a major firm with good future prospects. (ref 122251)

US Firm IP & IT City

Academically able lawyer required to join high profile department advising on a range of matters including technology development transactions, software agreements, licensing transactions and all related IP issues. Excellent long term prospects coupled with outstanding benefits package. (ref 20222)

Real Estate Finance City

Recently established team being seen as an emerging force within real estate finance seeks an additional partner to strengthen the group. Far reaching client base of UK, pan-european and international dealing and investment banks. A willingness to undertake marketing useful. (ref 20222)

Charities City

Impressive client base awaits accomplished lawyer with experience of supervising a team at recognised market leader. Role involves advice on trust administration; disputed legacies; restructuring and amending schemes; employment and pensions; governance and compliance. Clear career path. (ref 122222)

Tax City

Focus is on international non-contentious tax advice covering transactional M&A, joint ventures and corporate reorganisations as well as banking structured finance and investment funds. Experience of tax related real estate investment and development would be beneficial. Eminent clientele. (ref 20222)

Employment City

Candidate with top firm pedigree along with contentious and non-contentious experience required for a 7 person friendly and cohesive team. Broad employment mix of discrimination, dismissal, TUPE and directors' severance matters. Impressive client portfolio and a meritocratic culture. (ref 122222)

Dublin Office

t +353 (0)1 619 0400 f +353 (0)1 611 4448 e dublin@g2legal.ie 18 Fitzwilliam Square Dublin 2 Ireland

Out of Office Hours Paul Fahey 087 9109745 Annette Thape +44 (0) 7971 997550 Paul Wingfield +44 (0) 7970 026227

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Thorpe t +44 (0) 20 7841 1010

UK Regions

Paul Wingfield t +44 (0) 161 209 3460

Intellectual Property (Non Contentious) City

The team has a successful history of dealing with patents, copyright, designs, trade marks and passing-off. Having won a major energy contract, they seek a technically able lawyer to assist on the project. Top tier firm and strong scientific background essential; energy sector knowledge useful. (ref 57452)

Private Client SW1

Highly respected central London firm seeks senior lawyer to join their private client team. You will need experience of dealing with HNWI individuals on matters including tax, trusts, wills & probate. Outstanding opportunity with partnership a realistic prospect for the right individual. (ref 44451)

Employment West End

Dynamic high profile practice requires an employment lawyer to act for a range of employers and employees on both advisory and litigation work. The department is expanding so the ideal candidate must have good marketing capabilities and a willingness to develop strong contacts with employers. (ref 22043)

Clinical Negligence West London

Recommended firm with considerable expertise in the field. You will be handling a broad claimant caseload including both primary and secondary care as well as some general personal injury matters. First class opportunity to enhance your career in this exciting and expanding area. (ref 212415)

Corporate Westminster

Expanding team has exciting opportunity to work on a variety of matters including M&A, joint ventures and restructuring for clients including PLCs, multinationals, private companies and start-ups. This represents a great opportunity for someone from a top tier firm. (ref 44452)

Banking Birmingham

Acting predominantly on real estate finance (and often more widely within corporate banking team) you will work closely with a partner on development transactions and investment property facilities. National reach acting for major banks and large scale developers. Superb opportunity. (ref 70751)

Corporate Bristol

A major Legal 100 firm seeks ambitious lawyer to join a growing team to deal with high value work across the country and internationally. Acting for a range of clients advising on PFI and share sales and purchases you will have excellent experience and academics and thrive on success. (ref 142472)

Construction Liverpool

Regional heavyweight has partner level opportunity within leading construction team. With particular expertise in litigation, you will handle work for main and sub-contractors, insurers and employers. Highest quality work from both national and international clients. Excellent package. (ref 152416)

Insolvency Manchester

Dedicated corporate recovery team seeks experienced insolvency lawyer. Mix of contentious and non-contentious work including administrations, liquidations and company restructures and refinancing. Enjoy good quality work, excellent working environment and a competitive package. (ref 221110)

Commercial & IT Nottingham

Rare opportunity to benefit from high value work referred by household name clients within a Legal 100 firm. The high quality caseload consists of commercial, IT and e-commerce work so you will be strong in these areas whilst knowledge of the Data Protection Act would be advantageous. (ref 122412)

