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On the cover

Starsky and Hutch were always getting into tight corners, but they were also always able to call Huggy Bear for backup. But are Irish solicitors' firms playing cops and robbers with their sensitive data?

PIC: REX FEATURES

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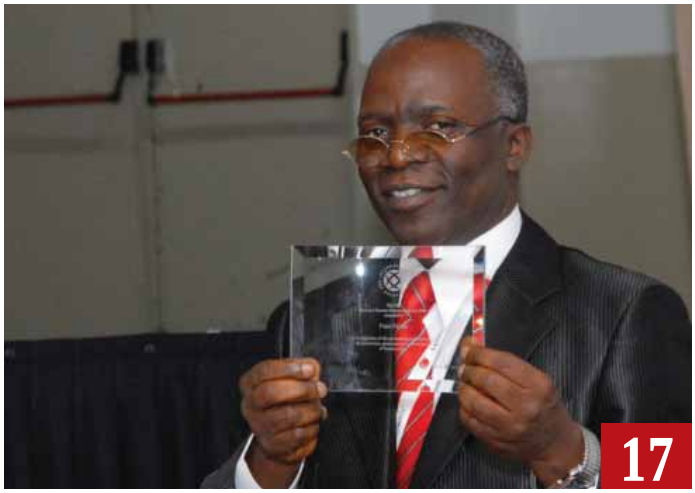

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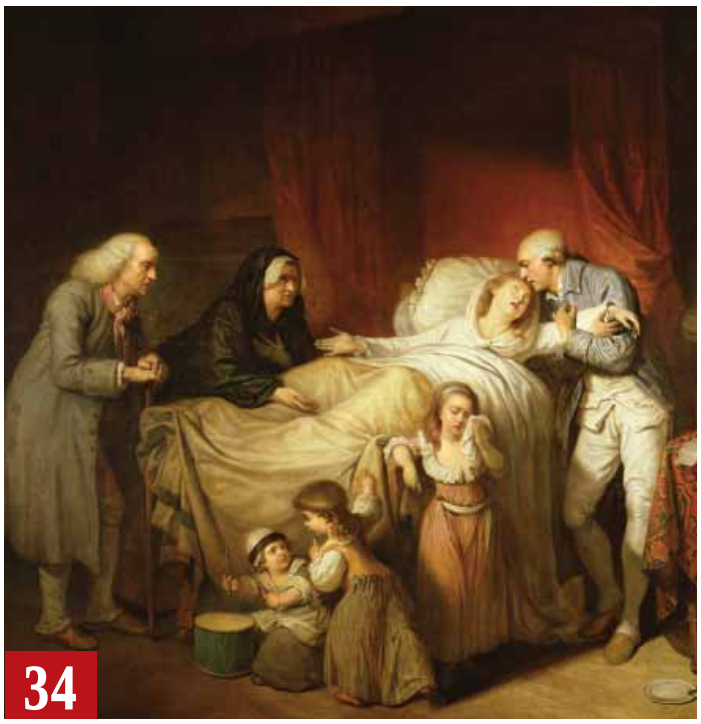
FEATURES



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Mar focail scoir

The central thesis of Mici Mac Gabhann's book, *Rotha Mór an tSaol*, is the extraordinary cycle of events in life. It has indeed been a short year, which commenced with the focus on our profession's dealing with the banking sector and finished with international concern with the banking system itself. This simply serves to remind us to keep all of life's challenges in perspective.

One of the most rewarding aspects of having served as president is to have observed that, however difficult individual practitioners find their personal situation at this especially arduous time, the overall response has been to seek to manage the difficulties in a sensible and calm fashion and, critically, to be solicitous for the welfare of our clients. While the profession is frequently and, by and large, unfairly criticised – it appears for our very existence – almost no credit is given to us for the role we play in helping our clients and our community at difficult times. We understand that our duties of confidentiality prevent us from claiming credit that is rightfully ours. However, I feel we should have a collective pride in the good work that our profession has done to date, and this sense of pride should embolden us in working in the national interest in the challenging times ahead.

In much the same way as we are taken for granted institutionally, there is a danger that we, as a profession, might take for granted the wonderful personnel that are employed by the Society. In the course of my year as president, I not only had the opportunity of seeing at first hand the wonderful work being carried out by our team, but also of seeing the arrangements in place in other jurisdictions. I can say, hand on heart, that in every respect, the Law Society of Ireland holds its own internationally – and in many areas is the clear market leader.

Like the allegorical duck, much of this work is invisible, but having had the opportunity of observing the paddling at first hand, I want to thank all our personnel on your behalf.

The Society also benefits from the entirely voluntary work of the members of committees and the Council itself. We all know how difficult practice has been in the last 12 months, and I would like to pay particular tribute to those involved, who have not alone stuck the course, but in fact raised their game at this difficult time.

A real strength in our system is the emphasis on teamwork, but also the rotation of officers. With you, I look forward to a new and dynamic leadership taking office as you read this article.

Finally, on the basis that *níl aon tinteáin, mar do thinteáin féin*, we all need the support and encouragement of those closest to us. I would like to thank my colleagues in Co Louth, my own office, my family and particularly Conor and Lisa for their patience, understanding and encouragement throughout the year.

An bhfuil cead agam dul amach anois? G

James MacGuill
President

"In much the same way as we are taken for granted institutionally, there is a danger that we, as a profession, might take for granted the wonderful personnel that are employed by the Society"

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All-Ireland Senior Football Final
Croke Park, 27th September 1953
Kerry 0-3 Armagh 1-6

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nationwide

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CARLOW

The Carlow Bar Association held a successful seminar recently on family law case management, with the county registrars for Carlow (Patricia Casey) and Wexford (Marie Garahy) explaining the new 2008 case progression rules.

WEXFORD

That doyen of style and elegance, bar association president Helen Doyle, recently organised a night at the newly-opened Wexford Opera House, where 24 colleagues were entertained by *The Minds of Sulphur*. I'm not sure whether CPD points were on offer, but I'm told by Helen (a leading member of the Opera House board) that it was a very enjoyable night.

The county registrars from Wexford and Carlow will continue their road show on the new family law case management rules, while the Property Registration Authority will update members on the effects of compulsory registration, now that the county has joined that select bunch.

DONEGAL

Congratulations to Brian McMullin and his wife Julie, who completed the 'Galway Bay 10' – a charity ten-mile run/walk in aid of Cancer Care West. Brian is hoping to organise a conveyancing-related seminar shortly.

MAYO

Dermot Hewson is the new president of the Mayo Bar Association. At a well-attended AGM, Dermot succeeded Pat O'Connor. There was criticism of the Courts Service for the manner in which it had announced the revision of the District Court No 3 boundaries without prior consultation. In his outgoing address, Pat O'Connor reiterated this criticism and indicated that some limited success had been recorded – although the threat still remained. In particular, he felt that the decision to close the District Court venue in Charlestown and move it into Co Sligo was "perverse, illogical, irrational and, above all, contrary to the clearly-stated policy of the Courts Service itself, which seeks to preserve county boundaries for court areas".

At the Practice Management Task Force seminar 'Changing the traditional methods of practice for increased profitability' in the Horse and Jockey, Thurles, on 8 October were *(l to r)*: Philip Joyce (Law Society Past-President), M Nolan and Patricia Gleeson (Thurles)

DUBLIN

The DSBA has a new president, but no more of that. Over 100 colleagues attended the recent AGM, with the other new officers elected being John P O'Malley (vice-president), Helene Coffey (secretary), Stuart Gilhooly (treasurer) and Geraldine Kelly (programme director). Pauline O'Donovan has stepped down after several years' service to the association. In the election that followed, Julie Doyle (MOP) was elected to the council, together with John Geary (DJ Synott) and Grainne Whelan (Frank Ward and Co). Also re-elected were: Keith Walsh, Alma Sheehan, John Glynn, Paddy Kelly, Eamonn Shannon, Claire O'Regan and John Hogan.

Michael Sheil, a practitioner in Blackrock, won the coveted 'Award for Excellence'. It is understood that a special presentation will be made to Michael at a later date.

Recent DSBA seminar offerings on the new VAT rules and on solicitor/executor trustees were held recently at well-attended events. Justin McKenna organised a seminar in which Finola O'Hanlon spoke on taxation issues to Dun Laoghaire colleagues. Paddy Kelly and his practice management committee have been working on providing a trilogy of seminars, the first of which will take place on the afternoon of Thursday 13 November and Thursday 4 December in Fitzwilliam Hall, Fitzwilliam Place, Dublin 2. Anyone interested should contact Maura at dsba.ie.

Michael Quinlan's presidency ended recently, but not before he was able to host a dinner for District Court President Miriam Malone and several of her colleagues. It will be my great pleasure, now that Michael has passed the baton, to host a similar dinner for all the Dublin-based High Court and Circuit Court judges, including several litigation practitioners. G

NEW DSBA PRESIDENT

The contributor of the 'Nationwide' column, Kevin O'Higgins, has been elected as the new president of the DSBA following its recent AGM. Kevin has been on the DSBA council since the mid 1990s and served as its secretary for many years. He has also been an elected member of the Council of the Law Society and has chaired a number of its committees.

Based in Blackrock, he runs a busy general practice and is a regular contributor to the *Gazette*. Kevin says: "I am thrilled and honoured at the privilege to serve my colleagues in Dublin!"

We extend our sincere congratulations to Kevin on his election.

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

ADR – 'lawyers taking responsibility'

PIC: LENSMEN

At the recent CPD Focus/Legal Aid Board conference on ADR in family law matters were *(l to r)*: Hilary Coveney, Eugene Davy, Ken Murphy (Law Society director general), Attracta O'Regan, Moling Ryan (chief executive, Legal Aid Board), Mrs Justice Catherine McGuinness, Kevin Liston, Paul Gallagher (attorney general), Richard Sharp, Anne Colley (chairperson, Legal Aid Board), John McDaid, Joe Maguire, Geoffrey Shannon and Sinead Kearney (chairman, Family Law Committee)

Alternative dispute resolution (ADR) is about people, client choice and lawyers taking responsibility, said Attorney General Paul Gallagher SC at a recent conference on ADR in family law matters. The conference was jointly hosted by the Law Society and the Legal Aid Board on 9 October 2008.

Patricia Mallon, who chairs the Association of Collaborative Practitioners, Joe Maguire and Richard Sharp, a solicitor from Britain, spoke about the collaborative model and how their own considerable experience had led them away from the 'winner takes all' mentality towards a process where clients come up with the options and the solutions.

Polly Phillimore from the Family Mediation Service (FMS) spoke about the ongoing relevance of mediation and, in particular, its capacity to address issues such as child-care arrangements and financial support issues. She stressed that, while lawyers did not directly participate in the mediation process, the FMS took the approach that people attending mediation were entitled to get legal advice contemporaneous with attending mediation. Eugene Davy spoke about the potential for an adapted mediation model to seek to address perceived power imbalances between the parties.

Structured negotiation process

The need for a 'structured' negotiation process was the focus of Kevin Liston's talk. He pointed out that while the conduct of family law cases is heavily regulated when divorce or judicial-separation proceedings are instituted, there is a complete absence of process where court proceedings are not taken.

Rosemary Horgan reminded the conference that negotiation is the fundamental form of dispute resolution and that bargaining can be a relatively cooperative process when both parties seek a solution that is mutually beneficial, but confrontational when each side seeks to prevail over the other. She gave the very practical example of the possibility of negotiating agreements that have the effect of minimising tax liabilities – something that is far more difficult to achieve in the context of confrontational bargaining or contested court proceedings.

First letter

Judge Petria McDonnell, who has a strong background in mediation but only came to family law with her appointment to the bench last year, reminded attendees of the damage that can be done by that first letter to the client's spouse. It was important to make that letter as non-confrontational as possible, she said.

Law Society President James MacGuill, director general Ken Murphy, Legal Aid Board chairperson Anne Colley and chief executive Moling Ryan all reiterated the Society's and the board's commitment to developing a culture where ADR is regarded as the norm, and where adversarial proceedings are seen as a last resort or relevant only for a relatively small number of cases.

The Law Reform Commission's draft report on ADR, which includes a chapter on family law; recent Circuit Court case progression rules; and a new family law code of conduct issued by the Law Society's Family Law Committee are other building blocks towards a scenario where most family law clients are given meaningful, non-adversarial options for dispute resolution. There is, however, a considerable distance to go to give real meaning to the Attorney General's words referred to at the outset.

Regulation to relocate from Blackhall

With effect from 1 December 2008, all of the Law Society's regulatory activities will be based, not in Blackhall Place, but in modern office premises nearby. Earlier this year, the Council of the Law Society decided unanimously that such a move would have major benefits both for the profession and the public that it serves.

The Society has taken a lease on a newly-constructed office premises in George's Place, which is on the northern side of Smithfield and some three or four minutes walk from the gates of Blackhall Place. The reasons for, and results of, the move will be:

- All of the staff and activities of the Society's Regulation Department will operate from a different location, with a different address, from the rest of the Society's representative and educational activities, which will remain in Blackhall Place.
- Meetings of the Society's three main regulatory committees – the Regulation of Practice Committee, the Complaints and Client Relations Committee and the Professional Indemnity Insurance Committee – will all be held in the new premises and not in Blackhall Place.
- The ever-increasing internal and external demands on the Society – in connection with a solicitors' profession that has doubled in size in a little over a decade – have resulted in an expansion of staff numbers to a point where the Blackhall Place premises is full to capacity. Necessary additional recruitment has become impossible due to lack of accommodation.
- The establishment of the Law School in Cork and the move of continuing professional development to rented accommodation have only temporarily eased the problem.
- This situation was anticipated by the Society for some time and, 18 months ago, architects were engaged to assess the office accommodation requirements of a move of the Regulation Department. They assessed the departmental requirement at 1,200 square metres.
- Ever since the acquisition of the Benburb Street site, there has been a tentative plan to move the Regulation Department to occupy part of an office development that would be constructed on that site. However, for a number of reasons, not least the major downturn in the economy, this plan has become impracticable in the short term.
- There will be obvious benefits to the internal management and efficiency of the Regulation Department from being based in a single location in modern premises, rather than physically separated, as it has been, over two separate sections of the building in Blackhall Place.
- The Society has a chronic shortage of meeting rooms at present. However, the Regulation Department's move will have a transforming effect in freeing up space for meeting rooms and for members' use generally in Blackhall Place.
- The relocation of the Society's regulation function away from Blackhall Place will more clearly demonstrate the reality that already exists, namely that the Society's regulatory decision-making in all individual cases is conducted today, as it has been for many decades, separately from the Society's discharge of its representational role.
- A sufficient number of consultation rooms will exist in the new premises.

The Blackhall Place premises is full to capacity

Law Society President James MacGuill said "Major changes in the regulation of the solicitors' profession are due in the course of 2009. First and foremost it is expected that, in the course of next year, legislation will be passed to create the new role of Legal Services Ombudsman, and the ombudsman will, in fact, be appointed and commence operations. The arrival also, with effect from 1 January 2009, of a non-lawyer majority on the Society's Complaints and Client Relations Committee is another major change. In preparation for these very significant changes in the level of external oversight and involvement, it is necessary to develop new, separate and modern premises for the Society's regulatory function."

HEALTH ADVICE AND SUPPORT FOR LAWYERS

MENTAL ILLNESS, ALCOHOL ADDICTION AND RECOVERY

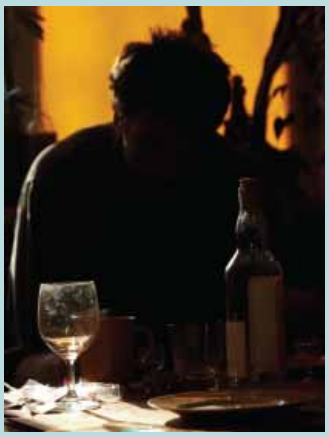
Christina (not her real name) is a LawCare client who is in recovery from alcohol addiction. After contacting LawCare for help two years ago, she has successfully detoxified and has been attending Alcoholics Anonymous (AA) daily for some time. She is enthusiastic and determined in her recovery, and confident about her future.

Unfortunately, a job offer with a small firm was suddenly withdrawn when she told them about her former problems with alcohol. The senior partner defended his change of heart by explaining that even AA says "once an alcoholic, always an alcoholic."

"That may well be true," Christina countered, "but it doesn't mean I'll be drinking. Surely the strength of character I've shown in beating my addiction must count for something."

Christina's potential employer is by no means unique in being wary of alcoholism and unsure about the facts but, in reality, those who have admitted and addressed their problem are far less of a risk than those who attempt to hide their growing addiction.

Alcoholism is an illness that is both difficult to define and difficult for the addicted lawyer to



recognise. No one wants to admit they are alcoholic, and many people will clutch at straws as they deny the problem: "I don't drink spirits" or "I only drink at weekends" are common excuses.

As a general rule, if alcohol is causing problems in your career, family or social life and yet you cannot change your behaviour, then you have an alcohol problem. The prevalence of denial is evidenced in the fact that 45% of calls to LawCare about alcohol problems are secondary referrals – that is, they come from a colleague or family member rather than the impaired lawyer. This compares with 15% of other cases.

An alcoholic who has recognised and acknowledged his or her problem is a rare beast. Employers wary of offering a position to a recovered alcoholic should bear in mind that they could easily and unknowingly then offer it to a drinking alcoholic instead, with far more serious consequences – heavy drinkers rarely advertise the fact on their CV.

LawCare's document, *An Alcoholic in the Firm*, includes a sample office policy statement and partnership agreement that make it clear that alcohol does not mix with the practise of law. There is much to be said for operating a 'dry' office and making staff aware that it is not appropriate for them to drink during their lunch break, or at any time when their performance at work might be compromised.

Remember that the candidate who has addressed and overcome their addiction has shown considerable strength and bravery, especially in an environment where socialising invariably means alcohol. Their former problems with alcohol do not have any bearing on their ability to do their job, but their determination and courage do. Lawyers who have had good lives and successful careers can return to that state given the right motivation, treatment and support. Don't waste all the time and money that has been invested in progressing their careers by running away from the issues facing them – face them honestly and work with the lawyers towards achieving and maintaining their recovery. G

ABOUT LAWCARE

LawCare is an advisory and support service to help solicitors, their staff and their immediate families to deal with health problems such as depression and addiction and related emotional difficulties. The service is free and entirely confidential.
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(9am – 7.30pm weekdays and 10am – 4pm at weekends/bank holidays, 365 days a year.
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Criminal legal aid scheme – retention of name on panel

The Department of Justice, Equality and Law Reform has advised that a solicitor who wishes to have his/her name retained on the Criminal Legal Aid Panel(s) beyond 30 November 2008 must submit to the relevant county registrar(s) a tax clearance certificate (TCC) with an expiry date later than 30 November 2008.

A solicitor whose TCC has an expiry date on or before 30 November 2008 and wishes to have their name retained on the panel(s) for the panel year beginning on 1 December 2008 must apply to the Revenue Commissioners for a new TCC.

Applying for a TCC in writing
Local Revenue districts now deal with the processing of written applications for TCCs. The contact names, addresses and telephone numbers of the relevant Revenue districts are available on the Revenue's website, www.revenue.ie. You should contact your local Revenue district office for an application form (TC1).

Applying for a TCC through Revenue's online application facility
This facility is to be found at Revenue's website address at www.revenue.ie. The arrangements that have been introduced to allow taxpayers to apply online for a tax clearance certificate do not apply to solicitors who are employees.

On receipt of your certificate, it should be forwarded to the relevant county registrar(s).

NB: No fees under the *Criminal Justice (Legal Aid) Regulations* shall be payable to a solicitor who accepts an assignment to a case if his/her name is not, at the time of assignment, on the relevant solicitors' panel.

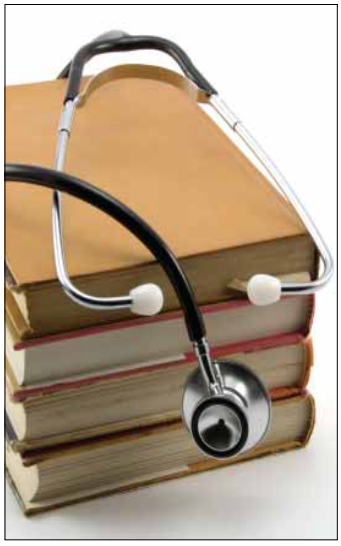
'Poor professional performance' – Medical Council can investigate

A number of significant changes to the manner in which the Medical Council can deal with complaints about doctors have been introduced by the *Medical Practitioners Act 2007*, *writes JP McDowell*. The act was commenced by the Minister for Health and Children on 1 July last.

The new act introduces the additional ground of 'poor professional performance'. In the past, it was the function of the Fitness to Practise Committee (FTPC) to assess complaints and decide if the complaint was serious enough to necessitate inquiry. Whereas previously complaints were assessed on the grounds of 'professional misconduct' and 'unfitness to engage in the practise of medicine by reason of physical or mental disability', complaints will now be assessed on additional grounds, including 'poor professional performance'.

Formerly, 'professional misconduct' was defined as conduct that was disgraceful and dishonourable or represented a serious falling short of the standards expected.

With the addition of 'poor professional performance', any falling short at all, whether



serious or otherwise, will be considered by the council and, if necessary, dealt with under its complaints procedures.

Further, inquiries before the Medical Council's FTPC will now be conducted in public, unless the medical practitioner concerned, or a witness about whom personal matters may be disclosed, requests that all or part of the hearing be conducted in private. The previous legislation effectively provided that all inquiries would be held in private unless the medical practitioner requested an inquiry to be held in public. The new act has therefore shifted the balance in favour of transparency and public accountability.

The provision for public inquiry has caused concern among medical practitioners that media coverage and access to hearings may have a damaging effect on a doctor's reputation – regardless of the outcome of the inquiry. Until inquiries are carried out under the new legislation, it is difficult to predict the number of inquiries that will be held in public, as it will depend on each individual case and on the attitude of the FTPC to applications to hold proceedings in private. In each case, the committee will have to balance public interest and questions of fairness and privacy in respect of the parties involved.

The act also provides a further remedy of resolving complaints through mediation or other informal means. It will take time to measure the success of this legislation. One thing is certain – this legislation will mean that the council and its complaints process will be more driven by a lay/public interest and will be more transparent in the manner in which it deals with complaints.

PROFESSIONAL NOTICE RATES

As a result of the budget's VAT-rate change from 21% to 21.5%, the new rate for professional notices published in the *Gazette* from 1 December to 31 December 2008 will be €139.

Please note that, from 1 January 2009, the *Gazette's* professional notice rates will increase by 4%, in line with the price inflation index, as notified by the director of finance of the Law Society. From that date, the new rate for professional notices will be as follows:

- Lost land certificates: €144 (incl VAT at 21.5%)
- Wills: €144 (incl VAT at 21.5%)
- Title deeds: €144 (incl VAT at 21.5%)
- Recruitment/miscellaneous: €144 (incl VAT at 21.5%).

The optional extra of adding a box-highlight to your notice stays at €33.

It should be pointed out that professional notices can only be considered for publication if they are accompanied by payment. Cheques should be made payable to: Law Society of Ireland.

We would like to sincerely thank all members of the profession and those clients who advertised with us during 2008. We look forward to your continued custom in 2009.

NEW SCOTTISH CEO

The Law Society of Scotland has named Ms Lorna Jack as its new chief executive. She will take up her new post on 4 January 2009. She replaces departing chief executive Douglas Mill, who has headed up the society for the past 11 years.

Ms Jack returns to Scotland after spending six years in Boston as president of the Americas for Scottish Development International, part of Scottish Enterprise.

NWCI'S NEW CHAIR

The National Women's Council of Ireland (NWCI) has announced the appointment of Maura Butler as the new chairperson of the NWCI. Maura is course manager in the Education Centre at Blackhall Place, Dublin.

Maura is a graduate of NUIG in arts and law and qualified as a solicitor in 1985. She practised as a criminal court advocate for 11 years and lectured in criminal law and employment law at third level for eight years. She received an MSc IT in Education from TCD in 2004.

CPD HOURS COMPLETED?

With only a few weeks left in the current cycle (ending 31 December 2008), practitioners should ensure they have completed their CPD hours. This year's cycle requires ten hours' CPD, three of which must be management and professional skills. Full details are available at www.lawsociety.ie under the 'CPD scheme' section, or email: cpdscheme@lawsociety.ie, or tel: 01 672 4802.

RETIREMENT TRUST SCHEME

Unit prices: 1 October 2008
Managed fund: €4.572758
All-equity fund: €1.051323
Long-bond fund: €1.380476
Cash fund: €2.892122

Eugene F. Collins Solicitors

CASE STUDY

One of Ireland's leading law practices, Eugene F. Collins Solicitors provides clients with a broad range of legal services. The firm is committed to partner involvement in managing each client's legal requirements and providing a quality service with a solutions-driven commercial approach.

EFC's expertise covers a wide range of practice areas and the firm's focus at all times is to work with clients and not simply for them. Such an ethos led EFC to assess client accessibility to partners and associates which in turn led to the deployment of a number of Vodafone BlackBerrys and mobile handsets across the firm.

"Since we began using mobile email, accessibility is clearly one of the major benefits of this technology. It means our clients have access to us if we are out of the office and we can contact colleagues and barristers when we are away from our desks," said Terry Leggett, Litigation Partner with Eugene F. Collins.

The nature of certain practice areas of the firm means some partners spend a large part of the time outside the office. "I do a lot of litigation work meaning I can spend quite some time waiting in courts for cases to be heard. Traditionally in the past I would have returned to the office to large chunks of emails in my inbox waiting to be actioned and it would take some considerable time to go through them all. Now that I have mobile email I can actually be productive during this waiting time and respond or forward emails as necessary. It also reduces stress levels to a certain extent as you feel more in control of your workload," added Terry.

Terry Leggett of Eugene F. Collins Solicitors using Vodafone Mobile Broadband

The firm also works with international clients and would liaise with client contacts overseas and in many cases in different time zones. "I travel quite a bit with work and would spend time in airports and transit lounges waiting for flights and as we work with international clients I can receive emails at any time of the day or night. Again it comes back to accessibility and I can use this down time usefully to respond to emails. It also means that should an urgent matter arise I am in a position to address it at any time, despite not being at my desk," concluded Terry.

Eavann Murphy, Vodafone Ireland Head of Business Marketing and Adrian Copeland, Louis Copeland & Sons tailors, launching Vodafone's new Tailored Tariffs

Tailor-made to fit your business

Vodafone Ireland introduces new tailoring tool for small business customers.

In today's economic climate SMEs are increasingly more cost sensitive and there is a growing need for businesses to become more agile when it comes to managing costs. To assist businesses in doing so Vodafone Ireland has introduced an innovative enhancement to its Wireless Office Plus proposition to make it easier for business customers to control their mobile bills. The company has launched a new Tailoring Tool that will advise small business customers on the best price plan and deliver mobile services that meet the specific and unique needs of each business and generate real savings for SMEs.

"There is no one-size-fits-all solution for SMEs as no two businesses are the same. To survive in today's economic climate, small businesses need to be agile and cost sensitive – businesses want their suite of mobile plans honed to suit the specific needs of their organisation and their usage monitored so that they know they will always be on the right price plan," said Eavann Murphy, Head of Business Marketing at Vodafone Ireland.

The new tailoring tool is an innovative savings calculator that is customer focused and allows Vodafone to respond more accurately to customer usage patterns.

"The savings calculator enables Vodafone to take a systematic and in-depth look at a SME customer's account over a three month period that will drill down into the complexities of multiple users on voice; data; text; international and roaming add-ons and advise on the best tariff for that customer," continued Murphy.

Justice minister congratulates Society on 'very progressive approach'

Warm and extended praise for "the very progressive approach taken by the Law Society" on a range of issues was a striking feature of the speech given by Minister for Justice, Equality and Law Reform Dermot Ahern at a parchment ceremony in Blackhall Place on 23 October 2008.

In addition to acknowledging that both the Society and the profession had been "completely transformed" for the better since he had "taken solicitors' exams in this very hall back in the 1970s", the minister focused on a number of recent reforms and then departed at length from his prepared script to pay personal tributes to both the Society's president James MacGuill and the director general Ken Murphy.

ALL PIX: JASON CLARKE PHOTOGRAPHY

Director general Ken Murphy and Minister Dermot Ahern share a word at the parchment ceremony for newly-qualified solicitors

Personal tributes

He remarked that he had "first noted James MacGuill's great ability when they were both practitioners in Dundalk". It was a particular pleasure for him to be speaking today as Minister with a fellow Dundalk man as president of the Law Society.

Of the director general, the minister said that Ken Murphy had demonstrated over many years that he is "an excellent representative for the profession", which is "fortunate to have him". He added: "I have heard him defending the profession very effectively, often in very difficult circumstances."

"Part of this effectiveness," he observed, was "the credibility that comes from putting your hands up when things are wrong."

Returning to his prepared remarks, and specifically addressing the 50 newly-qualified solicitors, together with their families and friends, Minister Ahern talked of "the Law Society's commitment to educating solicitors of the highest standard who will compare favourably with lawyers in any other jurisdiction. The development of a modern education centre here in Dublin and, more recently, one in Cork, is an example of the commitment of the Society in this regard. You, as young solicitors, are the beneficiaries of these developments."

Challenging time

He noted that they were "entering the profession at a challenging time, particularly in view of the downturn in the economy, which may limit career opportunities in the profession in the short term". However, he still believed that "you can look forward with confidence to the future, whether that be in practice as a solicitor or in some other position for which your training as a solicitor makes you eminently suited".

Welcoming the Society's support for the *Legal Services Ombudsman Bill*, which he expected would be enacted "early in the new year", he said that the government recognised that "improved regulation of the legal profession is necessary".

He continued, "solicitors' clients will be the beneficiaries of this reform. It is also in the Society's own interests. It is in the interest, too, of all those solicitors who serve their clients with professionalism, integrity and diligence that solicitors are regulated effectively and that the highest standards prevail for the profession as a whole. Rogue or grossly deficient solicitors damage not only their clients, but the overall standing of the profession."

Pictured prior to the parchment presentation ceremony were *(l to r)*: John D Shaw (senior vice-president), Ken Murphy (director general), Minister for Justice, Equality and Law Reform Dermot Ahern, James MacGuill (Law Society president) and Mr Justice Richard Johnson (president of the High Court)

Protecting clients on

The *Gazette* begins a short series of articles explaining various aspects of the Law Society's regulatory function. John O'Connor introduces readers to the compensation fund

The compensation fund is a statutory fund maintained by the Law Society for the purpose of making payments to clients who suffer loss as a result of their solicitor's dishonesty or the dishonesty of someone employed by their solicitor. It is administered by the Regulation of Practice Committee, which has the responsibility to:

- Maintain the fund,
- Process claims made against the fund, and
- Make payments from the fund where it is satisfied that a claim for loss to a client arising from his or her solicitor's dishonesty has been sustained.

The fund is maintained through an annual levy paid by practising solicitors. The fund is governed by section 21 (as amended by section 29 of the *Solicitors (Amendment) Act 1994* and section 16 of the *Solicitors (Amendment) Act 2002*) and section 22 (as amended by section 30 of the *Solicitors (Amendment) Act 1994*) of the *Solicitors (Amendment) Act 1960* and the *Solicitors (Compensation Fund) Regulations 1963* (SI no 115/1963).

At the end of 2007, the net assets of the fund were €27.5 million. The preponderance of the fund's assets are invested in publicly-quoted stocks, shares and government securities. These investments are recognised in the accounts at prevailing market valuations. This year has been dominated by the cases of Michael Lynn and Thomas Byrne. In both cases, we are processing claims on the fund in accordance with the terms of the statutory scheme. It is still too early to estimate the total amount of such claims that will be granted.

In the seven months ended 31 July 2008, excluding invalid claims refused, claims amounting to €13.5 million were received and the net assets of the fund as at that date were valued at €15 million after providing for all valid claims. Insurance cover for €30 million in excess of €5 million is in place. The Society will be seeking to recover under the insurance policy and is confident of making substantial recoveries. To meet the increasing demands on the regulatory function, our financial regulation team has recently been strengthened by the recruitment of a dedicated specialist claims administrator to handle claims on the fund.

Some fundamental points

Some fundamental points about the fund should be kept in mind:

- The fund is designed to compensate for dishonesty, not negligence; a client seeking compensation for loss that arises from his or her solicitor's negligence should pursue a claim for redress through the courts,
- There is a statutory limit of €700,000 on any grant made,
- The fund is one of 'first resort'; in other words, a client seeking redress for his or her solicitor's dishonesty is not obliged to exhaust other potential remedies before claiming on the fund.
- Only clients of a dishonest solicitor may make a valid claim. The fund is not available to persons who have dealt with the solicitor in a capacity other than that of client.

"Where the committee believes 'grave hardship' would be caused if a higher award than the statutory maximum were not made, then it can make a higher award"

The following are some of the more important principles that apply to the amount of the grant that can be made, and the circumstances in which it is made:

1) The grant is the amount that, in the opinion of the Regulation of Practice Committee, represents reimbursement of the amount of the loss sustained by the client,
2) The amount awarded cannot include an award based on the fact that the client was deprived of the use of the money while the solicitor had it – the client cannot claim that he or she would have put the money to far better use and seek compensation on that basis,
3) On making payment of a grant to any client, the Law Society has a statutory right of subrogation to the amount of the award made to any rights enjoyed by the client against the party whose dishonesty caused the loss.

The grant can include an element to cover legal fees already paid by the client to the solicitor whose dishonesty occasioned the loss. Where a higher legal fee has to be paid to a solicitor to take over and complete the transaction in respect of which the original solicitor's dishonesty occasioned the client's loss, the difference between the original solicitor's fees and the subsequent solicitor's reasonable fees can be included in an award. The grant can also include a reasonable fee to be paid to a solicitor acting on behalf of a client to bring a claim against the fund.

The Regulation of Practice Committee is permitted certain limited discretion regarding payments from the fund. Where the committee believes 'grave hardship' would be caused if a higher award than the statutory maximum of €700,000 were not made, then it can make a higher award. The committee

those cloudy days

has discretion to make no award or an award only to a limited extent in certain circumstances, including where dishonesty or negligence on the part of the client has contributed to the loss.

Making a claim

Intention to make a claim upon the fund, and the actual making of a claim upon the fund, must be communicated to the Law Society by the completion of two separate forms: Form CF1 and Form CF2, obtainable from the Regulation Department of the Law Society. Except in exceptional circumstances, the Law Society will not make a payment from the fund if the intention to make the claim is not communicated to the Law Society within three months of the date that the client became aware of the loss.

The Regulation of Practice Committee endeavours to protect the fund through:

- Operation of the regime of accounting propriety imposed by the *Solicitors' Accounts Regulations*,
- The requirement of submitting an annual report from each practice's reporting accountant, and
- Regular practice inspections carried out by the Law Society's team of investigating accountants. G

John O'Connor is chairman of the Regulation of Practice Committee.

No exceptions to the

The USA's use of extraordinary rendition and torture in its 'war on terror' was discussed in some detail at the IBA's annual conference in Buenos Aires. John King reports

The International Bar Association's annual conference took place in Buenos Aires from 12-17 October 2008. More than 4,000 lawyers from around the world met to exchange views on legal topics ranging from looted art to green tourism. As always, the association highlighted the role of the profession in preventing human rights abuses.

At a ceremony on 15 October, IBA President Fernando Pombo presented the association's Bernard Simons' Memorial Award for the Advancement of Human Rights to Lagos-based lawyer Femi Falana. Throughout his career, he has represented the victims of repressive Nigerian regimes. He was himself jailed in the 1990s and saw collaborators lose their lives.

At the session that followed, speakers examined how the United States government has made use of extraordinary rendition and torture in its 'war on terror'. A victim of rendition is deprived of his liberty in an extra-legal process. Many of those who have been seized have had no connection with jihadi groups. Clara Sandoval, who lectures at the University of Essex, cited one such case. Maher Arar is a telecommunications engineer who lives in Canada and holds a Canadian passport. He was seized in John F Kennedy Airport as he returned from a family holiday and was later handed over to the Syrian authorities. After his eventual release, the Canadian government set up a commission that found that he had been tortured in Syria and that he had had no links with terrorism.

Zacahry Katznelson works with Reprieve, which acts for many Guantanamo detainees. He described how a victim of rendition is typically seized in the street by masked men. He is hooded and shackled. He may, like Maher Arar, be handed over to a regime that uses torture as a matter of routine. Alternatively, he may be held by the US in a 'black site' or in Guantanamo Bay.

Torture is explicitly prohibited by a United Nations convention to which the US is a party. It is also prohibited by a federal statute in the US, which provides that a torturer can be imprisoned for up to 20 years, and may receive the death penalty if the torture results in the victim's death.

In an effort to legitimise the brutal treatment of prisoners, the Bush administration sought to redefine torture. So, for instance, in a 2003 memo, a Justice Department lawyer essentially told the US military that it could subject suspected terrorists to harsh treatment as long as it did not cause death, organ failure or permanent damage.

"By using coercive techniques, US interrogators have accumulated information that would not be admissible in a court of law that functions in accordance with generally accepted norms"

Leonard Rubenstein, of Physicians Against Torture, described how the US authorities originally intended that the use of brutal methods of interrogation would be subject to internal controls. However, these controls were never implemented and the use of such methods became generalised. Prisoners were isolated, humiliated, beaten, kept in stress positions and subjected to waterboarding.

Waterboarding

Katznelson described the process of waterboarding, which is sometimes referred to as 'simulated drowning'. The prisoner is tied to a board, and his mouth is covered with a cloth. Water is poured on to the cloth and, as the victim cannot clear it from his mouth, it begins to fill his lungs and he experiences acute pain and terror, as he actually begins to drown.

He questioned whether the US's interest in obtaining useful intelligence was served by the use of such methods. Experience shows that prisoners who are subjected to torture frequently provide inaccurate information.

He went on to refer to the case of Ibn al-Shaykh al-Libi, who was a Libyan paramilitary trainer for al-Qaeda. Al-Libi was captured and interrogated by American and Egyptian forces. The information he gave under torture was cited by the Bush administration in the months preceding the 2003 invasion of Iraq as evidence of a connection between Saddam Hussein and al-Qaeda. However, this information was later shown to have been false.

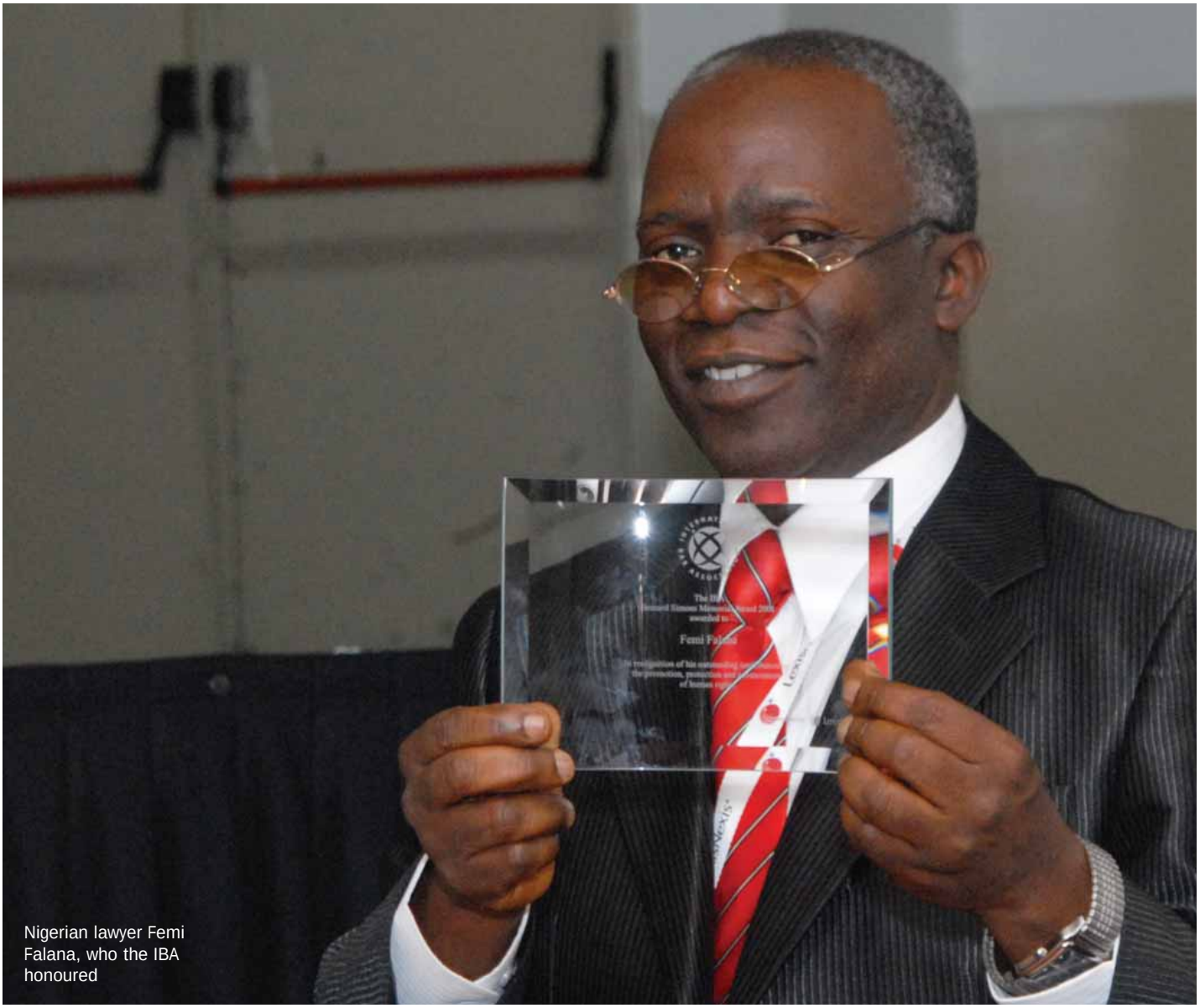
One of the aims of America's rendition policy has been to bring terrorists to justice. However, by using coercive techniques, US interrogators have accumulated information that would not be admissible in a court of law that functions in accordance with generally accepted norms. For example, Khalid Sheikh Mohammed is a prisoner in Guantanamo. He was charged with war crimes by a US military commission and faces the death penalty if convicted. It appears that he confessed to being the architect of the 9/11 attacks, but only after he had been subjected to waterboarding.

Ticking bomb

The Bush government sought to legitimise torture by redefining it. Efforts have also been made to justify brutal methods of interrogation by reference to the 'ticking bomb' theory. This suggests that an interrogator may use prohibited methods in order to obtain information that will allow him to prevent a terrorist attack.

Yuval Ginbar of Amnesty International subjected this theory to critical analysis.

rule against torture



Nigerian lawyer Femi Falana, who the IBA honoured

Governments are obliged by international treaty to organise their armed forces, police and intelligence services in such a way that they do not employ brutal methods of interrogation. Their personnel should be trained in the use of non-coercive techniques, and should not be equipped with the instruments of torture. These are all factors that should suggest that where a country meets its international obligations, torture will not be used, even in ticking-bomb cases.

Conversely, in a country where there is established jurisprudence supporting the ticking-bomb defence, the existence of such jurisprudence is likely to seriously undermine the prohibition of torture. Yuval Ginbar cited the case of Israel, where the defence of necessity is pleaded in dozens of torture prosecutions every year and is always successful.

Clara Sandoval referred to Argentina's recent history. In the 'Dirty Wars' of the 1970s, thousands of dissidents had 'disappeared'. It was essential that states should not attempt to use the law to undermine human rights.

"Torture thrives on ambiguity," said Leonard Rubenstein. The prohibition against its use must be absolute, and the rules must be clear.