Corporate Sheffield

Realise your potential with undisturbed prospects. Corporate and commercial caseload of European and US clients. Acquisitions and disposals, corporate restructuring, JV commercial contracts, PFI projects & project finance banking. Corporate academic from within a respected firm. (ref 70282)

Company Commercial Aberdeen

Global oil and gas exploration and production company seek legal advisor for British operation. Based in their UK headquarters in Aberdeen, you will provide legal advice on a wide range of oil and gas related work and more general company and commercial matters. (ref 122511)

Banking Edinburgh

Due to continued expansion, a celebrated firm require a banking solicitor. Involved will be quality transactional banking work; hotels, property development. There will be no retail banking work involved as this is dealt with by another branch. Friendly team with good prospects, international travel and annual performance bonus. (ref 102416)

Financial Services Glasgow

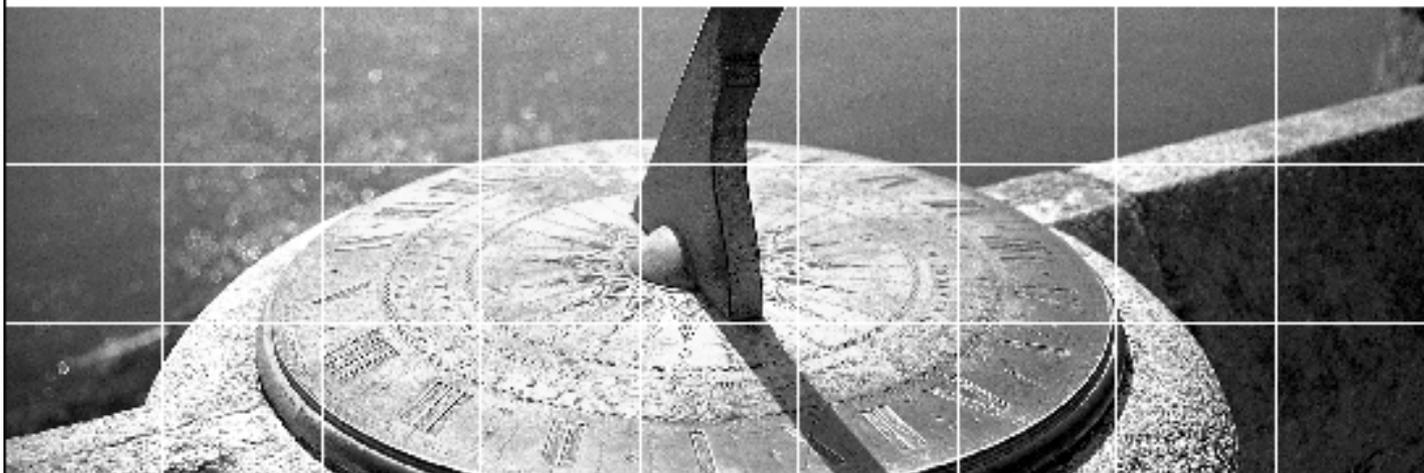
Pre-eminent financial services team. Substantial experience required in investment trusts, offshore fund structures, insurance law and securities. Advice on FAS compliance, retail banking and consumer credit will also be required. Client facing environment. (ref 222410)

International Legal Recruitment

Local knowledge



outstanding legal opportunities



In-House

Senior Legal Counsel €110k + Bonus and Benefits

A leading financial services organisation seeks to appoint a senior banking lawyer to join their expanding legal department in Dublin. Our client is particularly well known in capital markets. The ideal candidate will be a senior banking lawyer with expertise in one of the following: general banking, law, structured finance, securitisations, capital markets, project finance or derivatives. Ref: J0609180

Commercial Lawyer €80k + Bonus and Benefits

Our client, a global hi-tech telecommunications company, wishes to recruit an exceptional commercial lawyer. Experience in IT/Telecoms or a commercial position in a large law firm would be an advantage. However, strong corporate experience will also be considered. A high standard of legal drafting skills, both commercial contracts and customer contracts is required. Ref: J0604322

Funds Lawyer €75k + Bonus and Benefits

Our client is a leading global provider of fund services to traditional and alternative investment funds. They now seek to appoint an excellent in-house counsel to their headquarters in Dublin. The successful candidate will have experience in a top legal practice or investment bank, strong academics, excellent organisational, interpersonal and drafting skills and must be capable of working on his or her own initiative. Ref: J0608500

Interested candidates should forward their Curriculum Vitae to Claire Durneedy at claire.durneedy@robertwalters.com or call (01) 633 4111.