The consequences of allowing exceptions to the rule can be far-reaching. At the Combatant Status Review Tribunal Hearing on 10 March 2007, Khaled Sheikh Mohammed sought to justify the 9/11 attacks. Revealingly, he did so not by reference to any ethical rule by which such attacks were permitted – rather, he said (in somewhat broken English): "When I said I'm not happy that 3,000 been killed in America, I feel sorry even. I don't like to kill children and the kids. Never Islam are give me green light to kill peoples. Killing, as in the Christianity, Jews, and Islam, are prohibited. But there are exception of rule when you are killing people in Iraq." G

John King is a partner in Ivor Fitzpatrick and Company, Dublin.

CHRISTMAS CARDS

IN AID OF THE SOLICITORS' BENEVOLENT ASSOCIATION

ADORATION OF THE MAGI
Peter Paul Rubens

This is an opportunity to support the work of the Solicitors' Benevolent Association, whose needs are particularly acute at Christmas time

GREETING PRINTED INSIDE EACH CARD:

With Best Wishes for Christmas and the New Year

MESSENGER OF PEACE

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SBA Christmas Cards, Santry Printing Ltd, Unit 5, Lilmar Industrial Estate, Coolock Lane, Dublin 9. Tel: 842 6444. Contact: Amanda

Lessons from the *Earl of Malmesbury* case

Taking an unreasonable position in mediation, or an unreasonable refusal to engage in mediation, may have adverse costs consequences, writes Joe Thomas

The leading case on the effects of a refusal to mediate on the issue of costs is the decision of the English Court of Appeal in *Halsey v Milton Keynes General NHS Trust* ([2004] 1WLR 3002). This case established that "the burden is on the unsuccessful party to show why the general rule of costs following the event should not apply and it must be shown that the successful party acted unreasonably in refusing to agree to mediation".

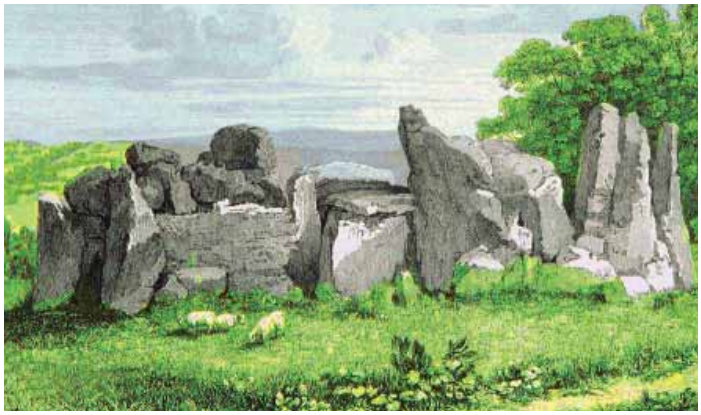
The case of *Earl of Malmesbury and Others v Strutt and Parker* ([2008] EWHC 424 QB) deals with the issue of unreasonable behaviour in refusing mediation and unreasonable behaviour in the mediation itself.

The facts

The claimants were the owners of lands near Bournemouth International Airport. The claimants had engaged the defendants to negotiate in all three leases of these lands with the airport for the use by the airport of these lands as its main car park. The claimants alleged that the defendants were negligent in negotiating the terms of these leases and sued for approximately stg£100 million.

The case came before Mr Justice Jack on three separate occasions on the issues of liability, damages and (among other things) costs.

In the event, Mr Justice Jack held that the defendants were negligent in respect of two of the leases, but not in respect of the third. He subsequently measured damages at stg£915,000,139.



An ancient druidic altar on the Malmesbury lands: the druids, of course, were well known for their superlative mediation skills

The costs issue came before the judge on 18 March 2008 – the total costs were stg£5.38 million, which he described as "a horrific figure".

Mr Justice Jack looked at a number of issues in determining who should pay the costs of the case. The principal issue that is pertinent here is what happened in relation to mediation and the resulting consequences for costs. It is very important to note at the outset that both parties agreed that privilege be waived in respect of all "without prejudice matters", that is to say, correspondence prior to and what took place at the mediation itself.

Mediation

Prior to the first hearing, which was on the issue of liability, there had been what Mr Justice Jack called "a curious lead into mediation", in that there had been an exchange of correspondence and, indeed, a meeting of the lawyers for each side in connection with trying to arrange a mediation. The lawyers could not agree on a basis for mediation. In the judge's view, each side was equally guilty of failing to engage in mediation. There was "obduracy" on both sides. Mr Justice Jack went on to say that "where the failure to mediate was due to the attitude taken on either side, it is not open to one party, here the defendants, to claim that the failure should be taken in to account in the order as to costs".

Following the determination of the liability issue, mediation was set in train on the issue of damages. At the mediation, the defendants offered the sum of stg£1 million, inclusive of interest, with each side to bear their own costs. The claimants made an offer to settle for stg£9 million plus 80% of their costs – this was rejected.

Mr Justice Jack considered the claimants' position at the mediation to be plainly unrealistic and unreasonable. He went on to say: "As far as I'm aware, the courts have not had to consider the situation where the party has agreed to mediate but has then taken an unreasonable position in the mediation. It is not dissimilar in effect to an unreasonable refusal to engage in mediation. For a party who agrees to mediation but then causes a mediation to fail by reason of his unreasonable position in the mediation is, in reality, in the same position as a party who unreasonably refuses to mediate. In my view, it is something that the court can and should take account of in the costs order in accordance with the principles considered in *Halsey*."

Accordingly, the lessons to be learned from this case are:

- Do not agree to waive privilege in respect of 'without prejudice matters' unless you are certain it is to your benefit,
- Be aware that taking an unreasonable position in mediation may have adverse costs consequences,
- The lawyers must be aware that mediation does not simply mean going through the motions,
- Where the failure to mediate was due to the attitudes taken on either side, it is not open to one party to claim that the failure should be taken into account in the order as to costs,
- It is prudent to ensure that, prior to mediation, you have a written mediation agreement that provides (a) that the mediation is entirely confidential and (b) is without prejudice, and
- By implication, the lawyers must be aware of their duty to advise clients to consider mediation. G

Joe Thomas is a partner in the Drogheda law firm O'Reilly Thomas.

The hijab in schools – religious

The right or otherwise of pupils to wear a hijab touches upon a number of pertinent legal and constitutional issues, says Louise Higgins

The question of whether Muslim girls have the right to wear an Islamic headscarf, or hijab, in educational institutions has sparked mass debate on freedom of religion and national identity in many European countries in recent years – and finally the issue has come to Ireland. Central to the debate are the freedom to practice and manifest religious belief, the right of parents to educate their children in line with their own religious ethos, and the notions of non-discrimination and religious ethos in schools.

The issue of wearing the hijab in schools came to light in Ireland in May, when the principal of Gorey Community School wrote to the Minister for Education seeking guidance following a request by a student to wear the religious garment with the school uniform. The initial response from the Department of Education was that the matter was one for individual school boards to decide. However, the ensuing coverage in the media, public support of a ban from opposition politicians, and the establishment of the Irish Hijab Campaign, among other things, have compelled the government to commit to firmly establishing a coherent policy on the matter. The government report is currently in the final stages of completion and is expected in the coming weeks.

> *"Ireland's unique position of being a country that embraces religion brings a number of new and interesting questions to the hijab debate"*

Legal issues

The right or otherwise of students to wear a hijab in schools touches upon a number of pertinent legal and constitutional issues. Article 44 of *Bunreacht na hÉireann* guarantees freedom of conscience and free profession and practice of religion (44.2.1) and provides that the state must respect and honour religion (44.1) and must not discriminate on grounds of religious profession, belief or status (44.2.3). Article 42 further provides that parents are the primary educators of their children, including in religious matters (42.1), and that the state is obliged to provide educational facilities and services with due regard for the rights of parents *vis à vis* religious and moral formation (42.4).

Other provisions, such as non-endowment of any state religion (44.2.2) and the right of children to attend denominational public schools without receiving religious instruction (44.2.4) combine to provide a Constitution that is bathed in the language of respect for, and tolerance of, not only Christianity, but all religions. Citizens of Ireland also enjoy further protection of their right to freedom of religion and their right to manifest their religion from article 9 of the *European Convention on Human Rights* and article 18 of the *International Convention on Civil and Political Rights* (ICCPR). Article 2, protocol 1 of the ECHR also protects the right of parents to educate children in conformity with their own religious beliefs.

So how do these protections affect the wearing of the hijab in educational institutions?

ONE TO WATCH: NEW LEGISLATION

Broadcasting Bill 2008

On 14 May 2008, the government published the *Broadcasting Bill 2008*. If introduced, it will significantly alter the broadcasting landscape in Ireland. The bill is comprehensive and seeks to deal with all aspects of the regulation and provision of broadcasting in Ireland. It will also consolidate existing legislation relating to broadcasting.

Minister for Communications Eamon Ryan said: "This is a modernising bill designed to meet the needs of Irish broadcasting as we enter a new era of media and regulation. In essence, the bill aims to level the playing field of the broadcasting market in Ireland and place greater emphasis on the needs of viewers and listeners."

The bill is currently in the second stage in Dáil Éireann. More information on it can be found at www.oireachtas.ie.

Broadcasting Authority of Ireland

The bill provides (sections 5-38) that the Broadcasting Commission of Ireland (BCI) and the Broadcasting Complaints Commission (BCC) will be abolished and replaced by the Broadcasting Authority of Ireland (BAI) (Údarás Craolacháin na hÉireann). This will assume the roles currently held by the BCI and the BCC, as well as a range of new functions.

The purpose of the BAI will be to ensure that the number and categories of broadcasting services best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity; that the democratic values enshrined in the Constitution are upheld; and that open and pluralistic broadcasting services are provided.

Duties, codes and rules

Section 39 imposes certain duties on broadcasters. Every broadcaster shall ensure that:

- News is reported in an objective and impartial manner.
- Reporting of current affairs is conducted in a manner that is fair to all interests concerned, and that the

human rights watch

belief and Irish law

The outcome of such a debate is partially dependent on the significance and status of the hijab in Islamic culture and practice. Indeed, this very argument has been made in support of bans across Europe and in Ireland. If the wearing of a headscarf were a mere cultural practice, a non-essential aspect of worship, those demanding the right to wear it would find themselves on shakier ground. However, there is ample theological opinion to support the assertion that the Qur'an's order for women to "draw their outer garments around them" and "not display their beauty and ornaments" equates to an obligation to cover all parts of the body except the face and hands. Thus, the wearing of the hijab by pubescent girls and women could be said to be an obligatory aspect of the practice of Islam. In legal terms, the wearing of the hijab falls firmly under the right to practise religion in the Constitution,

and the right to "manifest" religious belief in the ECHR, and also the ICCPR, to which Ireland is state party.

Irish jurisprudence

The jurisprudence of the courts sheds further light on how a ban of the hijab may be regarded in Ireland. The cases of *Quinn's Supermarket v Attorney General* affirmed that the Constitution must be interpreted in such a way as to give "vitality, independence and freedom to religion" and reflect the objective of article 44, which is to guarantee the free profession and practice of religion.

Walsh J went further in *McGee v Attorney General* to state that the purpose of article 44 was to ensure that no person could be compelled to act contrary to his conscience where the practice of religion is concerned, although the right is by no means absolute and is subject to public order and morality.

broadcast matter is presented in an objective and impartial manner. If this should not prove practicable, two or more related broadcasts should be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other.

- In the case of sound broadcasters, a minimum of 20% of broadcasting time should be devoted to the broadcasting of news and current affairs programmes, unless a derogation is authorised by the BAI. If the broadcasting service is provided for more than 12 hours in any one day, two hours of broadcasting time between the hours of 7am and 7pm should be devoted to the broadcasting of news and current affairs programmes – unless a derogation is authorised by the BAI.
- Anything that could reasonably be regarded as offending against good taste or decency, or as being likely to promote, or incite to crime, or as tending to undermine the authority of the state, is not broadcast.
- The privacy of individuals is not unreasonably encroached upon in the making or broadcasting of programmes.
- Party political broadcasts are still allowed, provided that, in the allocation of time to particular broadcasts, an unfair preference is not given to any party.

Section 41 also imposes a number of requirements in relation to advertising, setting out maximum times to be allocated to it. The bill also provides for a prohibition on advertising that is directed towards a political end, has any relation to an industrial dispute, or addresses the issue of merit or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation. Once again, there is a derogation from this prohibition for party political broadcasts, as long as no unfair preference is given to any one party in the allocation of time for the broadcast.

In the case of a potential ban on the hijab, it is difficult to see how wearing a headscarf in a school would qualify as a threat to public order or morality. Unlike more restrictive garments like the niqab or the burqa, the hijab does not pose any difficulties for teachers in terms of identifying students, and the call to be modest by covering the head could hardly be said to be contrary to Christian morality or alien in a country in which women, from nuns to lay women in church, traditionally covered their heads. To this extent, a government-sanctioned restriction on wearing the hijab may fall under discrimination as laid out in article 44.2.3 of the Constitution.

The protection against discrimination is not, however, so clear-cut and is, in fact, complicated by the very religious nature of Ireland itself. On the one hand, the respect for religion on which the Irish state is founded may preclude it from relying on the rationale of Turkey and France for their respective headscarf bans. The need to maintain the secular nature of the state and provide a neutral environment in public institutions simply does not apply in Ireland. Therefore, the European Court of Human Rights' decision in *Sahin v Turkey*, in which the court applied a wide margin of appreciation in deference to Turkey's wish to maintain the secularity on which their state was founded, may not be instructive to the Irish situation.

On the other hand, the fact that the vast majority of public schools in Ireland are denominational, and most denominational schools are Catholic, further complicates this issue.

It has been established by the courts that the state's funding of denominational schools is constitutional. Furthermore, the rights of a child of a different religious persuasion to attend a denominational school and not receive religious instruction are complicated by the right of the school to preserve its religious ethos. In *Re Article 26 and the Employment Equality Bill 1996*, discrimination was ruled to be permissible in order to preserve the ethos of an institution, though only insofar as it was necessary to do so.

Schools' religious ethos

The *Equal Status Acts 2000-2004* go further to allow schools to give preference to students of a certain religion over others in the interests of preserving the school's ethos. This raises two important questions: what constitutes a sufficient threat to a school's ethos, and who decides? The latter question has been dealt with by the courts in the *Employment Equality* case – it is they, not the schools, who make such a judgement. As for the former question, the nebulous concept of 'ethos' remains open to interpretation.

In this regard, perhaps the current state of affairs in Irish schools is enlightening. The integrated curriculum, which applies to all national schools, states in rule 68 that religious instruction is the most important part of a child's education and that a religious spirit should inform and vivify the whole work of the school. The integrated curriculum is not without controversy in and of itself but, if taken at face value, it must be conceded that a handful of students wearing scarves on their heads is unlikely to pose a significant threat to a religious ethos of the school, if said ethos is already woven into every aspect of school life.

The impact of the hijab is surely no match for such comprehensive incorporation of religious values into an institution of learning. If there is a case to be made in this regard, it is perhaps more appropriate that the entire issue of the religion of a student should be examined – not merely what she is required to wear on her head – and the rules that govern such decisions should apply. This continued approach may prove to ultimately protect the freedom of religion of those in Ireland who are not Christian, and expose the various shortcomings in the current law and policy regarding the inability of non-Christians to avail of their rights under articles 44 and 42 as a consequence of the sheer lack of schools that are multidenominational or non-denominational.

Ireland's unique position of being a country that embraces religion brings a number of new and interesting questions to the hijab debate. In an age where Islam appears to be regarded with increasing apprehension by many Western countries, it will be interesting to see exactly how the Irish government, and potentially the judiciary, squares Ireland's increasingly multicultural identity with freedom of religion and its own Christian traditions. G

Louise Higgins is a PhD candidate at the Irish Centre of Human Rights at NUIG.

Provision is made in the bill for the development of codes governing standards and practices to be observed by broadcasters (section 42) and for the preparation of rules in respect of access to broadcasting services by persons with hearing or sight impairments (section 43).

Redress

Section 47 requires broadcasters to consider complaints made to them and to establish a mechanism for dealing with complaints. The bill introduces a 'right of reply' mechanism, whereby individuals who feel their reputations have been damaged may have this corrected in a further broadcast (section 49).

Enforcement

The Compliance Committee of the BAI can conduct investigations into the affairs of a broadcasting contractor in respect of adherence by a commercial or community broadcaster with the terms of their contract with the BAI and their licence. On the recommendation of the Compliance Committee, the BAI may suspend or terminate a broadcasting contract (sections 50 and 51). Financial sanctions may also be imposed on the broadcaster (sections 52-56).

Public service broadcasting

The bill also amends legislation regarding public service broadcasters and the allocation of public funding. It revises the legislation relating to RTÉ and TG4 and sets up the framework for two new public service broadcasters – an Irish film channel and an Oireachtas channel. There is also provision for the establishment by RTÉ and TG4 of 'audience councils' to represent the views of listeners and viewers (sections 79-128).

Other proposals

The bill also makes provision for the regulation of digital broadcasting and analogue switch-off, television licences, the broadcasting fund and television coverage of major events. G

Elaine Dewhurst is the Law Society's parliamentary and law reform executive.

Ladders or lawyers? Unmet legal

A lack of research on the issue of unmet legal needs has limited our capacity to meaningfully consider the extent to which equitable access to justice is currently available, says Moling Ryan

It has been accepted for decades that there is more to the concept of 'legal need' than people simply having a legal problem and not being able to acquire the services of a legal adviser. For example, there may well be a suitable non-legal solution. Philip Lewis offered the following: "If a tenant in a flat has a leaking roof, he may be regarded as having a legal problem; does his lease provide that the landlord should do the repairs, and is the mechanism of the courts adequate to ensure quick action? But he may choose to get a ladder and not a lawyer…" Thus, when a person can find a non-legal solution that addresses the problem, we could not say that he is deprived of his rights or that there is an unmet legal need. More correctly, an unmet legal need arises where a person encounters or experiences a matter that raises legal issues and is unaware of his or her legal rights in the matter. Such a need may also arise where a person would like to defend or assert a right, but is unable to do so for want of effective access to appropriate legal services of adequate quality and supply.

So what is the real extent of such needs in Ireland and what is the significance of the topic? Why should lawyers or members of the public be interested in unmet legal needs?

Access to justice

The problem in Ireland is that discussion about access to justice (more usually, lack of access to justice) proceeds for the most part in the absence of reliable quantifiable data about the needs and experiences of people within the community. Very little research on the area has been undertaken in Ireland, and we are one of the few countries in the developed world not to have conducted any national survey of legal needs. This fact has limited our capacity to consider meaningfully the extent to which equitable access to justice is currently available, and also the impact of various social and legislative initiatives.

I recently conducted a survey of legal needs of clients of what is now the Citizens' Information Board, which aimed to examine these issues.

Legal needs surveys usually cover the widest possible range of problem types within the civil law spectrum. In my own survey (which mirrors other international studies), I included consumer issues, employment, noisy or anti-social neighbours, owning or buying residential property, living in rented accommodation, money/debt, welfare benefits, divorce proceedings, family, domestic violence, children, personal injury, clinical negligence, mental health, immigration, unfair treatment by the gardaí, housing (homelessness) and discrimination. Such surveys will normally have a filtering mechanism included in order to confine the results only to those problems that are perceived to be difficult to resolve.

> *"One of the main areas of concern is the number of people who take no action to resolve such problems because of a lack of awareness of rights"*

Prevalence and types

My survey found that over 50% of people questioned had experienced difficult-to-resolve problems or disputes within the reference period of over three-and-a-half years. This is somewhat more than that reported in Britain and Northern Ireland (24-36%,) but lower than the surveys in the Netherlands and many in the USA. The higher figure may be explained to some extent by the nature of the population surveyed.

The problem types most encountered were consumer, employment, social welfare, money/debt, noisy or anti-social neighbours, rented accommodation and family. Within the consumer category, problems or disputes relating to electrical goods were most reported; in employment, it was specific work-related rights, such as maternity leave, sickness pay and holiday entitlements; in the social welfare area, it was entitlement to social welfare payments; in money/debt, it was severe difficulties managing to pay money owed – and so on.

International studies have found that experiencing problems is far from randomly distributed: differences in life chances significantly affect vulnerability to such problems. Thus, my survey found that, for those with the lowest incomes, the main problems were living in rented accommodation, social welfare and difficulties in paying money. For the highest income grouping, the problem type occurring with greatest frequency related to consumer issues.

A feature of needs surveys internationally is that problems often do not occur in a singular and self-contained fashion. They can be additive – having experienced one, there is an increasing likelihood of others occurring. Problems can come in clusters, too. A third of respondents reporting multiple problems identified connections between these problems – examples being money/debt problems connected with employment problems and welfare payments; welfare benefit problems connected with employment; and family problems connected with money/debt and owning

viewpoint

needs and access to justice

one's own home. Such incidence serves to reinforce the disadvantage of already vulnerable people in society.

A further area of interest explored in most legal needs surveys is the impact of difficult-to-resolve problems on those experiencing them. Very few remained untouched in terms of health, economic or social consequences. Almost 60% of such people in my survey reported a markedly or extremely severe impact, with stress-related illness and loss of confidence being the most reported. Other consequences included loss of income, physical ill health and having to move home. This clearly suggests that the impact of experiencing difficult-to-resolve problems affects not only the individual concerned and those close to them, but also the health and other social services and may also have other societal consequences.

Responses and outcomes

One third of those who had experienced problems within the reference period of the study took no action to resolve the problem. The most common reason for inaction was uncertainty regarding rights, with a further considerable number giving as their reason a belief that taking action would not make any difference to the outcome. Others thought the problem would resolve itself, while another reason was a feeling that it would take too long to sort out. Quite a number also reported that they did not know what to do or where to go. These findings mirror those of other international surveys, where a sense of powerlessness and helplessness is regularly experienced by people who have experienced justiciable problems.

Those who did take action to resolve their problems went to a range of bodies for advice or assistance. As might be expected, solicitors were seen as contact points only in respect of particular types of case, notably family problems where disputes arise (usually in connection with a divorce or separation) in relation to the division of money, pensions or property.

Details of the advice received from the various contact points were explored further. Interestingly, in only 17% of cases were respondents advised to start formal proceedings.

Legal needs studies usually also explore the outcome of difficult-to-resolve problems or disputes – whether or not they were resolved, the approaches used for resolution, and the extent to which respondents were satisfied with the outcomes.

In my study, consumer problems tended to be brought to conclusion quickest, with employment problems being the slowest. Indeed, certain problem types, notably consumer ones, lent themselves more easily to informal resolution. In only 12% of cases were courts (including the Small Claims Court) or tribunals used to reach resolution. Interestingly, even for those problems brought to conclusion, more than 40% were very or fairly dissatisfied with the outcome, the usual reason being that there continued to be no change in the situation and they were still unhappy with it.

Information and education

The issue of unmet legal needs is one that the Law Society's Civil Legal Aid Task Force is now turning its collective mind to. The Society's initiative, through its engagement with unmet legal needs, is a most welcome one and has the potential to contribute significantly to a more rational and evidence-based discussion on access to justice and the appropriate policy and societal responses.

My study suggests that the extent of difficult-to-resolve or justiciable problems is considerable. Only a modest number of such cases currently involve lawyers and the courts process. One of the main areas of concern is the number of people who take no action to resolve such problems because of a lack of awareness of rights or knowledge of what to do. There is also a sense of powerlessness among a significant number of the more vulnerable in society, where they feel that taking action is unlikely to make any difference to the outcome. There is clearly a role for information and education and a far more coordinated approach among state services. A failure to address these issues has implications for individuals, families – immediate and extended – state and other services and, ultimately, society. G

Dr Moling Ryan is chief executive of the Legal Aid Board.

CALL FOR

Irish firms show a mixed attitude to safeguarding their data, but there are compelling reasons for regularly backing up important files so that information can be quickly and easily recovered. Gordon Smith tests the safety net

Data backup is like insurance – payment for a service you hope you'll never need. But accidents will happen, from unintentionally deleting an important file on a PC, to a server crash that wipes the entire contents. In more extreme cases, an office fire could destroy a firm's records and jeopardise its ability to continue in business. Any of these outcomes make a compelling argument for regularly backing up important files so that, if the worst happens, the information can be quickly and easily recovered and the business can continue with minimum interruption.

The problem is, Irish firms show a distinctly mixed attitude to safeguarding their data. According to a survey by MJ Flood Technology last year, 42% said staff productivity would be adversely affected as a result of losing data that had not been backed up, and 18% said they would go out of business altogether. The survey found that 31% of Irish companies do not use a fireproof location for storing backup media – 17% of respondents said they store it onsite only, which would lead them to losing data if the office was to be damaged or otherwise inaccessible.

Room for improvement

In the TNS mrbi technology survey commissioned by the Law Society's Technology Committee in 2006, a total of 200 solicitors' firms were surveyed. It was found that the vast majority (over nine in ten) had developed a backup policy for their computer systems, which was encouraging.

Most firms (88%) were using a manual backup system, however, and less than one-tenth were employing an external company to back up their computer files. Of those using external companies, most were located in the capital, and were proportionately larger in size. The Technology Committee called for improvement in this area.

"You can't quantify the impact that losing data could have on your business," warns Avine McNally, assistant director of the Small Firms Association, who notes that law firms, like many other businesses, build up important information about their clients over many years. "You can't buy back that kind of data," she says. "There's also the company's reputation to think about if word gets out. It doesn't instil confidence if a firm loses data."

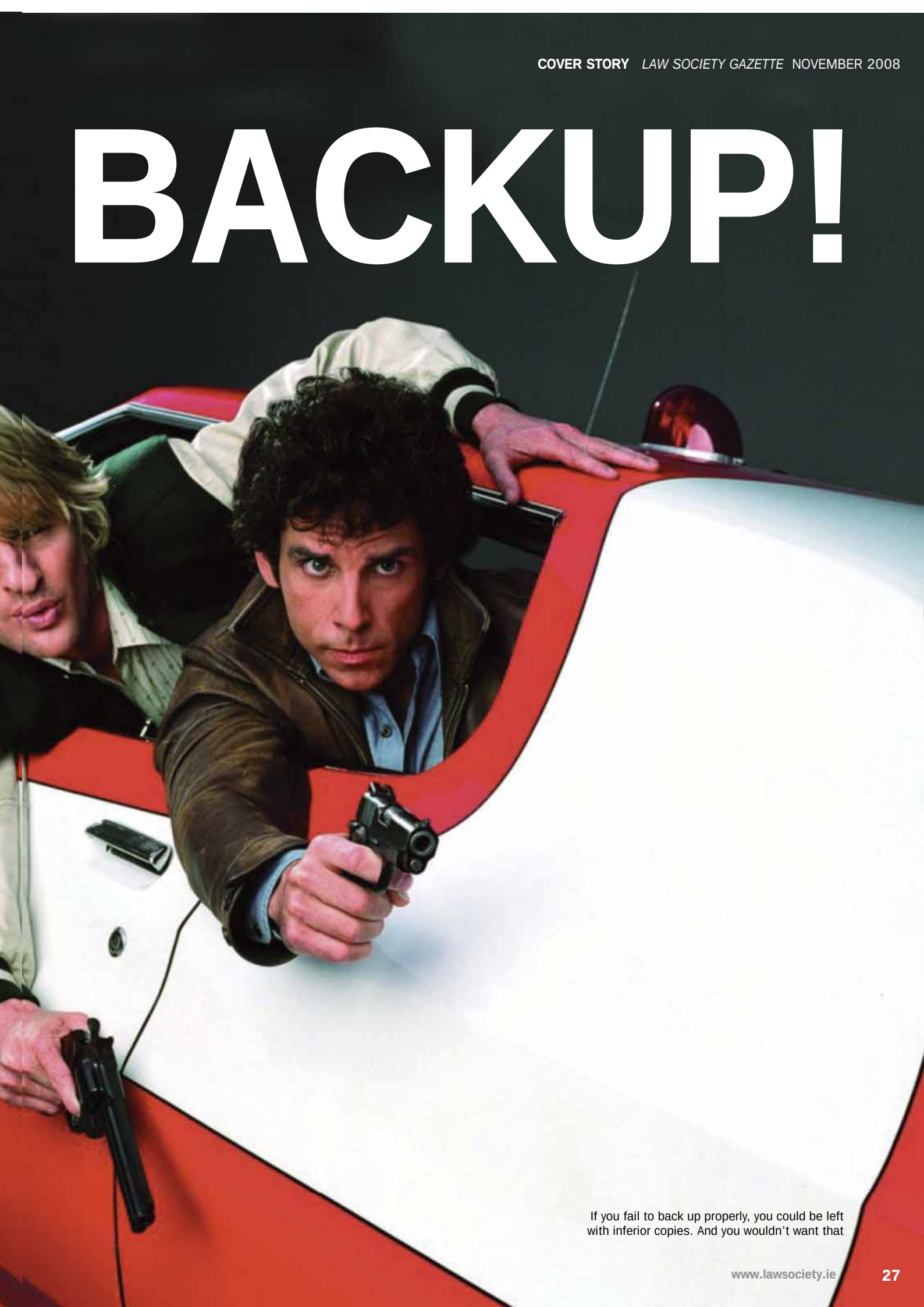
Last year, patent attorneys Hanna, Moore & Curley had a computer crash that could have had serious implications if the firm had not backed up its data. "If your computer is down and you have no access to data, you could spend a lot more time, effort and money trying to get it back. You could easily spend four to five hours in front of a computer if you lose data – that's four to five hours of billable time that's lost," says director Barry Moore.

The *Data Protection Acts* of 1988 and 2003 place a legal obligation on companies holding information about members of the public to ensure they use "appropriate" security measures for protecting that data from loss or inappropriate access. The legislation is not prescriptive about how this is done, but backup should be included as best practice, according to Data Protection Commissioner Billy Hawkes.

MAIN POINTS

- Mixed attitudes to safeguarding data in Ireland
- Legal obligations on companies holding information about members of the public
- Different ways of backing up data

BACKUP!



If you fail to back up properly, you could be left with inferior copies. And you wouldn't want that

"Fundamentally, data protection is about respecting people's rights to protection of their personal information," he says. "When deciding on systems for backing up and securing data, organisations – including solicitors – should choose systems that are appropriate to the harm that might result from unauthorised or accidental access to, or destruction of, the kind of data held. Physical security measures combined with passwords may be enough to secure a simple database of customer names and addresses for invoicing purposes. On the other hand, customer or client records containing sensitive information (such as, for example, criminal records or information about the physical or mental health of a client) would require a high level of encryption and access controls. Similar security measures would have to apply to any backups of such personal data."

Saving money

Ann Quinn, office manager at John Shiel Solicitors, points out that a good backup policy can also help to save money in other aspects of the business. "Insurance with legal firms is very expensive, and one of the questions [insurers ask] is about backup. It's like house insurance – if you have an alarm, you get a better quote," she says.

Fortunately, the legal sector is well served by many companies offering data backup services, such as telecoms and internet providers, IT service and maintenance firms, data-centre hosting companies and dedicated backup specialists. From a technology point of view, there are essentially two choices: backing up to tape or disk media, or, alternatively, saving data over the internet to a secure off-site location.

"You'll only have one experience of needing backup when you don't have it to realise how important it is"

Data Electronics is a Dublin-based data-centre operator that provides both options. The cost of a backup service is calculated according to the volume of data to be saved, says chief operations officer Daniel Tinkiel. "For a lawyer, if the only thing they tend to back up is text documents, the volume of data to be backed up will depend on the number of cases they have," he explains.

However, scanned versions of original paper documents require significantly more storage space, he points out. "A ten-page Microsoft *Word* document could be something between 200 kilobytes and one megabyte in total. An image of each page of a document will be in the region of one megabyte minimum." He advises firms to use techniques such as saving in portable document format (PDF) or compressing files in order to save space and therefore money. "There tends to be a lot of repetition of documents within a company, so if you can add a mechanism to sort and classify data, that way if you have multiple copies, you only back up one. That reduces the cost."

Tinkiel acknowledges that backing up to tape has some limitations, especially when it comes to retrieving data from backup after the original has been lost. "Data takes time to be written, and the sequential nature of tape means you have to read it back to find the information you were looking for, which could mean going to the end of the tape," he says. "You can read a disk more quickly than a tape, but that comes at a slightly higher cost."

Human error

Perhaps tape's biggest limitation is that it leaves too much room for human error. Last year's MJ Flood survey found that 30% of businesses don't replace their backup tapes every 12 months – as best practice suggests. In more than 20% of companies, only one person is entrusted with looking after backup tapes or disks. Ann Quinn says this has its drawbacks.

"The onus is on somebody every day to put the tape into the server and back it up. If that person is on holidays, somebody else has to do it, and it takes time to get used to that," she says. Her firm was using tapes for many years before changing to an online backup provider. "There is security and a fantastic sense of relief in having off-site online backup," she says. "It gives peace of mind, knowing that it's done every night. It's like the responsibility is taken from us."

According to Eoin Blacklock, managing director of online backup specialist KeepITsafe, setting up a backup process at the beginning is vital to its success. "Many backups, even tapes, are set up incorrectly," he points out. As good practice, he advises law firms to recover their data from a backup copy at least twice a year to ensure the process is working. "Backup is nothing without the ability to restore," he says.

Backing up over the internet to a secure off-site location has become an increasingly popular alternative to tapes. Hanna, Moore & Curley has been using KeepITsafe's online backup service for almost two years. The firm backs up three types of data – all of its documents, as well as its patent management software and its Microsoft *Exchange* email settings. For additional protection, each of these file types is backed up independently of the others.

"Everyone signs up expecting never to have to use it, but we have had to use it and we got a full backup within six hours," says Barry Moore. In that instance, one of the firm's servers failed, which could have caused significant disruption to the business. To restore the data, KeepITsafe staff arrived at the firm's offices with a copy of the data to be loaded

19th century pioneers had a very rudimentary understanding of what constitutes disk backup

onto the replacement system.

"We also had some individual restores where a couple of people had deleted files by mistake," Moore recalls. In those cases, they were able to download the missing files over the internet.

Hanna, Moore & Curley backs up its data every night between midnight and 4am, to avoid disruption during the working day. Previously, the firm had been using manual tape backups, but this was not practical, Moore explains. "There are only ten people in the firm, and we don't have the capacity for a full-time technical person."

Encryption

Although there are offshore data backup services, which can be cheaper, Moore says he is happy to pay a higher price to an Irish provider, "because you have somebody who can call to the door and an Irish number you can call". In addition, all of the information is stored in encrypted form and only the data owner has the code to unlock it. This works on a similar principle to ATM PIN codes, where not even the issuing bank knows the customer's four-digit code.

Blacklock says that online backup doesn't require a very fast broadband connection, nor does it take very long. "Because online backups only back up changes to data, they're very quick – they might only take 30 seconds to a minute." The initial backup is performed at the customer site to a disk that is then stored in the off-site location. After that, only changes to the original data rather than entire files are saved over the internet. This is useful for companies that prefer to save their data several times during the day, rather than doing a single backup overnight.

Fergal Madden, of the online backup provider Arion, says it is important that the service is fully managed by a third-party specialist. "Online backup does need to be supervised. Although it is set automatically to back up, there can still be some problems, such as a fault in broadband or a server crash during the backup process. It is essential then that we check all backups daily, so that if such a problem were to occur we could contact the customer and implement a full data recovery if required. The online backup process becomes more of a managed solution, and a notification is also sent to the end user each day as to the status of their backup."

Barry Moore strongly recommends that law firms ensure this basic – yet vital – task is done. "They'll only have one experience of needing backup when they don't have it to realise how important it is," he says. "Even if tape was half the price – and I don't know if it is – I still think it's worth spending the extra money for online backup. It's the cost of a new laptop per year and you're getting all your data saved." G

Gordon Smith is a writer and editor with Silicon Republic, Ireland's technology news service.

Saving for a

As the economic climate changes, so do the challenges of managing your finances. David Rouse looks at some of the issues and provides food for thought about the sound management of your personal finances

Many of us consider our home or our business to be our most important financial asset. However, when we ask the right questions, we discover the real answer.

What would happen if, due to permanent sickness or injury, you could no longer continue to work? What alternative source of finance could you rely on if the income from your profession stopped? Your income funds your lifestyle and meets the vast bulk of your financial commitments.

Perhaps your employer will help you in the short term. What if you're a self-employed partner in practice? Maybe you could depend on your savings in the short term. If you are an employee, the state will provide an invalidity pension of €10,571 each year. If you're self-employed, you have no such entitlement. It's a stark position – the realisation that your income is your most important personal financial asset.

On the positive side, for a limited cost, you can protect your income against circumstances where you can no longer earn. Providers of income protection (also called permanent health insurance) will pay a benefit to you in the case where, on a long-term basis due to accident or illness, you can no longer earn that income. To secure this protection, you need to pay a small proportion of your income now. Through tax relief on the policy premiums, the state pays almost half the cost of this protection.

The benefit from the income protection policy is payable until you are deemed fit to go back to work or to a predetermined cessation age. The cover is referred to as 'permanent' because, no matter how many claims you may make, the provider cannot cancel the policy so long as you continue to pay the premium.

Serious illness cover is different to income protection. It provides a lump-sum benefit payable on the diagnosis of a specified illness or condition covered by the policy. For example, it would pay a lump sum on a diagnosed heart attack. Serious illness cover is not linked to your capacity to work.

MAIN POINTS

- Income protection policies
- Serious illness cover
- Pension planning

Financing your long-term future

Pension planning is really long-term saving, but with very advantageous tax benefits. If you're a top-rate

rainy day

taxpayer, for every €100 you put into a pension, when combined with the tax relief, you get a bonus of €69 from the government. Compare this to the SSIA scheme, where you got only €25 on every €100 you saved. Even if you are a standard rate 20% PAYE taxpayer, it is still worthwhile to contribute to a pension, as you will get a bonus of at least €25 on every €100 you contribute – slightly more if you pay PRSI (4%) and the health levy (2%).

In the long term, because you save tax on the money you contribute to pensions, you get to hold on to more of your earnings. In addition, all investments and growth within your pension are tax-free. You pay tax on your pension only when you actually receive

benefits in retirement.

Depending on how soon you start saving, you could have 20 or 30 years of tax-free investment growth on funds you contributed to your pension in a tax-free manner. Many higher earners can get up to 25% of their fund at retirement in the form of a tax-free cash lump sum. Early and disciplined pension planning helps to achieve a secure future when you finish working.

Enhanced pension funding

An employer company can make pension contributions on behalf of a director or employee that are much higher than these personal contributions. How much can be contributed by the employer is determined by reference to the director/employee's age, salary, years' service and existing pension fund size. Rather than a percentage of salary, these contributions can amount to a multiple of salary.

Using a limited company for some of his business operations means that a self-employed person can access these enhanced pension-funding options. If the budget measures proceed and reduce the pension funding available to the self-employed, the limited company option will become more attractive. Regulatory or commercial reasons may rule out this approach, and detailed professional advice should be obtained.

Pension facts

Criticism of pensions is widespread in the financial and general media. Such criticism ignores the sensible fundamentals of long-term saving and of taking advantage of the tax breaks. You can draw a parallel between pensions and a world-class football stadium. The stadium has a great structure: the stands, the pitch, the goalposts are solid. How the players and teams perform depends not on the stadium structure, but rather on the quality of those players, the manager's selection, and the opposition. Afterall, you don't credit or blame Croke Park itself for the performance of your county team, or our national soccer and rugby sides!

"It is a truism to state that every individual case is different; however, the same broad issues of protection and planning apply to most of us"

USE IT OR LOSE IT

Failure to take advantage of pension tax breaks means that you voluntarily give away a proportion of your personal wealth each year. If you are self-employed, the tax relief you get each year is available only in that year – in other words, it's a 'use it or lose it' relief. Directors and employees have more opportunity to plan, because their employer company can make pension contributions on their behalf.

The recent budget proposes to limit the maximum earnings from which a self-employed person or PAYE taxpayer can make personal pension contributions or AVCs (additional voluntary contributions) that will receive tax relief. The personal contribution on which you get tax relief is based on an age-related percentage of your earnings (see table). The maximum earnings in 2007 are €262,382, and in 2008 they are €275,239. October's budget proposes to limit these maximum earnings to €150,000 with effect from 2009 onwards.

The same logic applies to a pension – the structure is solid and the tax breaks are considerable. The performance of the assets put into the pension depends on the investment manager, the quality of the assets, and market conditions. Recent falls in the value of the assets held in pensions should not detract from the long-term savings provided by the tax advantages.

What about the choice of assets in a pension? There is a wide range of pension investments available. You even have the option of keeping your funds on cash deposit. You can decide where your pension invests, when those investments are made, and when they are realised. If you have the time and the experience, then self-administered and self-directed pensions can give you complete control over your pension investments – you can be your own investment manager.

Pension investment is part of an overall financial plan. The amount of income you devote to your pension investments will be determined by your financial priorities. In most cases, the need to protect your current income would precede the need to contribute to a pension. That said, the earlier you start a disciplined approach to pension planning, the more will ultimately be available to you when you're no longer working.

Retirement options

If you are a self-employed individual, you have the option at retirement to use your pension fund either to purchase an annuity or to move your fund to an approved retirement fund (ARF).

Until 1999, at the point of retirement, you had no choice with what to do with your fund. Your fund was given to a life insurance company who provided you with a guaranteed yearly pension income for the rest of your days – the annuity route. In most cases, on your death in retirement, a reduced pension was

Age attained during the year	Maximum personal contribution
Under 30	15%
30-39	20%
40-49	25%
50-54	30%
55-59	35%
60 and over	40%

provided for your spouse or dependants. However, the overall fund you had accumulated during your working years and had given over to the life company at retirement remained with the life company.

Since 1999, the ARF option has been available as an alternative to the annuity route. The ARF has become popular in recent years because it allows you to hold on to the value of your fund at retirement and to retain control over your pension investments. The fund you have built up during your working life can be transferred to the ARF. In retirement, you draw an annual income from the ARF.

Planning for the unexpected

Importantly, your ARF forms part of your personal estate so, on your death, the value of your fund is preserved (less whatever you have drawn from it, or deemed to have drawn under recent new ARF tax rules). Your ARF can be left directly to your spouse or dependants when you pass away and can be inherited tax efficiently, or indeed tax-free in certain circumstances. An ARF can represent a valuable way of passing wealth to the next generation.

If you are a partner in a firm, what would be the financial impact on you and your colleagues if another partner died unexpectedly? It could jeopardise the very continuation of the practice. The firm may have to pay a large lump sum to the family of the deceased partner, representing the value of their inherited share of the business. Where would these funds come from? You and your surviving partners might have to make substantial borrowings to finance buying out the deceased's family.

A partnership insurance plan can provide for the liabilities thrown up by such an unexpected event. The plan provides the funds needed by the remaining partners to buy back from the family the deceased partner's share in the business. It allows the remaining partners in the firm to keep full control over the partnership.

Provided the correct arrangements are put in place, the plan comes with certain tax efficiencies. It operates to ensure that the deceased's family obtains the value of their inheritance in a timely manner. The undesirable alternative to this sensible planning is drawn out and perhaps acrimonious negotiations and financial transactions arising in the context of a sudden bereavement.

Be prepared

The issues outlined above may give you food for thought in reviewing your own financial affairs. It is a truism to state that every individual case is different; however, the same broad issues of protection and planning apply to most of us. The recent economic changes might prompt you to review your personal arrangements in conjunction with your financial advisor. G

David Rouse is a business development executive with Oregan Financial Limited.

The best will

Not every child dissatisfied with the terms of a parent's will has a cause of action pursuant to section 117 of the *Succession Act 1965*. Rita Considine points out some important things to remember

The *Succession Act 1965* has been the operative law dealing with succession and related matters for more than 40 years. The act has, like the vast majority of legislation, been amended from time to time, including as recently as this year by sections 67 and 68 of the *Civil Law (Miscellaneous Provisions) Act 2008*.