Private Practice

Banking Lawyer €90k + Bonus and Benefits

An excellent opportunity exists for a banking lawyer to work in a department unaffiliated to its expertise and experience. This banking and financial services department is one of the largest dedicated groups in Ireland, advising domestic and international banks as well as financial institutions. The successful candidate will have experience in banking, securitisation, structured finance, asset finance and corporate banking. Ref: J0607889

Litigation Solicitor €75k + Bonus and Benefits

This 'Top 6' law firm has one of the largest litigation and dispute resolution departments in Ireland. They now wish to recruit a litigation solicitor to focus on resolving disputes by way of litigation, mediation, arbitration or expert determination. Ideally you will have experience and knowledge of developing strategies for resolving a dispute. Ref: J0607280

Tax Solicitor €Negotiable + Bonus and Benefits

A 'Top 6' Irish law firm seeks to appoint a tax solicitor for their corporate tax department. You will advise Irish and overseas companies on a broad range of corporate transactions including domestic company acquisitions, MBOs, complex cross-border mergers and asset financing. Ideally you will possess a tax qualification or have experience working in a tax environment. An excellent remuneration package is on offer to the right candidate. Ref: J0607920

Interested candidates should forward their Curriculum Vitae to Louise Hoene at louise.hoene@robertwalters.com or call (01) 633 4111.

Robert Walters is a leading global recruitment specialist with 28 offices in 13 countries. Our Dublin legal division provides a high quality, proactive and professional service in both the private practice and in-house markets to meet your career needs in Ireland. Robert Walters, Riverside House, 21-23 City Quay, Dublin 2. Web: www.robertwalters.com

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Meghen Group works closely with many of Ireland's most highly regarded legal practices and companies. Meghen Group offers a tailored service, which meets the specifics, and often subtle demands of the legal industry. Meghen Group's commitment to your job search ensures you have access to decision makers, confidentiality, effective introductions and control of negotiations.

Commercial Lawyer - Telecoms Ref: MN0703-11
My client is an international telecommunications company and they are looking to recruit an experienced lawyer who has a number of years experience of working in commercial law and dealing with high end clients. The role will be required to provide legal advice on a full range of commercial issues arising in a large hi-tech telecommunications company. You will work alongside an already experienced and focused team. Excellent salary and terms of employment are on offer.

Tax Specialist - Inhouse Ref: MN0703-5
My client, based in a central location in Dublin, is currently seeking a qualified solicitor with experience working in the area of capital acquisitions tax, capital gains tax and stamp duty advice for high net worth individuals. You will possess specialist tax knowledge and be a member of the Institute of Taxation in Ireland and have a number of years experience. In addition to a competitive package my client will offer substantial opportunities for career development. Excellent terms.

Inhouse Legal Counsel Ref: MN0703-144
This senior key position is a unique appointment and the successful applicant will take an active and pivotal commercial role in providing strategic corporate legal advice and protecting the intellectual property and trademarks of this exciting new company. Unrivalled remuneration package.

Inhouse Commercial Lawyer Ref: MN0703-119
This role provides an exciting opportunity to provide support in a critical legal area to some of Ireland's most exciting infrastructural projects. A strong commercial lawyer with a background and/or interest in procurement law, construction law, projects or a related area will have a strong advantage. The successful candidate will be expected to contribute to other areas of practice and work well with the other members of the legal team.

Conveyancing Solicitor Ref: MN0703-127
An Associate level Solicitor is required to join this progressive law firm based on the Quays in Dublin. The successful candidate will enjoy a combined role dealing with residential conveyancing and commercial property. Genuine career progression is on offer.

Professional Support Lawyer Ref: MN0703-20
Are you looking to utilise your extensive Corporate Law knowledge and expertise as a Professional Support Lawyer? A leading highly regarded law firm is currently looking to recruit a Professional Support Lawyer to support the Corporate Lawyers with their research and drafting. You will have solid transactional experience and excellent IT technical skills.

Junior Commercial Litigation Lawyer Ref: MN0703-190
Responsibilities will include the following; assisting in a wide range of commercial litigation actions, including arbitrations and mediations; managing general personal injury plaintiff and defence work; assisting in the development of key areas of expansion. Candidates must have a genuine interest in developing a career in litigation. A highly competitive salary will be commensurate with experience plus excellent benefits. Excellent career prospects are on offer to the right candidate.