Section 117 of the *Succession Act 1965* (see panel) has been the subject of a large amount of litigation. The provision enables a child to take proceedings against the estate of a deceased parent, claiming that the deceased parent has failed in his or her moral duty to make proper provision for the child in accordance with the means of the parent, either during the lifetime of the parent or under the terms of his or her will, and asking the court to make proper provision for the claimant child.

Important matters to remember

Time limit. Subsection 6, as amended by section 46 of the *Family Law (Divorce) Act 1996*, provides that an order shall not be made under section 117 unless the proceedings are taken within six months of the first raising of representation to the estate of the deceased parent, being within six months of the issue of the first grant in the estate.

A child under a legal disability (either a minor or a person of unsound mind) is bound by the same six-month period, and no extension is given in the case of a disability. This is an absolute period of limitation, and the court has no discretion to make an order if the proceedings are not issued within that time period (*MPD v MD*).

Who can make a claim? Only a child of a deceased testator can make a claim under section 117. It does not apply to any other degree of blood relation or remoter issue. Since the amendment by sections 1 and 31 of the *Status of Children Act 1887*, the provisions apply equally to marital and non-martial children of a deceased testator. A child is a child of any age.

The deceased must have died testate. The provision only arises where the deceased parent died leaving a valid will. A claim does not arise in the case of a death intestate.

Practice and procedure

The High Court and the Circuit Court have jurisdiction to hear and determine claims taken pursuant to the provisions of section 117 of the *Succession Act 1965*.

High Court proceedings are commenced by a special summons, which is verified by an affidavit sworn by the plaintiff child following the issue of the summons. When the special summons is issued, it is assigned a return date before the Master of the High Court. On the return date, the summons will automatically appear listed before the Master. It is important to serve the summons before the return date. If, however, the summons has not been served, the solicitor for the plaintiff will have to apply to the Master for a new return date for the summons. It will be necessary to then serve the summons on the defendant with the new return date inserted.

Once an appearance is entered on behalf of the defendant personal representative(s) of the estate of the deceased parent, it is likely that an affidavit or affidavits in defence of the claim will be sworn and filed by the personal representatives. The plaintiff will have an opportunity to reply to the affidavits sworn by the defendant(s) (if necessary), as will the defendant have an opportunity to reply to any affidavits sworn by the plaintiff.

When the affidavits are complete, the Master of the High Court will transfer the summons to the Chancery list for the next available Monday. The Chancery judge will send the matter forward to the Chancery list to fix dates, unless any matters need to be dealt with at that time. Although the case is transferred to a list to fix dates, it will not appear in a call-over of that list until such time as it has been certified by senior counsel as being ready for hearing.

It will be necessary for one or both parties to seek

MAIN POINTS

- Child taking proceedings against the estate of a deceased parent
- Time limits and eligibility
- Practice and procedure
- Case law

in the world

discovery. The discovery that normally arises in section 117 proceedings is discovery of a financial nature, setting out the assets, liabilities, income and expenditure of the plaintiff child. Like discovery will be required in respect of any other child for whom the testator has made provision or who is making a similar claim.

In some cases, it will be necessary to join other parties as notice parties to the proceedings. However, that should only happen in exceptional circumstances, and it is at the discretion of the court whether or not to permit a person who is not a party to the proceedings to be joined as a notice party. The court may refuse such an application or may allow the application upon such terms, including terms as to costs, as the court determines.

The case is a hearing on affidavit. However, it is usual that notices to cross-examine the deponents on the affidavits filed would be served by each side. On occasion, applications are made to the Chancery judge to have the hearing of the claim as a plenary hearing with oral evidence only.

The Circuit Court has jurisdiction to hear all section 117 claims, provided that the rateable

valuation of any immoveable property of the testator does not exceed €254.

The proceedings must be taken in the Circuit Court area where the deceased was ordinarily resident at the date of his death. Order 50 of the *Circuit Court Rules 2001* (as amended) sets out the practice and procedure and the applicable rules of court.

The claim is commenced by the issue of a succession law civil bill. Once the civil bill has been issued and served, an appearance is entered by the defendant and a defence filed. Particulars may arise, as will discovery in a like manner to that sought in High Court proceedings. When the pleadings are closed and discovery made, the case is set down for hearing and receives a hearing date in the normal way.

All proceedings taken under part IX of the *Succession Act 1965* are heard *in camera*.

Position of a surviving spouse

Subsection 3 makes it clear that an order under the section shall not affect the legal right of a surviving spouse or, if the surviving spouse is also the mother/father of the plaintiff child, an order under the section shall not affect any devise or bequest or share

SECTION 117

Section 117 of the *Succession Act 1965* (as amended) provides as follows:

"117(1) Where, on application by or on behalf of a child of the testator, the court is of the opinion that the testator has failed in his moral duty to make proper provision for the child in accordance with his means, whether by his will or otherwise, the court may order that such provision shall be made for that child out of the estate as the court thinks just.

(1A) An application made under this section by virtue of part V of the *Status of Children Act 1887* shall be considered in accordance with subsection (2) irrespective of whether the testator executed his will before or after the commencement of the said part V.

Nothing in paragraph (a) shall be construed as conferring a right to apply under this section in respect of a testator who died before the commencement of the said part V.

(2) The court shall consider the application from the point of view of a prudent and just parent taking into account the position of each of the children of the testator and any other circumstances which the court may consider of assistance in arriving at the decision that will be as fair as possible to the child to whom the application relates and to the other children.

(3) An order under this section shall not affect the legal right of a surviving spouse or, if the surviving spouse is the mother or father of the child, any devise or bequest to the spouse or any share to which the spouse is entitled on intestacy.

(4) Rules of court shall provide for the conduct of proceedings under this section in summary manner.

(5) The costs in the proceedings shall be at the discretion of the court.

(6) An order under this section shall not be made except on an application made within six months from the first taking out of representation to the deceased's estate."

LOOK IT UP

Cases:

- *MPD v MD* [1981] ILRM 179]
- *Re ABC deceased XC v RT* [2003] 2 IR 250
- *Re: IAC* [1992] IR 143

Legislation:

- *Circuit Court Rules 2001*, order 50
- *Civil Law (Miscellaneous Provisions) Act 2008*, sections 67 and 68
- *Family Law (Divorce) Act 1996*, section 46
- *Status of Children Act 1887*, part V
- *Succession Act 1965*, section 117

on intestacy to which the surviving spouse (who is also the mother of the claimant child) is entitled to receive.

Therefore, if a testator made a will leaving the entire of his estate to his/her surviving spouse, a child of the parties could not succeed in a claim pursuant to section 117, as the court cannot make an order that affects either:

a) The legal right share of the surviving spouse, or
b) If the surviving spouse is also the mother of the child, any devise, bequest or share on intestacy to which the surviving spouse is entitled.

Distribution of assets

If a client has a claim and proceedings issue within the time allowed, it is important to seek an undertaking that the personal representative(s) will not proceed with the administration of the estate or dispose of any assets pending the determination of the claim. Once on notice of a claim, the personal representative(s) should not distribute the assets, as personal liability may attach to the personal representative(s) for any loss caused.

"The case law makes it clear that the child must prove a positive failure of moral duty on the part of the parent and a high onus of proof rests on the child"

Case law

There is a large amount of case law in this area. It clearly shows that the claimant child must prove his or her case "on the balance of probabilities" and that a "relatively high onus of proof" rests upon the claimant child and "a positive failure in the moral duty has to be proved" by the claimant child (*Re: IAC*).

The court approaches the claim in two stages, firstly determining if there has been a failure by the testator in his moral duty to make proper provision for the claimant child. Only if that is decided in favour of the child will the court proceed to the second stage, namely, to consider what is 'proper provision' for the claimant child.

The relevant date for considering the claim of the plaintiff is the date of death of the testator.

In the case of *Re ABC deceased XC v RT*, Kearns J reviewed the case law in the area and set out a list of principles to be applied in section 117 claims in a clear manner.

Not every child dissatisfied with the terms of a parent's will has a cause of action pursuant to section 117 of the *Succession Act 1965*. The case law makes it clear that the child must prove a positive failure of moral duty on the part of the parent and a high onus of proof rests on the child. The circumstances of every potential claim should be carefully considered before embarking upon such proceedings, which will delay the administration of the estate of a deceased person as well as put the estate to the cost of defending such claims. G

Rita Considine is a Dublin-based barrister.

In the first of two articles on legal liability for hospital-acquired infections, Rody O'Brien examines the concept of causation and relevant British case law

BALANCE OF PROBAB

MAIN POINTS

- Medical negligence and the duty of care
- Legal liability for damage sustained as a result of hospital-acquired infections
- British cases and the 'new' direction they are currently taking

Hospital-acquired infections such as methicillin-resistant staphylococcus aureus (MRSA) and clostridium difficile (C-Diff) are making the headlines a lot these days. In order to establish legal liability for damage or injury sustained as a result of hospital acquired infections, the plaintiff must prove that the defendant owed him/her a duty of care and that the defendant breached the standard of care as set out in the law. In addition, the plaintiff must prove that his/her injury was caused by the defendant's negligent action or omission. Indeed, because causation is often times the most difficult hurdle for the plaintiff to overcome in hospital-acquired infections cases, the main portion of this article will examine the law in this area. We will also look at how these types of cases have been running in Britain and the 'new' direction they are currently taking. All the while, we await more certainty with a pronouncement from the courts in this jurisdiction on these types of cases to give us a binding precedent.

Breach of duty

In cases of hospital-acquired infections, two types of breach of duty may be claimed. The first type of claim is that the plaintiff contracted the hospital-acquired infection due to a failure to take care. This is usually where there is an allegation of lack of hygiene in the hospital by staff members, failure to isolate infected patients, and so on. The second type of claim is that, once the hospital-acquired infection had been acquired, the defendant was negligent in diagnosing and treating it.

Causation

The traditional legal test for establishing causation is called the 'but for' rule. It goes along the lines of 'but for' the defendant's acts or omissions, the plaintiff would not have suffered the injury. Causation is established as a matter of facts in a scientific way, so expert medical evidence is a very important aspect. The 'but for' test is well established in Irish law.

We now focus on causation in medical negligence cases and, to do this, we will look at some very relevant and instructive cases from our neighbouring jurisdiction.

In *Barnett v Chelsea and Kensington Hospital Management Committee*, the plaintiff's husband was one of three night-watchmen who had turned up at the defendant hospital feeling very ill after drinking tea. The three men were sent away from the hospital without examination and were told to consult their own doctors. The plaintiff's husband died later from what turned out to be poisoning from arsenic that had been found in the tea. It was held that, while there was negligence, the negligence was not the cause of

ILITIES

the plaintiff's husband's death. He died from arsenic poisoning, and it had been at such an advanced stage by the time he arrived at the defendant's hospital, it wouldn't have mattered what the defendant had done – he would have died anyway. The poisoning was the cause of death, not the negligence of the defendant.

In *Hotson v East Berkshire Area Health Authority*, the plaintiff, a 13-year-old boy, fell from a tree and injured his hip. He was taken to a hospital run by the defendant. The boy's injury was not diagnosed and, after five days of severe pain, he was taken back to the hospital. His injuries were then diagnosed and he was given emergency treatment. His injury developed into avascular necrosis. This resulted in his hip being deformed and led to limited mobility by the time he was 20. The defendant admitted negligence, but argued that the negligence had not caused the plaintiff's injury. The trial judge accepted the expert medical evidence that there was a 25% chance that, had the plaintiff received the correct medical treatment on his first visit to the hospital, he would have avoided avascular necrosis. He awarded 25% of the damages that the plaintiff would have won had he shown that the defendant's negligence had caused the avascular necrosis. This was upheld by the Court of Appeal. The defendant appealed to the House of Lords and the appeal was allowed. It held that the avascular necrosis was caused by the fall from the tree and not from the defendant's negligence: "Once liability is established, on the balance of probabilities, the loss which the plaintiff has sustained is payable in full. It is not discounted by reducing his claim by the extent to which he has failed to prove his case with 100% certainty" (Lord Ackner).

Material contribution to causation

In *Wilsher v Essex Area Health Authority*, the plaintiff was born prematurely and suffered from oxygen deficiency. The defendant, on treating him, negligently inserted a catheter into his vein instead of his artery. This resulted in the plaintiff having an excess amount of oxygen. The plaintiff was found to be later suffering from virtual blindness as a result of an incurable condition of the retina. The condition could have been caused by the excess oxygen or it could have been caused by any one of four other completely different risks to which the plaintiff was exposed. In the trial, the medical evidence was inconclusive as to whether the excess oxygen caused or even materially contributed to the blindness. The plaintiff succeeded in the first instance and again in the Court of Appeal. The House of Lords reversed this and held for the defendant.

As the plaintiff was unable to prove, on the balance of probabilities, that the negligence of the

defendant caused or materially contributed to his injury, his claim failed. In other words, the traditional test of causation – the 'but for' test – reasserted its dominance.

Recent British High Court decision

In *Anderson v Milton Keynes General NHS Trust and another*, the plaintiff fractured his ankle following an accident at work on 11 November 2000. He was admitted to Milton Keynes General Hospital the following day and underwent surgery. He was then transferred to the John Radcliffe Hospital for further orthopaedic and plastic surgery. At this point, he was informed that, as a result of his injury, there was a 20% risk of deep infection with potentially serious consequences. He had a routine swab for infection, which confirmed MRSA colonisation, the result of which was not known until 17 November. On 14 November, the plaintiff underwent major orthopaedic reconstructive surgery. The test results were not communicated to the plastic surgeons, as they should have been. On 19 November, the plaintiff underwent plastic surgery. The surgeons were unaware of the MRSA colonisation. They used an intra-operative prophylactic antibiotic during surgery, which is not an antibiotic effective against MRSA. On 21 November, the plaintiff had developed symptoms of an infection. As the earlier test results had still not been communicated to his doctors, they commenced treating the infection with antibiotics. On 1 December, there were still signs of an infection. Antibiotic treatment was stopped to allow the active infection to be detected. Over the next few weeks, there was a general improvement and no signs of deep infection. On 16 December, the plaintiff was discharged from hospital. On 12 January 2001, a swelling to the leg was noted and he was readmitted to hospital. By now he was receiving drugs specific to MRSA. The infection improved. The fracture was not healing and he underwent further surgery in July 2001 and December 2001. There was non-union of the fracture, and he suffered disability with pain and shortening of the leg.

The defendant admitted two breaches of duty:

1) A failure to communicate the results of the first test to the plastic surgeons. Had the results of this test been known, it was accepted by the defendant that a different antibiotic would have been used for the surgery on 19 November 2000.
2) Had the results of the first test been known on 21 November, when treatment was prescribed, it was accepted by the defendant that the plaintiff would have received MRSA-specific antibiotics.

The defendant argued, on the balance of probabilities, that the negligence had not caused the injury. Even if the plaintiff had received the correct treatment, it would not have made any difference. They argued that the MRSA infection would have grown deep into the patient's bone and that the appropriate antibiotic treatment wouldn't have affected the outcome. The English High Court held that, though an MRSA-specific antibiotic might have improved the outcome, it was clear that any improvement would have been small. Even without deep infection, it held that there would have been non-union of the fracture. Accordingly, the plaintiff would still have required reconstructive surgery. On the balance of probabilities, by the time the MRSA antibiotics should have been administered, the infection had entered the bone and was immune from attack.

In summary, the plaintiff couldn't prove, on the balance of probabilities, that the MRSA infection caused the failure of the fracture to heal, leading to the surgery that removed part of the bone. The damage could have been caused by the original accident and the original break, which would have required the reconstructive surgery.

The second part of this article will deal with recent Irish cases on causation in medical negligence cases and breach of statutory duty in Britain. G

LOOK IT UP

Cases:

- *Anderson v Milton Keynes General NHS Trust and another* [2006] All ER(D) 175
- *Barnett v Chelsea and Kensington Hospital Management Committee* [1969] 1 QB 428
- *Hotson v East Berkshire Area Health Authority* [1987] AC 750
- *Wilsher v Essex Area Health Authority* [1988] AC 1074

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It is commonly believed that the Labour Relations Commission's *Code of Practice on Access to Part-time Work* is not legally binding. Though true in theory, the reality is quite different. Colm O'Connor assesses your request for flexi-time

Bending ov

In recent years, both employers and employees in Ireland have become acquainted with the notion of flexible working arrangements and associated concepts, such as access to part-time work, job-sharing and job-splitting. Reflecting the increasing demands being put on the labour force in terms of balancing work commitments with the rest of their daily lives (such as looking after family, friends and leisure), many employees' and employers' representatives have been keen to address this important and topical issue. Key bodies such as IBEC and ICTU have been instrumental in participating in the National Framework Committee for Work Life Balance Policies, a body established for the purposes of setting up a planned and systematic approach to the issue of work/life balance for employees.

In addition to the work carried out by the framework committee, the Labour Relations Commission has published its *Code of Practice on Access to Part-time Work*. This is a useful primer for many employers and employees who seek to understand how best practice should be adhered to in this area of the law and human resource management.

It is commonly stated that the code of practice is not legally binding in Irish law but, while this is true in theory, the practical reality is quite different, as recent case law has highlighted. More specifically, there are a number of recent cases, both at a national and a European level, that have highlighted the fact that a quasi-judicial body such as the Equality Tribunal will have regard to the code of practice when making decisions concerning its core areas of competency, such as discriminatory dismissal and discrimination/victimisation in the workplace.

MAIN POINTS

- **Flexible working arrangements**
- **LRC's *Code of Practice on Access to Part-time Work***
- **'Associative discrimination'**

Indirect discrimination

A particularly interesting example in this regard is the 2008 decision of the Equality Tribunal in the dispute between Ms Catherine Morgan and the Bank of Ireland Group. In this case, the Equality Tribunal ruled that Bank of Ireland had indirectly discriminated against Ms Morgan on gender grounds by failing to treat "seriously" her request for flexible working arrangements. Ms Morgan had made a request for part-time work or job-sharing in the year 2000, having been employed by the bank since 1990. This was to facilitate an overseas adoption she had been planning. Ms Morgan subsequently followed up on this request a number of times over a five-year period, availing of a career break and taking periods of stress relief in the intervening period, without any meaningful response to her initial request. It was not until April 2005 that the bank offered Ms Morgan job sharing; however, by this stage, she was not in a position to accept their offer.

By failing to deal with Ms Morgan's request for flexible working hours within an adequate timeframe, the Equality Tribunal held that Ms Morgan's request had not been treated seriously, as required by the LRC code of practice. It also held that she had been indirectly discriminated against on the grounds of gender, citing the Supreme Court case of *Nathan v Bailey Gibson* and also section 22(1) of the *Employment Equality Acts 1998-2007*. The tribunal stated that there was authority for the proposition that the behaviour complained of by Ms Morgan weighed more heavily on members of the female as opposed to the male gender, thereby making it *prima facie* discriminatory in nature. In such circumstances, it suggested, the onus shifted to the employer to prove that the discriminatory action complained of was objectively justifiable by a legitimate aim and, also, that the means of achieving that aim are appropriate and necessary.

The tribunal held that the facts of the case meant that a five-year delay was not objectively justifiable and, accordingly, made an award for compensation in the sum of €30,000 to Ms Morgan for the discriminatory treatment suffered by her. It also ordered that Bank of Ireland implement a procedure for job-sharing and part-time working applications that is fully compliant with the LRC code of practice.

Discrimination by association

Another salient example of the obligation of an employer to follow fair procedures and best practice when considering an application by an employee for

er backwards

Most working arrangements aren't as flexible as this

part-time work or flexible working hours is provided by the recent landmark English case, *Coleman and Attridge Law*. This case concerned a mother of a disabled child who took legal action after claiming that she was not allowed as much flexibility in her job as were parents of other children in her workplace. As a primary carer for a disabled child, Ms Coleman had applied to her employer for flexible working arrangements, but was told that she could not be accommodated. Ms Coleman subsequently accepted a voluntary redundancy package, only to make a claim for constructive dismissal five months later.

Initially, the claim was heard by the London (South) Employment Tribunal; however, it was subsequently sent by this statutory body to the European Court of Justice for clarification on a point of EU law. The ECJ was asked to consider whether or not Council Directive 2000/78/EC (establishing a general framework for equal treatment in employment and occupation) protected persons from the concept of 'discrimination by association'; that is to say, in the case that Ms Coleman was putting forward, the ECJ was being asked to consider whether or not she could be discriminated against on the grounds of disability by virtue of her association with her disabled child.

In a ruling that has profound implications for employment equality law throughout Europe, the ECJ clarified the laws of discrimination in this area by confirming that EU law does indeed provide for protection against 'associative discrimination'. The court further clarified that protection under EU law is not only for a particular category of person, but also applies to the nature of the discrimination itself. "Where an employer treats an employee who is not himself/herself disabled less favourably than another employee in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his/her child … such treatment is contrary to the prohibition of direct discrimination," according to the ECJ.

The case has now reverted back to the employment tribunal and is currently awaiting a final decision – however, the highest court in Europe has spoken. An important precedent has been established, and the principle of associative discrimination has been firmly set down at European level, with significant implications for the national laws of member states in this area.

"It is particularly important for employers to note that recent case law has demonstrated that there is an obligation on them to treat such requests seriously and, if possible, accommodate them"

Dealing with employees' requests

It is commonly held that employment law is unduly concerned with procedure, at the expense of the substantive legal issues at play. In many cases, employers have borne the full brunt of the law in this area in the form of costly compensation awards to employees, purely because they have failed to follow fair procedures when dealing with those in their employ.

Bearing this in mind, and in the context of dealing with requests for flexible working arrangements from employees – whether it be for reduced working hours or job sharing – employers in this jurisdiction should take note of recent developments in this area and always adhere to a predetermined policy statement and procedure, lest they find themselves before an equality tribunal explaining why they do not have a clear policy in place or, if they had, why they did not follow it.

Before drafting any such procedure, it is worth examining the full extent of the obligations put on the employer by the *Equality Acts*. In this regard, particular attention should be paid to the fact that employment equality law in Ireland not only applies to employees in the workplace, but also to prospective employees. As shown by the case of Dr Ronaldo Munck, a person can make a claim to the Equality Tribunal for compensation of up to €12,697 if they feel that they have been either directly or indirectly discriminated against by a potential employer at a job interview.

LOOK IT UP

Cases:

- *Coleman and Attridge Law* (UKEAT/0417/06/DM)
- *Ronaldo Munck and NUI Maynooth* (DEC-E2005-030)
- *Catherine Morgan and Bank of Ireland Group* (DEC-E2008-029)
- *Nathan v Bailey Gibson* (SC no 375 of 1992)

Legislation:

- Council Directive 2000/78/EC
- *Employment Equality Acts 1998-2007*

As far as the drafting of the policy and procedure itself is concerned, a number of key points are worth noting:

- In line with the recent trend towards consultation in the workplace, it is advisable that any proposals relating to flexible working arrangements be discussed with employees before pen is put to paper by a drafting solicitor,
- Once the consultation process has finished, a draft document should be formulated, aiming – where possible – to accommodate both the requirements of the organisation concerned and its constituent employees,
- At all times, the policy on access to part-time work or flexible working should encapsulate what is termed as fair procedure and dovetail neatly with the equality policy of the organisation concerned. More specifically, the policy should contain or provide for the following:
  a) A formal application form, requesting the employee to state why they are requesting the change in their contracted hours of work,
  b) A clearly defined timeframe for dealing with applications made by employees, and finally,
  c) The manner in which a decision will issue to an employee – for instance, if an employee is successful in their application, he/she should be informed in writing and an amended contract of employment reflecting the new terms and conditions of his/her employment should issue from the employer. Likewise, if an employee is unsuccessful, they should be given a clear reason in writing why their request could not be accommodated. They should also be given the right to appeal a decision refusing their request for part-time work or flexible working hours.

At the end of the day, both employers and employees need to know their rights in this area. It is particularly important for employers to note that, while there is no statutory obligation for them to provide part-time work or flexible working hours to an employee, recent case law has demonstrated that there is an obligation on them to treat such requests seriously and, if possible, accommodate them.

Failure to do so may result in a costly award of compensation being made to an employee by the Equality Tribunal if he/she can prove discrimination under one of the nine grounds contained in the *Equality Acts*. G

Colm O'Connor is a trainee solicitor with John A Shaw & Co. He has a Diploma in Employment Law and is due to complete his traineeship in December of this year.

As CEO of the Courts Service for almost ten years, PJ Fitzpatrick has overseen the transformation of the system from a "ruinous condition" into a modern, 21st century organisation. Tom Rowe spoke to him in advance of his retirement

MAIN POINTS

- Nine years as the first CEO of the Courts Service
- Modernisation and reconstruction
- "Dragging the courts into the 21st century"

From the many windows of his corner office in Smithfield, looking south towards the Phoenix Park, PJ Fitzpatrick can see one of the most dramatic results of his tenure as CEO of the Courts Service. The service's new building rises above the skyline in the distance, 11 stories of glass and steel in a distinctive circular shape. Due to be completed and operational in early 2010, it "flew up – it is several months ahead of schedule," says the CEO.

Enthusiastic in his description of the new edifice, PJ talks of the 22 technology-laden courtrooms, the accommodation for 100 prisoners in the basement, and the direct access for garda vans to avoid "all the problems of handcuffs and photographs at the Four Courts". There will be victim-support rooms on every level, facilities for solicitors, and the Bar Council is setting up a library on its own dedicated floor. It will replace all the criminal courts in Dublin.

The new building is one of PJ's proudest and most visible achievements of the nine years he has headed the Courts Service, a tenure that is coming to an end this year. He says that he is "a firm believer in fixed contracts. Many people stay too long in top jobs, get burned out and lose energy, lose enthusiasm. I promised that wouldn't happen to me, so I'm stepping down." Having completed two contracts with the Courts Service, PJ is moving on, but says "obviously, I'm not going to be doing nothing. I'll see what happens, but I'm certainly not going to retire and play golf – I'm too young for that."

Youth has never been a hindrance to the CEO. Appointed as a director of human resources in the health services at 28, he spent ten years as an assistant CEO before moving into the top position in the old Eastern Health Board. He remains a non-executive director of the HSE. He was the first CEO of the Courts Service when it was established in 1999 as a new independent statutory agency.

PJ is aware that he was "given an opportunity that few ever get – to build an organisation from a greenfield site". It was a "hectic time", but he has

HAIL TO THE CHIEF

"enjoyed every minute of it". He cannot emphasise enough how fortunate he was to have supportive boards, Chief Justices and presidents of the courts, as well as judges and staff.

Laying the foundations

There were several issues at the foundation of the Courts Service that could have scuppered the entire project. Judges were concerned about whether or not being involved in the board would threaten or impact on the separation of powers and judicial independence. The working group that recommended the establishment of the service, chaired by Mrs Justice Susan Denham, was of the view that, because the activity of the service was related to administration, it was not inappropriate for judges to work on the board. PJ regards this as their most important recommendation, since "if the judges had not decided to get involved at the time, much of what we achieved simply wouldn't have happened". The success of the board is exemplified by the fact that they have never had a vote. "Nobody has sought to exercise majorities; we've always had consensus," he says. Aside from the nine judges on the board, at any one time there could be "40 or 50 judges involved in committees or various projects, where a lot of work gets done, as in other organisations".

Alongside the work of the judges, for PJ the staff of the service have been "second to none". He "never ceased to be amazed by the openness to change". "We have not had one industrial dispute in nine years, despite the scale and volume of change". While the courts have an image of being "traditional and conservative", change was embraced, although the 'partnership structures' set up were also a major contributing factor. PJ talks of initial negotiations with staff and trade unions. He had to stand his ground on certain issues, such as insisting that the highest Supreme Court offices were no longer to be filled on a seniority basis, as they had traditionally been. Competitive interview was agreed upon, but only at the 11th hour of negotiations. After the potential industrial relations disputes had been ironed out, PJ set about creating a strong corporate

"There were times when people were wondering 'Is it worth it?'. We know it is now – we can see the benefits in real terms"

identity for the Courts Service, with "our own brand, our own colour, so we became very visible and staff could identify with the service".

Real work

Once the foundations were laid, the real work began, with modernisation and reconstruction. Mrs Justice Denham's working group had described the courthouses of Ireland as beings "in a ruinous condition" in the late 1990s. According to PJ, at the time, "there were a lot of courts sitting in community centres, halls and hotel rooms. It was pretty poor, to put it mildly. In Nenagh, the roof had fallen in". During his time, the service has refurbished or built 50 new courts and upgraded more than 100 nationwide. From memory, PJ lists a long series of towns around the country that have benefited from the new facilities or are soon to receive them. Not everyone has been pleased with the changes, as there have also been a hundred closures of courthouses around the country. Referring to Mayo, where objections to the closure of courthouses in Ballinrobe and Ballyhaunis led to a reversal of the decision, PJ says that, in the western seaboard counties, there were just too many venues to justify. "Mayo had around ten or 11, Galway had 13. That number just couldn't survive, and we certainly couldn't justify spending a huge amount of money on courts that sat only once a month or every two months. The volume of cases was only a couple of hundred a year." PJ believes that the service received support for the closures from judges, staff and those who use the courts, as they could see the significant investments being made in new buildings and the restoration and modernisation of old ones.

As well as bricks and mortar, the courts have been dragged into the 21st century from a position that PJ believes would surprise many, even those who now work within the Courts Service. In 1999, "there was no information technology, no email, nor any understanding of IT or its potential". With €200 million of initial funding for buildings and IT, the courts have undergone an electronic revolution that has eliminated a lot of manual procedures and practices. A courts accounting system has allowed all family law payments to be done electronically, whereas in the past a huge amount of time was taken up writing out cheques and taking in money from spouses. Fines can be paid online, small claims can be processed online from start to finish. All judgments are online – often on the day they are delivered to court – allowing easy access to academics, journalists, researchers and students. Along with the service website, the statutory mandate to provide information to the public is being well attended to.

A Courts Service newsletter has been published since 1999. Now with a circulation list of 10,000, it goes to all involved in the law in Ireland, including service staff. PJ sees it as a form of communication that was especially crucial in the early stages.

FACT FILE **PJ Fitzpatrick**

- Born in Cavan, lives in Tullamore, commutes by train daily.
- Married with four children in their 30s.
- Plays golf once a week, more in summer, wife plays too.
- Very involved in GAA football. Goes back to Cavan for their matches.
- Enjoys reading. Mostly work reports now, but has read four books recently, including Asne Seierstad's *101 Days of Baghdad*, *Angel of Grozny* and *With their Backs to the World*. Enjoys autobiographies: Sean Kelly's *Rule 42* ("a textbook for managers implementing change") and Moss Keane's book.
- Two sons in financial services. Reads books they leave around the house about hedge-fund managers.
- Watches golf, rugby, football, any sport, news, current affairs.

Revealing some of the theory behind his management style, PJ states that most change programmes that fail do so due to poor communication with key stakeholders. To avoid this, user groups were created for "virtually every facet of the courts system", which come together every year to "examine what we are doing, get feedback from them on what we could be doing better, or what we're not doing at all".

Staying the course

The CEO believes that the courts system is hugely improved. When he arrived, "it was very centralised, there was no strategic planning, no annual reports, very few statistics or financial information. The funds of wards of court and minors were €700 million, and every office looked after its own. It was all done manually, on ledgers". Now it's computerised, professionalised, and stands at €1 billion, with Mercer retained as investment advisors and JP Morgan as custodian.

This outsourcing has been a feature of PJ's term as CEO. Often asked why, he says there is no ideological reason. When founded in 1999, recruiting and retaining IT people for the service was "a nightmare", as the dotcom boom was vibrant. With "so much to do and so little time", the decision to outsource extensively was made – not only in IT, but in many areas, such as security and maintenance. The need for 'quick wins' and immediate visible improvements was strong, to dispel doubts that some had about the new organisation. "Soon, people bought into the whole concept."

Despite his imminent departure, PJ is full of plans for the future of the Courts Service. Redevelopment of the Four Courts is the next big capital plan, with a single office for all family and civil law. Many extensions to the building will be demolished and replaced with a building more in keeping with the Gandon-designed complex. Unlike the Phoenix Park building, the Four Courts will not be a public/private partnership and will be done on a phased basis with the Office of Public Works, starting in 2010 at the latest.

On a more internal level, electronic filing for all civil and family law will transform the system, as it will be possible to lodge documents electronically. In addition, a case-progressions system is being piloted in Limerick, which will allow management of family law cases to improve and speed up cases and reduce costs, with county registrars meeting parties to identify disputes and agreements before court dates.

Whoever replaces PJ will have a lot to live up to, but could do worse than listening to the lesson he learned. "You really do have to stay the course; you have to keep your focus on the ultimate vision. There were times when people were wondering 'Is it worth it?'. We know it is now – we can see the benefits in real terms." G

ALL PICS: LENSMEN

Fine Gael dinner guests

The leader and other elected representatives of Fine Gael were special guests for dinner at the Law Society of Ireland on 1 July 2008 *(back, l to r)*: Mary Keane, Ken Murphy, Philip Joyce, Kevin O'Higgins, John O'Connor and John D Shaw. *(Front, l to r)*: Lucinda Creighton TD, Alan Shatter TD, Enda Kenny TD, James MacGuill (president), Olwyn Enright TD, Senator Paul Coghlan and Senator Eugene Regan

Pictured prior to the Fine Gael dinner were *(l to r)*: Fine Gael leader Enda Kenny, director general Ken Murphy and Senator Paul Coghlan

LawCare board convenes in Fair City

Representatives from LawCare staff and LawCare Trustees travelled to Blackhall Place, Dublin, for the LawCare board meeting on 20 October. *(Back, l to r)*: James Ness, Tom Murran, Bronwen Still, Paul Venton and Ann Charlton. *(Front, l to r)*: Louise Campbell, Hilary Tilby, Olivia Burren, Trish McLellan and Mary Jackson

At a dinner for the leader of Sinn Féin, Gerry Adams, and a number of the party's elected representatives were *(front, l to r)*: Arthur Morgan TD, Gerry Adams MP, President James MacGuill, Mary Lou McDonald MEP and Aengus Ó Snodaigh TD. *(Back, l to r)*: deputy director general Mary Keane, Council member Gerry Doherty, Council member Michelle Ní Longáin and Lisa MacGuill

Tipperary tackles these tough times

The Practice Management Task Force, established by Law Society President James MacGuill, hosted a seminar entitled 'Changing the traditional methods of practice for increased profitability' in the Horse and Jockey, Thurles, on 8 October 2008.

One of the functions of the task force is to ensure that solicitors understand their cost base and obtain reasonable remuneration for the services they provide.

The seminar showed members how to be profitable in these challenging times and highlighted the benefits of changing the traditional methods of practice to achieve this aim.

ALL PICS: GEORGE WILLOUGHBY

E O'Mahony, Deirdre Blackwell, C Hickey and Claire McCarthy (all Clonmel)

William Gleeson (Thurles), Nicholas Shee (Clonmel) and John Joy (Clonmel)

Eithne O'Meara (Clonmel), Patrick Kennedy (Thurles), Philip Egan (Thurles), Martin Hughes (Thurles) and Susanna Manton (Fethard)

Some of those who attended a meeting of the Tipperary Bar Association after the conference are pictured with President of the Law Society James MacGuill *(seated)* at the Horse and Jockey Hotel, Thurles, on 8 October 2008

End-of-year dinner at Blackhall Place

FACES IN THE CROWD

The committees of the Law Society held their annual end-of-year dinner in the Presidents' Hall of the Blackhall Place premises, on 25 September 2008. The *Gazette* camera was on hand to capture some of the many committee members and committee secretaries who attended the event.

ALL PIX: LENSMEN)

At the committees' end-of-year dinner on 25 September 2008 were *(l to r)*: President James MacGuill, CEO of the Canadian Bar Association John DV Hoyles, Justin McKenna and Ken Murphy

Niamh Connery and Aisling Kelly added to the glamour at the committees' end-of-year dinner

Carol Anne Coolican, Joan O'Mahony and Rosemary Horgan of the Family Law Committee caught up at the committees' end-of-year dinner

Tony Ellwood, John D Shaw, Philip Daly and Jill Callanan met up at the annual dinner

Embassy meeting for Sligo and County Solicitors' Association

A total of 32 practitioners from Sligo attended a very successful – and busy – lunchtime meeting with the president and director general of the Law Society on 22 October 2008, at the Embassy Rooms in Sligo town. Various issues were discussed, including the likely impact of the economic slowdown on the profession generally, the *Legal Services Ombudsman Bill 2008*, the *Civil Law (Miscellaneous Provisions) Act 2008*, and the Law Society's 2009 annual conference in Bilbao.

PIC: JAMES CONNOLLY, PIGSELL8 LTD

(Front, l to r): Trevor Collins (secretary, Sligo and County Solicitors' Association), Michelle O'Boyle, Ken Murphy (director general), Seamus Monaghan (president, Sligo and County Solicitors' Association), James MacGuill (president) and Hugh Sheridan. *(Back, l to r)*: Carol Ballantyne, Eamonn Creed, Fiona Maguire, Declan Gallagher, Dervilla O'Boyle, Sean McTernan, Aine Kilfeather, Marie Cullen, Elaine Coghill, Brendan Johnson, Donal Carroll, Martin Burke, Lorraine Murphy, David Gallagher and Ita Lyster

The class of '58 reunites!

PIC: LENSMEN

(Front, l to r): Liam MacHale, John PA Hooper, John D Nugent, Gillian M Hussey, John P Carrigan (president), Margaret M Foley and Patrick J O'Brien. *(Middle, l to r)*: William A Young, Michael NM O'Donoghue, John M O'Donnel, Michael J Bowman, Franklin J O'Sullivan, Thomas P O'Connor, Patrick MA MacNamee, James PG O'Connor, Martin E Marren, Henry J Wynne, Michael J Moore and Richard Joseph Brannigan. *(Back, l to r)*: Joseph Murray McGowan, Fergus P Taaffe, John P Redmond, James Kevin Martin, James Noel Tanham, John Keller Temple Lang, Michael Brendan O Cléirigh, an tUasal Peadar Ó Maoláin and Michael P Keane

The class of 1958 enjoyed a recent reunion at Blackhall Place. They brought with them a copy of their graduation photograph, while the *Gazette* was on hand to take a more up-to-date version.

We present both photos to see if you can guess who's who in the recent photo. John Carrigan was president of the Law Society in 1958 and he was invited to attend the function. He declined on the basis that he is now 91.

The class of '58 is quite an interesting one – it contains three former District Court judges, while one individual confided in past-president Philip Joyce that he had been asked by two Ministers for Justice to put his name forward for the High Court – can anyone guess?

Keira-Eva takes silver for Ireland

Keira-Eva Mooney has done it again. The Kildare solicitor and Irish triathlon athlete clinched a silver-medal place in the ITU Duathlon World Championships on 29 September 2008 in Rimini, Italy. The contest consisted of a 10km run, followed by a 40km cycle, ending with a 5k run. It was a commanding victory for Mooney who finished in a time of two hours and 23 seconds – a personal best against top athletes from over 40 countries.

Keira-Eva opened the race with a fast ten-kilometre run before she headed out onto the 40-kilometre bike course. One of the most powerful cyclists in the sport, she clawed back her medal position with a very fast bike split, and increased the gap between pursuers in the final 5k sprint run. Britain's Louise Kelly cut the deficit to put herself in medal contention, but no one challenged Mooney's silver position, coasting home for Ireland just three minutes behind Britain's Danielle Stewart, who took gold.

"I improved my previous results at the European Championships by bringing home silver for Ireland at the World Championships," she told the *Gazette*. "I'm on a high!"

4,300k relay cycle

Keira-Eva has been working locum posts for the past year, which has allowed her to train and prepare properly for races. Not one for resting on her laurels, she headed off for the Americas in October to take part in a relay charity cycle from Halifax, Nova Scotia, to Texas (4,300k in relay). The cycle was organised by the Tony Griffin Foundation, which persuaded seven-time Tour de France winner Lance Armstrong to meet the cyclists on their arrival in Texas.

All funds raised go to Irish cancer-related charities. Keira-Eva's nominated charity is the Emer Casey Foundation, where funding goes to a research team that aims to develop a test for early detection of ovarian and uterine cancer. Emer was a friend and former colleague of Keira-Eva's when they worked in MOP.

You can support this worthy cause by making a secure online donation at: http://my.e2rm.com/personalPage.aspx?SID=1984213, or by choosing Keira-Eva as your sponsored cyclist at www.tonygriffinfoundation.com.

Mary bows out as Cork county solicitor

After 26 years of service to the Rebel County, Mary Roche bowed out as Cork county solicitor on 23 September 2008, *writes Bryan Harrington*. Mary is one of the longest-serving in-house county solicitors in the country. She is the fourth person to occupy the position of Cork county solicitor and succeeded Matt Purcell, John Carr and JB Hickey. She assumed the role in April 1982 and, in the following years, acted as legal advisor to four county managers.

Her time as county solicitor saw a period of unprecedented development in Cork. In her role as representative of the council at public enquiries and the provider of conveyancing and advisory services, it can truly be said that Mary's 'legal fingerprints' are visible from the Mallow road to the Midleton bypass! It is perhaps strange for younger colleagues to envisage that at the time of Mary's appointment, the only piece of dual carriageway in the entire county was the Tivoli dual carriageway. During her tenure, the road network of the county has been transformed, with Mary playing a crucial ancillary role throughout.

One of her first tasks was to deal with the legal aftermath of the *Betelgeuse* tanker disaster. Over the following years, she became a familiar figure at courts all over the county. Her knowledge of local authority law was a great resource to both her legal and administrative colleagues and her retirement marks the loss of an encyclopaedic legal knowledge leavened with experience. The county's judiciary recently paid her tribute, as did her legal colleagues at her final court attendance in her native Mitchelstown.

Mary has had a longstanding and abiding interest in equestrian matters, including successfully competing in, and judging, show-jumping competitions.

It must be a matter of quiet satisfaction for her, as she criss-crosses the county's roads on the way to gymkhanas, to realise that she has played a real part in the provision of so many aspects of the county's infrastructure.

To mark her departure, county manager Martin Riordan made a presentation to Mary on behalf of all her colleagues in County Hall, who wish her a long, happy and well-earned retirement.

books

Delegation of Governmental Power to Private Parties: a Comparative Perspective

Catherine Donnelly. Oxford University Press (2007), Great Clarendon Street, Oxford OX2 6DP, England. ISBN: 978-0-19-929824-2. Price: stg£60

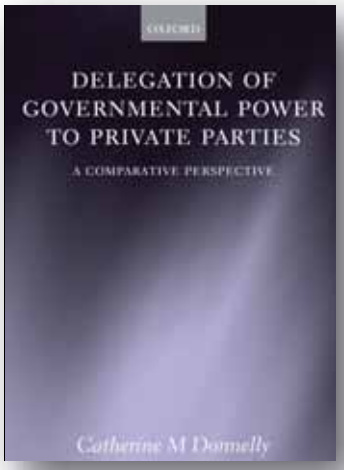
A staggering amount of public function delegation takes place in modern government, blurring the line between what we consider to be public and private. Privately run prisons, private care homes performing statutory duties, and construction companies taking on statutory social housing projects (and then reneging) are just a few examples. The high number of privatisation crises begs two questions: does delegation create more work for government? And if the definition of 'public function' is shrinking, are we adequately protected by the law?

Catherine Donnelly has undertaken to examine the contracting-out of state functions to private entities without the simultaneous extension of the reach of public law. In her comparative analysis of the US, the EU and Britain, she examines the adequacy of legal restraints. Donnelly has researched extensively on the reach of public law in the past: "I've always been interested in the subject of the extent of human rights obligations. I think that Ireland, which is behind the US in terms of delegation – in a good way – is in a position where it can learn from the experiences and mistakes of others. All three jurisdictions in the book are constantly facing crises of privatisation."