Senior Commercial Litigation Solicitor Ref: MN0703-33
This leading domestic law firm requires a senior solicitor to join their very strong commercial litigation team. The ideal candidate will be career driven and ambitious. You will have strong litigation experience and must be seeking a broad role. Excellent remuneration is on offer.

In addition to these vacancies, we currently have a wide variety of opportunities for all levels of Solicitors in many areas of law. Visit our website to view further opportunities.

Your details will not be forwarded to any third party without your prior consent.

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Commercial and Legal Manager, Dublin

€120k

Our client a global provider of aircraft finance is looking to recruit an associate lawyer to join its team. This role will involve the project management of lease, sale and purchase transactions as well as managing compliance issues. You will manage a small team and have excellent legal and commercial abilities with a flexibility and willingness to travel. Ref: 21331.

Contact portia@laurencesimons.com

In-House, Senior European Counsel, Dublin

€300k

Leading international insurance organisation, requires a senior European Counsel. You will have responsibility for managing the group legal affairs in Europe including corporate and regulatory compliance, product development, policy wordings and claims litigation. This is a senior position for an ambitious professional with an insurance or reinsurance background gained in a major law firm or as an in-house counsel. Ref: 20370.

Contact portia@laurencesimons.com

Legal Counsel, Dublin

€85k+

This is a superb opportunity to work for a global technology organisation. You will be required to assist with the delivery of high quality legal contracts and give daily advice to the business. You will have excellent drafting skills with particular regard to complex IT agreements. You will have the ability to work on your own initiative and work under pressure within a very busy team. Ref: 11203.

Contact portia@laurencesimons.com

In-House Banking/Financial Services, Dublin

€70k

Our client is an established participant in international structured credit and securitisation markets. An excellent opportunity to join the bank's credit structuring team reporting to the Head of Department and working with a busy team. You will have experience in general banking law, capital markets or structured finance. Excellent path for career progression. Ref: 15857.

Contact portia@laurencesimons.com

Legal and Commercial Director, Dublin

€110k

Our client is a leading provider of IT solutions. Already at a senior associate level, your responsibilities will include the negotiation, drafting and analysis of a wide range of commercial agreements. You will assist in organisations ongoing growth and have an influence on its strategic direction. You will also have the ability to communicate fluently with senior management. Business and commercial awareness a must. Ref: 16049.

Contact portia@laurencesimons.com

Corporate x 2, Dublin

€60k+

A leading boutique practice is looking to recruit 2 junior corporate lawyers. Ideally you will come from a top or mid sized practice and will join a small, but highly skilled corporate team working in an international context. You will have exposure to M&A, shareholder agreements and a wide range of corporate work. Ref: 16261.

Contact sharonswan@laurencesimons.com

Probate/Wealth Management, Dublin

€ Negotiable

A leading niche practice wishes to appoint a probate/wealth management lawyer at associate or junior partner level. This is a new role within the firm offering plenty of autonomy. You will advise high net worth individuals in relation to capital tax planning, administration of trusts and estates and associated areas. Excellent terms. Ref: 16251.

Contact sharonswan@laurencesimons.com

Legal Counsel, Kildare

Up to €100k

Our client, a leading international retail entity has a requirement for an in-house lawyer to join the global legal team at associate or junior partner level. The role is broad and will include: real estate, licensing, brand commercialisation, corporate and compliance matters, marketing review, general commercial law, intellectual property & data protection. Ref: 16068.

Contact sharonswan@laurencesimons.com

Litigation, Dublin

€ Negotiable

An exciting opportunity exists for a litigation lawyer at associate or junior partner level to join a leading mid sized practice. You will become involved in an array of litigation matter at local and European level. Experience in arbitration and mediation is essential. Ref: 14498.

Contact sharonswan@laurencesimons.com

Financial Services Lawyer, Dublin base with international travel

€70k

Our client is a leading provider of financial services. Its European headquarters based in Dublin is looking to recruit a junior banking or corporate lawyer. You will have gained excellent training in a leading firm and now wish to develop your career in-house. Excellent basic and bonus is offered as well as international travel to other global financial centres across Europe and US. Ref: 6432.

Contact sharonswan@laurencesimons.com