So, which jurisdiction offers the best protection to its citizens? The EU seems to be most wary of contracting out. "In *Meroni v High Authority*, it was decided that only purely technical, non-discretionary powers should be delegated; and any power delegated should be subject to the same legal standards as applied to the delegating (public) body."

This prompts another comparative question: which law or standard is best equipped to protect individuals whose rights can be violated by these companies? Are tort or contract law up to the challenge, or is a human rights approach more suitable? "The problem is that human rights obligations often only apply against state actors, and not private actors, even if they are performing governmental functions. In the US, a stringent 'state actor test' must be passed to invoke constitutional rights protections. The EU adopts a more flexible notion of the state, but this too has gaps from a human rights perspective. In the UK, the meaning of the term 'public authority' has been interpreted narrowly by the courts."

Donnelly has found that private law does not provide an adequate substitute for direct



human rights provisions and judicial review. "Contracts are much more difficult to draft in a public than in a commercial context. What is a good outcome for, say, prison service provision, economic performance or rehabilitation? Also, how can the individuals enforce the contract? The notion of privity rules out contractual remedies for service-recipients." Tort law is inadequate too, as it requires a predefined suit of action. "There are some suits which can be useful in ensuring accountability, like, say, misfeasance in public office. However, the elements of a tort action are very specific and don't always fit these cases. Also, damages available in tort law may not adequately vindicate the right."

The situation in Ireland is still more greenfield site than fertile legal landscape. "Since 1973, Irish law has recognised an action for wrongful interference with a constitutional right (*Meskell v CIE*), which is available against private actors. It hasn't been invoked very often, but if we continue down this privatisation route, at least there's a possibility of making sure that constitutional rights obligations can be imposed on private contractors."

It is beyond doubt that the exercise of governmental power now involves an unprecedented amount of interaction with private entities. The argument put forward by this book is that we need a new way of looking at contracts. Functions delegated by the government are still public, even if they are carried out by private bodies. What benefit is a high standard of human rights protection if the functions it should regulate are, by delegation, slowly retreating into opaque private contracts? The choice of legal standards, public or private, "should generally depend on the nature of the power, not on the identity of the person exercising it". G

Claire O'Brien is a graduate of the University of Limerick and Queen's University Belfast.

tech trends

Read all the technology news here first, in your glorious *Gazette*. Or not, as the case may be

Kafka would be chuffed, if he was dead

A few years ago, when the smoking ban was a mere twinkle in whatever minister's eye (which one was it again? Is it the one who's now in Finance? They all look the same to us...) the *Gazette* team came up with what must be the most reasonable of proposals.

Ok, we said, it's all about bar workers' health. Fair enough, we thought, and it's probably on foot of some EU directive or other. Surely that must have the scent of democratic legitimacy about it? Because, if we're all being honest, the only tangible argument for European integration is the proliferation of green beer in unpronounceable bottles. Let's face it: there are no decent beers coming out of Lisbon, after all...

But anyway: guys who work hazardous jobs – say, oilrig roughnecks or miners – have to wear appropriate protective equipment. So why not supply barmen with gas masks? It's a small price to pay, having your pint pulled by someone who looks and sounds like Darth Vader, if you can openly smoke in his face.

But 'twas not to be. Which is why this nifty little number might fit the bill. It looks somewhat like a cigarette, apparently tastes like a cigarette and allegedly provides the same hit as a cigarette – but without the stinky, dangerous downsides.

Basically, it's a tobacco-free electronic cigarette that claims not to involve the usual suspects like tar, carcinogenic chemicals, and so on. The nicotine hit is supplied by cartridges – each one packing the awesome lasting power of 20 fags – in a variety of strengths. Virtual 'smoke' is generated by drawing air through the device, using some fancy schmancy technology that atomises the air and turns it into water vapour. And the tip even lights up when you inhale.

The Gamucci Micro Electronic Cigarette and the Milano Cigarette are available from www.iwantoneofthose.com, between stg£40 and £50.

Monkey say, monkey do – that's what they tell us

The Society's noble IT-monkeys inform us that the hottest new products this year include what have become known as 'netbooks' – mini-laptops optimised for ultra-portable wireless web browsing. Checking out the numerous options out there, the *Gazette* – or, rather, the people we rip off these reviews from, because we've never seen any of the products we supposedly review in real life, ever – has narrowed your options down to two of the best of these sleekit wee beasties, as Rabbie Burns might say.

First up is the Asus Eee PC 1000 (below), which we have heard described as "the Holy Grail of tiny laptops". Again, lads: heard! Won't someone somewhere actually send us products to try?

It has a decent-sized 10" screen and an almost full-sized laptop keyboard. In terms of memory and power, it has a 1.6GHz Intel Atom CPU, up to 2GB of RAM, and the *Windows XP* model has an 80GB drive – making it a pretty damn powerful netbook compared with the competition. It also comes with up to an extra 20GB of web-based storage. It promises high-definition audio and a seven-hour battery life, and 3G is in the pipeline. On the downside, it's not as small and light as some of the competition.

Which brings us neatly to the Acer Aspire One, which is competitively priced and has an impressive set of features. It also has a 1.6GHz Intel Atom CPU, as well as up to 1.5GB of RAM, an 8.9-inch WSVGA screen that works well even in outdoor light, a great keyboard, and an optional HDSPA/3G module for true go-anywhere internet access. Storage starts at 8GB,but can be upgraded to 80GB.

However, the mouse pad has attracted criticism, and the standard battery pack has only about three hours' worth of life in it. However, it should be cheaper than the Asus unit.

The Asus Eee PC 1000 is just over €400 (including VAT) from laptopsdirect.ie, while the Acer Aspire One is about €320 from expansys.ie. Prices vary somewhat, so do a google and look around.

You are what you read – so, how soulless are you?

In our view, nothing will ever replace real books. Proper books. To our eyes, even the creepy guys in anoraks reading *Harry Potter* on the train look more sophisticated – no, let's not pull any punches here: they look more civilised and less sociopathic – than those next to them staring intently at their phones or music players like they're awaiting orders from God to have fun.

That said, we can see circumstances in which having the equivalent of a small library in electronic form might be handy. Your year out to travel the world, for example. Or the interminable plenary session of that conference you fiddled your expenses to justify. Or when you've been fired and have moved into a small bedsit in Ballyhaunis and haven't told your Ma yet. And so on.

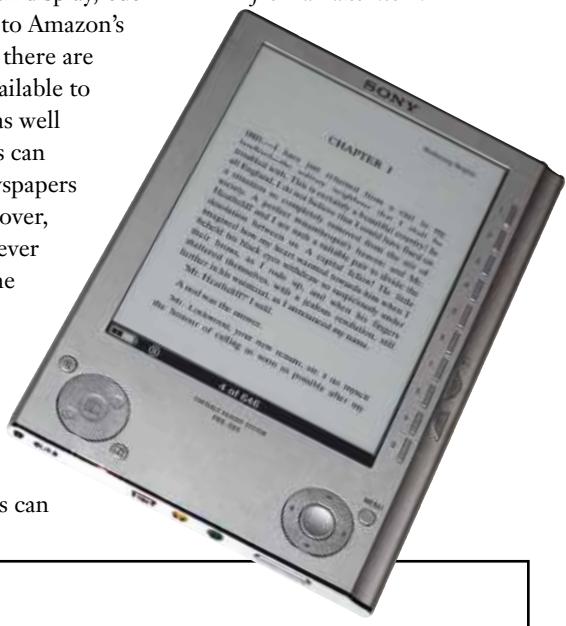
So which e-book reader to choose? Well, at the moment,

your choice will probably come down to one of these two: Sony's PRS-505 Reader or the Amazon Kindle. The former (right) has an impressive display that uses 'paper-mimicking' screen technology that apparently makes it easy to read even in bright sunshine. In addition, the screen allows for high contrast and high resolution, with a near 180° viewing angle. The text can also be changed between three different font sizes. It can store over 150 books in its built-in memory and allows you to store extra books on spare memory cards. You can also use it for digital photos and music.

The Kindle (left) has been getting better reviews, however. It does much the same as the Sony unit and has a similar 'paper-like' screen display, but the Kindle links to Amazon's online store and there are 145,000 titles available to download. And as well as books, readers can subscribe to newspapers and blogs, Moreover, Amazon has a clever way of linking the device to the content – each Kindle is connected to a 3G mobile network, so books and papers can be downloaded in minutes.

If we had to go with one, we'd probably choose the Kindle – purely based on the reviews – but Sony's technological experience and reputation might win out in the end.

The Sony Reader is available from www.peats.com for €*249. The Kindle is $359 (about* €*279) from amazon.com.*



SITES FOR SORE EYES

Take it to the top (www.supremecourt.ie). When every man and his dog – and indeed *One Man and his Dog* – have their own websites, it's no surprise to hear that the Supreme Court has gone digital native. The new site offers the full text of the Constitution, info about the court, its composition, its judgments, as well as a primer on the legal system as a whole, biographies of judges, and the role of the Supreme Court Office. Nothing groundbreaking here, but worth bookmarking.

'Scuse me while I kiss this guy (http://lyrics.rockmagic.net). Everyone occasionally mishears lyrics sung by the popular beat combos of today and yesteryear, and, to be fair, half of those guys didn't know what they were singing when they were singing it. Still, it's good to have a site that – while not necessarily dead-on balls accurate, as they might say in *My Cousin Vinny* – is close enough for pub-quiz purposes. And now you, too, can mull over the bizarre lyrics of Al Stewart's 'Year of the Cat'.

report

Law Society Council meeting, 26 September 2008

Comparative review of models of regulation and representation

The Council discussed the comparative review of models of regulation and representation internationally, which had been conducted by Joe Brosnan, and which had been presented by him to the Council at its July meeting. It was agreed that Mr Brosnan's report was an excellent document, which contained a considerable amount of original research and identified a number of key issues for consideration. It was agreed that the Council should discuss the matter further in order to crystallise its own thinking, before engaging in a collaborative discussion with the profession on the matter.

Proposed prohibitions on (a) acting on both sides of a conveyance, and (b) solicitors giving undertakings on their own behalf

The Council noted the submissions received from a number of bar associations in relation to (a) a proposed prohibition on acting on both sides of a conveyance, and (b) a proposed prohibition on solicitors giving undertakings on their own behalf. It was agreed that an 'issues paper' should be prepared in relation to each matter, incorporating the views of the bar associations, the current rules, any relevant case law and any other relevant information, and the matter would be discussed at the November Council meeting.

Budget submission 2008

The Council noted the budget submission prepared by the Taxation Committee, which had been forwarded to the Minister for Finance. The president confirmed that representations had also been made to the minister with an offer to engage in discussions about the manner in which the solicitors' profession and the Society could assist in confidence-building and in identifying steps that might be taken to stimulate commercial activity.

The effects of the economic downturn on the profession were discussed. It was noted that, together with all other businesses, the profession was facing cutbacks and financial difficulties. Philip Joyce said that the Practice Management Task Force was holding two seminars on 8 October and 3 November, both of which were heavily subscribed. The purpose of the seminars was to present to colleagues different methods of maximising profits within their practices and also of maximising efficiencies.

While it was acknowledged that there was nothing that the Society could do about increasing the amount of legal business or changing market forces, it could assist members of the profession to concentrate their minds on methods of trimming expenditure and increasing efficiency within their practices.

Complaints and Client Relations Committee

The Council approved the appointment of the following six lay members to the Complaints and Client Relations Committee, with effect from 1 January 2009: (nominated by IBEC) Michael Carr, Frank Cunneen and Michael Lynch; (nominated by ICTU) Brendan Hayes, Dan Murphy and Sheila Nunan.

Meeting of presidents, secretaries and PROs of bar associations

The president briefed the Council on the meeting with the presidents, secretaries and PROs of bar associations, which had been held on 22 July 2008.

Trainee solicitors

James O'Sullivan reported that there were 595 trainee solicitors on the current PPCI course, with 76 in Cork and 519 in Dublin. This represented an 11% reduction on 2007, although the reduction had been preceded by unprecedented surges in numbers. He noted that the profile of the training solicitor was changing and the number of training places in large Dublin firms was increasing, as was the number of training places in in-house corporations. By corollary, the number of training places in small/medium-sized firms was reducing.

John Hoyles, Canadian Bar Association

The chief executive of the Canadian Bar Association, John Hoyles, addressed the Council meeting. He confirmed that the Canadian Bar Association would hold its annual meeting for 2009 in Dublin from 15-18 August, following a poll of its members in which over 80% had indicated Dublin as their first choice for an offshore meeting. It was expected that the 800-1,000 attendees would have a full and productive experience during the course of their stay in Dublin. It was also hoped that many Irish lawyers would participate in the professional development sessions.

Address by past-presidents

On the occasion of their last meeting of the Council of the Law Society, past-presidents Geraldine Clarke and Owen Binchy expressed their gratitude to the Council for their friendship and camaraderie over the past 24 and 21 years respectively, and for having had the honour of serving as president of the Law Society. G

practice notes

NOTICE TO ALL PRACTISING SOLICITORS: *PROFESSIONAL INDEMNITY INSURANCE REGULATIONS*

The new regulations governing the minimum terms and conditions of professional indemnity insurance for solicitors came into operation on 1 November 2007.

The attention of all practising solicitors is particularly drawn to the following practical considerations:

- Cover must be renewed with effect from 1 December each year. This date is not negotiable. New practices should obtain cover from the date of commencement of practice to expire on 30 November. All existing cover expires on 30 November 2008.
- Confirmation of cover in the designated form must be furnished to the Law Society within ten working days after the due date for renewal each year. All firms must confirm cover by 15 December 2008. Normally, the broker provides confirmation of cover, but the obligation is on each firm to ensure that this is done.
- Any firm that is unable to obtain cover in the market should, before expiry of its cover on 30 November 2008, apply to be admitted to the Assigned Risks Pool. (The Assigned Risks Pool is the pooling arrangement participated in by each qualified insurer through which firms not covered by the market may be granted coverage that incorporates the minimum terms and conditions.) A proposal form can be obtained from the Law Society. The manager of the Assigned Risks Pool will set an appropriate premium.
- Any firm for which confirmation of cover is not received within the ten-working-day period and which has not applied, and been admitted, to the Assigned Risks Pool will be classified as a '**defaulting firm**'. The Assigned Risks Pool will automatically provide such firms with professional indemnity insurance cover **as a defaulting firm**. The manager of the Assigned Risks Pool will set an appropriate premium, which will be much higher than that available in the market. If claims should arise while a defaulting firm is being provided with cover by the Assigned Risks Pool, such claims will be met by the Assigned Risks Pool, but the Assigned Risks Pool will then have recourse against the firm for recovery of the amount of the claim.
- The Law Society will seek a High Court order compelling any defaulting firm, which does not regularise its position very swiftly, to cease practice. Obviously it is in the interests of all firms to avoid becoming a defaulting firm.
- Firms providing legal services relating to the laws of any other jurisdiction should note that the minimum terms and conditions do not cover legal services relating to the laws of other jurisdictions. Such firms should therefore arrange to put additional cover in place if they consider it appropriate.
- Solicitors providing legal services solely outside the jurisdiction will not be required by the Law Society to have professional indemnity insurance cover in place.
- Where a firm ceases practice and there is no succeeding practice, run-off cover for six years from the end of the then-current indemnity period must be provided by the last insurer. (Run-off cover is coverage that includes the minimum terms and conditions for a firm that has ceased to carry on practice, where there is no succeeding practice.) Sole principals are strongly recommended to consider and plan for the cost of run-off cover, should it come into force.
- The exemption for in-house solicitors providing legal services only to their employer continues to apply.

What firms should do with regard to the renewal of professional indemnity cover:

- Firms should endeavour to renew their cover as early as possible for the coming year in order to ensure that the Law Society is provided with confirmation of cover by 15 December 2008.
- If a firm is deemed to be a defaulting firm, such a firm should use its best endeavours to regularise its position very swiftly and should seek to ensure that its cover, when renewed, is effective from the date of expiry of its previous cover, with a view to mitigating the adverse consequences of defaulting firm status.
- Firms, and in particular all sole principals intending to cease practice, should pay particular attention to the information relating to premium terms for run-off cover contained in quotations or renewal notices. All quotations and renewal notices are required to contain the following notice:

"Notice to proposers for insurance: you should be aware that by accepting a quotation and taking out a policy, this insurer becomes obliged, should your practice cease during this policy year without a successor practice, to provide run-off cover for a six-year period at the premium rates calculated in accordance with the provisions of this policy. Consequently, you should ensure that the run-off premium terms are satisfactory to you before entering into a policy."

By way of reminder, the main changes introduced by the new regulations are:

1) Firms, rather than individual solicitors, are covered.
2) Firms can agree any level of self-insured excess with their insurer. In the event of a claim, where the firm

does not pay the amount of the excess to the client, it is paid by the insurer and then recovered from the firm.

3) There is a uniform renewal date of 1 December.
4) The defence costs of the solicitors for the insurer for dealing with a claim are not limited. Such costs had been limited to €130,000, but now simply form part of the overall cover provided without any limit.
5) Run-off cover is for a six-year period, rather than two years as previously, and must be provided automatically by the last insurer, with the run-off cover premium terms for each year being set out in quotations and renewal notices for the normal cover.
6) Insurers cannot repudiate a policy on any grounds, including fraudulent misrepresentation. They must cover claims, but may pursue the firm subsequently.
7) Statutory compensation or restitution to clients, such as may be ordered by the Solicitors Disciplinary Tribunal, is covered.
8) Any firm that, for whatever reason, fails to have insurance is covered by the Assigned Risks Pool for €2,500,000 each and every claim (the current minimum level of cover) rather than that amount in aggregate for all claims. If a firm enters the Assigned Risks Pool by default (having failed to arrange insurance), the firm can be pursued directly by the Assigned Risks Pool if any claims are made.
9) Insurers who were formerly members of the Professional Indemnity Insurance Committee are now be represented on a separate 'Qualified Insurers Liaison Committee', to avoid a conflict of interest.

The benefits for clients are:

1) Situations whereby clients do not have access to professional indemnity insurance cover are prevented,
2) Clients are automatically covered for a six-year period after a solicitor ceases practice, rather than two years as previously,
3) Statutory compensation or restitution to clients is covered,
4) Where the Assigned Risks Pool covers a firm, each claim has its own limit of €2,500,000.

The benefits for solicitors are:

1) The insurance of firms rather than individual solicitors simplifies renewal, particularly for those who move firm,
2) Firms can negotiate the level of their own self-insured excess,
3) There is no limit on defence costs,
4) Firms are assured that their clients will be covered by insurance in situations where previously there was a risk of no cover.

For further information

Please refer to the Law Society's website, www.lawsociety.ie, under Society committees – Professional Indemnity Insurance – for the designated form for confirmation of cover and the full text of the new professional indemnity insurance regulations.

Any queries relating to the professional indemnity insurance regulations should be addressed to the Law Society executive responsible for professional indemnity insurance, Rosemary Fallon, at 01 672 4856 or r.fallon@lawsociety.ie. G

John Elliot, Registrar of Solicitors and Director of Regulation.

legislation update

16 September – 20 October 2008

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

ACT PASSED

Credit Institutions (Financial Support) Act 2008

Number: 18/2008

Contents note: Makes provision, in the public interest, for maintaining the stability of the financial system in the state and, for that purpose, provides for financial support by the Minister for Finance to credit institutions. Enables the minister to guarantee, up to 29/9/2010, the borrowings, liabilities and obligations to the Central Bank or any person of any credit institution or subsidiary that the minister may specify by order. Amends the *Competition Act 2002* in relation to a merger or acquisition involving a credit institution. Makes consequential amendments to other enactments and provides for related matters.

Date enacted: 2/10/2008

Commencement date: 'Relevant date' is defined in the act as 30/9/2008, the date from which – for a two-year period – the minister may provide financial support to credit institutions. Regulations to be made for bringing the act into operation (per s5 of the act)

SELECTED STATUTORY INSTRUMENTS

Criminal Justice (Public Order) Act 1994 (Sections 23A and 23B) Regulations 2008

Number: SI 363/2008

Contents note: Sections 23A and 23B of the *Criminal Justice (Public Order) Act 1994*, as amended by the *Intoxicating Liquor Act 2008*, provide for the issue of fixed-charge notices in respect of offences committed under section 5 (disorderly conduct in a public place) and section 4 (intoxication in a public place) of the act. These regulations set the levels of the fixed charges, €140 and €100 respectively, and the format of the fixed-charge notice.

Commencement date: 10/9/2008

European Communities (Directive 2006/100/EC) (Recognition of Bulgarian and Romanian Medical Qual-ifications) Regulations 2008

Number: SI 393/2008

Contents note: Amend the definition of directive 2005/36/EC, which is provided for in section 2 of the *Medical Practitioners Act 2007*, to include the amendment of that directive by directive 2006/100/EC. The effect of this amendment is to allow for the recognition of medical qualifications of Romanian and Bulgarian medical practitioners by the Medical Council under the provisions of the 2007 act.

Commencement date: 26/9/2008

Finance Act 2008 (Commencement of Section 46) Order 2008

Number: SI 397/2008

Contents note: Appoints 9/10/2008 as the commencement date for section 46. This section provides for the introduction of a scheme of accelerated capital allowances for expenditure incurred by a company on certain energy-efficient equipment for the purposes of a trade carried on by that company.

Official Languages Act 2003 (Section 9) Regulations 2008

Number: SI 391/2008

Contents note: Provide for the use of the Irish language only, or the Irish and English languages together, on recorded oral announcements, stationery and signage of public bodies. A number of exemptions are detailed in the regulations. Provide for a number of different dates from 1/3/2009 to 1/1/2026 on which the various provisions provided for in the regulations shall come into effect.

Social Welfare and Pensions Act 2008 (Section 27) (Commencement) (No 2) Order 2008

Number: SI 398/2008

Contents note: Appoints 1/11/2008 as the commencement date for section 27 of the *Social Welfare and Pensions Act 2008*, other than insofar as section 27 relates to the insertion of section 64P into the *Pensions Act 1990*. Section 27 of the *Social Welfare and Pensions Act 2008* amends the *Pensions Act 1990* and inserts a new part VIA, 'Registered administrators', into the *Pensions Act 1990* in order to bring registered administrators of pension schemes within the remit of the act in relation to certain core functions that they perform on behalf of trustees of pension schemes. Revokes an earlier section 27 commencement order (SI 277/2008).

Taxi Regulation Act 2003 (Maximum Fares) Order 2008

Number: SI 394/2008

Contents note: Sets the new national maximum fares that may be charged throughout the country. Revokes the previous maximum fares order (SI 438/2006).

Commencement date: 1/11/2008

Waste Management (Waste Electrical and Electronic Equipment) (Amendment) Regulations 2008

Number: SI 375/2008

Contents note: Amend the *Waste Management (Waste Electrical and Electronic Equipment) Regulations 2005* (SI 340/2005) (WEEE regulations).

Commencement date: 23/9/2008

Prepared by the Law Society Library

firstlaw update

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

COMPANY LAW

Examinership

Scheme of arrangement – Companies (Amendment) Act 1990 – *whether the court could confirm proposals for a scheme of arrangement submitted by an examiner, essentially seeking an order cancelling the issued ordinary shares in the company.*

The examiner of McEnaney Construction Limited formulated proposals for a scheme of arrangement in relation to the company, held the necessary meetings, and made a report thereon to the court on 5 February 2008, recommending confirmation of the proposals. The court indicated that it could not confirm the proposals for the scheme of arrangement as proposed and adjourned the matter to allow the examiner an opportunity to consider whether the difficulties could be overcome by modifications to the scheme. The modified proposals were subsequently confirmed by the court. Originally it was proposed to cancel all 100 issued ordinary shares in the company. The company was a single member company. The original proposals also sought to amend the articles of association of the company.

Finlay Geoghegan J held that the court should not confirm proposals that included a provision that the company cancel issued paid-up shares unless the consequent reduction of capital was expressly authorised by the *Companies Acts 1963-2006*, and section 24(8) of the 1990 act did not give the court jurisdiction to make an order cancelling the issued shares in the capital of the company. In fact, the 1990 act contained no express provision enabling a company to whom an examiner was appointed under that act to reduce its share capital as part of a scheme of arrangement. The original proposals of the examiner did not specify the intended alterations to the articles of association as required by section 24(7) of the 1990 act.

***In the Matter of McEnaney Construction Limited and in the Matter of the Companies (Amendment) Act 1990*, High Court, Miss Justice Finlay Geoghegan, 25/2/2008** [FL14981]

CONSTITUTIONAL LAW

Habeas corpus

Liberty – lawfulness of detention District Court warrant – default of payment of penalty – unpaid fine – public order offences – article 40.4 of the Constitution.

The applicant initiated *habeas corpus* proceedings to inquire into the legality of his detention pursuant to a warrant of execution. The applicant was convicted of public order offences and did not pay a fine imposed, resulting in the warrant of execution. The applicant alleged a conspiracy to incarcerate him.

Edwards J refused the application, holding that no basis was presented for an inquiry pursuant to article 40.4. There was no evidence of a conspiracy to incarcerate him.

***Riney (applicant) v Governor of Loughnan House Prison (respondent)*, High Court, Mr Justice Edwards, 21/3/2008** [FL15029]

CRIMINAL LAW

European arrest warrant

Lithuania – challenge to detention on foot of warrant – bail – no crime committed – deprivation of liberty – locus standi – European Arrest Warrant Act 2003, s16(4).

The appellant challenged the validity of his detention on foot of an arrest warrant for surrender pending his surrender, pursuant to section 16 of the *European Arrest Warrant Act 2003*, on the basis that he had not been convicted of a crime and that he had been deprived of his liberty. The issue arose as to whether the effect of the legislation was to deprive the appellant of the opportunity to apply for bail.

The Supreme Court, per Murray CJ, held that the order made pursuant to section 16(4) was a consequential order. While the deprivation of liberty warranted a strict interpretation of the legislation, the effect of the order did not oust the jurisdiction of the court to grant bail. It was part of the schema that such detention was inevitable. The appellant had not applied for bail.

***Algimantas Butenas v Governor of Cloverhill Prison*, Supreme Court, 12/3/2008** [FL14984]

FAMILY LAW

Custody

Child Abduction and Enforcement of Custody Orders Act 1991 – Hague Convention – *article 11(2) of Council Regulation (EC) 2201/ 2003 – whether the failure of the court to comply with its obligations under the regulation meant the order for return of the child ought to be set aside.*

The respondent sought, by way of motion, an order setting aside an order of the High Court for the return of her child to Latvia. The order for return was made on an *ex parte* basis and the court was satisfied at the time that the respondent had been properly served with the proceedings. The respondent's application was made pursuant to the inherent jurisdiction of the court by reason of the failure of the court to comply with the mandatory obligation under article 11(2) of Council Regulation (EC) 2201/ 2003. Article 11(2) of the regulation provides that, when applying articles 12 and 13 of the 1980 *Hague Convention*, it shall be ensured that the child is given the opportunity to be heard during the proceedings, unless it appears inappropriate having regard to his or her age or degree of maturity.

Finlay Geoghegan J set aside the order for the return of the child, holding that the obligation imposed on the court by article 11(2) was a mandatory obligation and independent of any issues raised by the parties. Consequently, the total failure by the court to comply with that obligation in the sense of not even considering article 11(2) amounted to a fundamental failure that went to the jurisdiction of the court.

***R v R*, High Court, Ms Justice Finlay Geoghegan, 12/12/2007** [FL14983]

IMMIGRATION AND ASYLUM LAW

Judicial review

Leave application – whether the applicant established substantial grounds to permit a review of the decision of the Refugee Applications Commissioner.

The applicant sought leave to apply for judicial review of the decision of the Refugee Appli-

cations Commissioner refusing to grant him refugee status. The grounds relied on by the applicant were that country of origin information was not put to him, the country of origin information was used selectively, and the findings on credibility were not brought to the applicant's attention in order to allow him to take issue with then or aspects of them.

Hedigan J refused to grant leave, holding that it was incorrect to state that the country of origin information was not put to the applicant. The country of origin information was not used selectively and, in any event, a complaint of that nature was something more a matter for appeal to the Refugee Appeals Tribunal. Credibility was not a ground upon which the decision was reached in this case and, consequently, nothing arose to ground the grant of leave to apply.

***O(O) (plaintiff) v Minister for Justice, Equality and Law Reform (defendant),* High Court, Mr Justice Hedigan, 11/12/2007** [FL14976]

JUDICIAL REVIEW

Garda discipline

Delay – legitimate expectation – inquiry – fair procedures – Garda Síochána (Discipline) Regulations 1989.

The applicant sought to restrain the respondent from holding an inquiry or from processing further disciplinary proceedings. The applicant was alleged to have accessed child pornography at Garda Headquarters. A criminal investigation and prosecution followed. The applicant alleged, among other things, that the disciplinary procedures were unfair and that the proceedings were not dealt with expeditiously.

MacMenamin J held that the lapse of time alleged to be unfair was not in breach of the regulations. No prejudice could be said to exist. The application for judicial review was not made promptly. The applicant had not denied the admissions made in response to allegations.

***Kennedy (applicant) v Commission of An Garda Síochána (respondent),* High Court, Mr Justice MacMenamin, 14/3/2008** [FL15054]

PRACTICE AND PROCEDURE

Commercial

Judicial review and proceedings on merit – entry to commercial list – speed of proceedings – which set of proceedings to be heard first.

A complaint by a credit union that the plaintiff had breached its duty of care to the credit union by investing in unsuitable financial products, upheld by the ombudsman, was the subject of judicial review proceedings and an appeal from the decision of the ombudsman. Both sets of proceedings were transferred to the commercial list of the High Court. The plaintiffs wished to have the judicial review application heard first, and the ombudsman sought firstly to have the appeal on its merits heard.

Kelly J held that the judicial review application would be heard first, in light of the speed and efficiency of the procedure on affidavit, particularly in the Commercial Court. Directions would be made accordingly.

***J&E Davy trading as Davy (applicant) v Financial Services Ombudsman (respondent) and Enfield Credit Union (notice party),* High Court, Mr Justice Kelly, 13/3/2008** [FL15053]

Probate law

Costs – rule in In Bonis Morelli: Vella v Morelli *– challenge to will – whether costs awarded to unsuccessful plaintiff insufficient – whether rule appropriate – application of rule – whether undue influence.*

The issue arose in proceedings as to the application of *In Bonis Morelli: Vella v Morelli* in probate actions. The plaintiffs had brought a challenge to the validity of a will, alleging – among other things – undue influence. The High Court held that the will had been validly executed and awarded the plaintiffs one third of their costs from the estate. The plaintiffs alleged that, pursuant to *In Bonis Morelli*, they should have received their full costs.

The Supreme Court, per Kearns J, held that the appeal would be allowed. The plaintiffs would be allowed their full costs from the estate. The trial judge had not reasoned the award made. The rule in *In Bonis Morelli* served an important purpose in such litigation so as not to deter litigation.

***Elliott v Stamp,* Supreme Court, 12/3/2008** [FL15001]

Third-party notice

Delay – "as soon as reasonably possible" – setting side – complexity.

The plaintiffs sought various reliefs arising from damage caused to their building from an adjoining site. The defendants were given leave to serve a third-party notice. The third party sought to set aside the notice on grounds of delay.

Clarke J held that the entire period up to the formal service of the third-party notice had to be considered. The court was not satisfied that the application to issue and serve the third-party notice was brought as soon as reasonably possible. The third-party notice would be struck out.

***Greene (plaintiffs) v Triangle Developments Ltd (defend-ants),* High Court, Mr Justice Clarke, 4/3/2008** [FL15051] G

This information is taken from FirstLaw's legal current awareness service, published every day on the internet at www.firstlaw.ie.

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

Criminal effects of competition law in Ireland

Anti-competitive behaviour results in consumers paying higher prices without any extra benefits and undermines the competitiveness of the Irish economy. Anti-competitive practices by cartels, such as price fixing and bid rigging, are akin to theft at the expense of consumers. The Competition Authority is taking a strong stance in respect of such behaviour in Ireland. In 2006, Ireland became the first country in Europe to have a jury trial for a criminal competition offence under the *Competition Act 2002*. It was also the first custodial sentence imposed in Europe for cartel activity (although the six-month jail sentence was suspended on age and health grounds). This case related to the home heating oil cartel. Criminal proceedings had also been pursued under the previous competition regime, the *Competition Act 1991*, as amended by the *Competition (Amendment) Act 1996*.

On 29 October, a former president of the Citroen Dealers' Association was given a three-month suspended sentence and his company was fined €20,000 for being involved in a price-fixing cartel

Competition Authority

In Ireland, the Competition Authority is the principal body responsible for the enforcement of competition law, pursuant to the 2002 act. In accordance with section 30(1)(b) of the 2002 act, the authority is empowered to carry out an investigation, either on its own initiative or in response to a complaint made to it by any person, into any breach of the act. The authority's Cartels Division is focused on the investigation and prosecution of hard-core cartels, such as those involved in price fixing, bid rigging and market allocation among competitors. Where it obtains evidence of a cartel and prosecution is to be by way of indictment, the authority may submit a file to the DPP with a recommendation that the parties involved be prosecuted. When the DPP considers that there is a justifiable case, his office takes over responsibility for any further enforcement action. The Competition Authority may itself bring a summary prosecution in the District Court.

ComReg

The *Communications Regulation (Amendment) Act 2007* confers new competition law powers on the Commission for Communications Regulation (ComReg), amending the 2002 act in order to enable ComReg to apply sections 4 (prohibition on restrictive agreements) and 5 (prohibition on abuse of dominance) of the 2002 act in the electronic communications sector. Before performing its functions under the 2002 act, ComReg, pursuant to section 47C, shall notify the authority of its intention to do so.

Relevant legislation

Section 4 of the 2002 act states: "all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the state or in any part of the state are prohibited and void".

Article 81 of the *EC Treaty* also prohibits restrictive agreements and is applied where there is an effect on trade between member states of the EU.

Section 5 of the 2002 act states that "any abuse by one or more undertakings of a dominant position in trade for any goods or services in the state or in any part of the state is prohibited".

Article 82 of the *EC Treaty* also prohibits an abuse of dominance where there is an effect on trade between member states.

Section 6(1) of the 2002 act sets out that a breach of section 4 or of article 81 is an offence. Section 6(2) provides that "it shall be presumed that an agreement between competing undertakings, a decision made by an association of competing undertakings or a concerted practice engaged in by competing undertakings the purpose of which is to:

a) Directly or indirectly fix prices with respect to the provision of goods or services to persons not party to the agreement, decision or concerted practice,
b) Limit output or sales, or
c) Share markets or customers,

has as its object the prevention, restriction or distortion of competition in trade in any goods or services in the state or in any part of the state or within the common market, as the case may be, unless the defendant proves otherwise".

Section 7(1) provides that "an undertaking that acts in a

manner prohibited by section 5(1) or by article 82 of the treaty shall be guilty of an offence".

Section 8 sets out the penalties that are applied, and there is a distinction between hard-core breaches – that is, those described in section 6(2) – and other competition law offences. Incarceration as a penalty is only applied to hard-core breaches. In relation to hard-core offences, undertakings are liable on summary conviction to a fine not exceeding €3,000. Individuals are liable to such a fine and/or up to six months' imprisonment. On conviction on indictment, undertakings are liable to a fine of €4 million or 10% of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction, whichever is the greater. Individuals are subject to the same fine and/or a term of imprisonment not exceeding five years. In relation to all other offences, only the fines apply. Furthermore, the 2002 act allows for an additional fine in respect of each successive day the offence took place. By virtue of section 8(3) of the act, if the contravention concerned continues one or more days after the date of its first occurrence, then the undertaking is guilty of a separate offence and may be fined for each successive day: €300 per day on summary conviction and €40,000 per day on conviction on indictment.

Where offences committed by an undertaking have been authorised or consented to by a person such as a director, manager or other similar officer, that person shall also be guilty of an offence pursuant to section 8(6). In addition, a director is presumed to have consented to the doing of the acts that constituted the offence until the contrary is proved under section 8(7). A director convicted on indictment under the 2002 act could then become disqualified for a period of five years, or such period as the court may order, under section 160(1) of the *Companies Act 1990*. Furthermore, as pleaded in the prosecution cases in Ireland to date, there are other consequences in terms of obtaining a visa when travelling to the USA.

Under section 7 of the *Criminal Law Act 1997*, individuals who are found guilty of aiding and abetting the commission of an offence prohibited by section 4 of the *Competition Act* are guilty in the same manner as if they committed the actual competition offence. Thus it is worth noting that anyone involved in a cartel could be found guilty of an offence, even if they were only privy to information and did not actually carry out an active role.

The previous regime, under the 1996 act, provided for penalties in respect of all infringements of the 1991 act where, on summary conviction, fines of up to €1,500 were imposed and/or imprisonment of up to six months and, on conviction on indictment, fines of up to €3 million or 10% of turnover, whichever was the greater, were imposed and/or imprisonment of up to two years. Under the 2002 act, only those prosecuted for hard-core offences are subject to custodial sentences. However, in relation to mergers, the 2002 act provides, in section 26, that a person who contravenes a provision of a commitment, a determination or an order for the time being in force shall be liable to, in addition to or instead of a fine, imprisonment of up to six months on summary conviction or two years on conviction on indictment.

Cartel Immunity Programme

The Competition Authority, in conjunction with the DPP, has a Cartel Immunity Programme, and the details of this programme are published on the authority's website and the DPP's website. The programme encourages self-reporting of unlawful cartels by offenders at the earliest possible stage and the provision of important evidence to the authority in relation to the cartel. The discretion to grant immunity in relation to a prosecution rests with the DPP.

The European Commission also operates a Cartel Leniency Programme. The commission recently adopted a *Revised Leniency Notice* ('Community Notice on Immunity from Fines and Reduction of Fines in Cartel Cases', *Official Journal*, C 298/17, 8 December 2006) in this regard. Improvements have been made in several areas of the 2002 *Leniency Notice* (*Official Journal*, C 45/3, 19 February 2002) to provide more guidance to applicants and to increase transparency of the procedure. If an undertaking in Ireland applies for leniency under the notice, it may receive immunity from fines or reduced fines from the commission, yet it could still face criminal prosecution in Ireland under the 2002 act.

Criminal prosecutions

The Competition Authority can initiate summary prosecutions itself further to section 30(4)(b) of the 2002 act and, previously, further to section 3(6)(a) of the 1996 act. The following cartel prosecutions have taken place in Ireland.

Resale price maintenance. The first prosecution under the 1996 act was a summary prosecution taken by the Competition Authority without the aid of the DPP in the District Court in 2000. This involved Estuary Fuels, an oil distribution company involved in resale price maintenance. The defendant company pleaded guilty and fines amounting to €1,000 were imposed.

Haulage services. Another prosecution under the 1996 act involved the Irish Road Haulage Association. The action was settled when the association agreed to a declaration by the High Court that it had engaged in a concerted practice to fix prices for haulage services, resulting in a blockade of Dublin port.

Grain imports. This case was a summary prosecution in accordance with section 8(1)(a) of the 2002 act. In March 2003, the Competition Authority secured criminal convictions in the District Court in Drogheda against six members of the farming community for breaches of section 4 of the 2002 act arising from a blockade and a meeting, which had as its object the prevention of unloading a cargo of grain from Britain. The defendants appealed the convictions and the case was reheard in the Circuit Court in Dundalk in 2004. At the rehearing, only three of the convictions were upheld and the *Probation Act* was applied.

The Competition Authority is not empowered to bring criminal prosecutions on indictment on its own behalf, and is therefore assisted in doing so with the aid of the DPP. The following indictable competition law cases were taken by the DPP.

Failure to appear – DPP v Pat Morgan. This case related to a complaint made by the Competition Authority to the gardaí during 2004 in relation to the failure by Pat Morgan, managing director of Tru Gas Limited, to appear before the authority. The witness summons was issued under section 31 of the 2002 act. The authority was seeking information during the consultation process leading up to issuing a declaration in the cylinder LPG market under section 4(5) of the 2002 act. The DPP prosecuted on behalf of the authority and the case was heard in Dublin District Court

on 22 December 2005. The court found that the facts were proven against Mr Morgan. At the request of the authority, the case was adjourned until 6 February 2006 in order to allow Mr Morgan to comply with the witness summons and provide the information that had originally been sought of him. Subsequent to the adjournment, Mr Morgan complied with the witness summons and provided the authority with the information required. On 6 February 2006, the District Court judge gave Mr Morgan the benefit of the *Probation Act*.

Home heating oil. This case saw the first criminal conviction on indictment for offences under the 2002 act. In 2003, the Competition Authority carried out an investigation on the home heating oil market and referred the file to the DPP. In 2004, the DPP initiated proceedings against 24 undertakings, which included corporate undertakings and, in some cases, their directors. The charges against the various undertakings related to allegations of retail price fixing in the home heating oil market in the west of Ireland.

One of the most high-profile convictions of the home heating oil cartel was that of JP Lambe, who was the director of Corrib Oil Company Limited and was described as the organiser of the cartel. Mr Lambe pleaded guilty to aiding and abetting Corrib Oil in price-fixing. Mr Lambe was sentenced on 6 March 2006, and was given a six-month prison sentence, suspended for a period of 12 months, and he was also fined €15,000. This case was noteworthy, as it was the first custodial sentence received for a competition law offence by an individual in Ireland. This case also marked the first time that a custodial sentence was given for violation of competition law in Europe. On 23 January 2006, Corrib Oil was also fined €15,000, which was payable within three months, for its involvement in the cartel.

Con Muldoon, of Muldoon Oil Limited, also pleaded guilty to the charge of being a director of an undertaking that entered into an agreement that had as its object the prevention, restriction or distortion of competition contrary to section 2 of the 1996 act. It was put forward that Mr Muldoon, as well as Muldoon Oil Limited, had as their object the prevention, restriction or distortion of competition in the trade of gas oil in Galway city and county by directly or indirectly fixing the selling price of gas oil, and authorised or consented to the doing of acts constituting that offence. Muldoon Oil Limited and Con Muldoon were fined €3,500 and €1,000 respectively for their involvement in the cartel.

In another trial, Michael Flanagan, trading as Flanagan Oil, was found guilty of the offence of entering into an agreement that had as its object the prevention, restriction or distortion of competition contrary to section 2(2) of the *Competition Amendment Act 1996*. Mr Flanagan was fined €3,500 for his part in the price-fixing conspiracy and Judge Groarke, when sentencing him, commented that: "Those engaged in cartels and involved in the fixing of prices are doing so only with the motivation of greed, and with nothing to be gained by financial profit. That is why the legislature takes such a serious view of it … I could well see circumstances where persons convicted by a jury could be subjected to terms of imprisonment."

Throughout the course of the prosecutions, it became apparent that those who had entered an early guilty plea received lower fines. An early guilty plea in a cartel case saves the state a considerable amount of time and money – therefore, this is also often reflected when sentencing an undertaking. An early guilty plea was lodged in the case of Muldoon Oil Limited and Mr Muldoon, and Judge Groarke noted this when issuing them with fines. Mr Dalton, the founder and director of Corrib Oil, entered an early guilty plea and was fined €10,000 as well as being suspended from acting as a director of Corrib Oil for the next five years. The judge in Mr Dalton's case noted that a custodial sentence was not appropriate in this case. The judge noted that Mr Dalton had cooperated with the Competition Authority, had no previous convictions, and also had given an early guilty plea.

Motor vehicles. The DPP initiated proceedings against Denis Manning, who was summonsed in relation to two charges alleging that he had aided and abetted the Irish Ford Dealers' Association and its members in the implementation of agreements to fix the selling of Ford motor vehicles within the state between July 2002 and June 2003. The first of the two charges related to an offence under the 1991 act and the second of the two charges related to an alleged offence under the 2002 act. The DPP agreed to drop the first of these two charges. On 9 February 2007, Mr Manning was sentenced under the 2002 act and was given a one-year prison sentence, suspended for five years, and he also received a fine of €30,000, which was payable within 21 days. Judge McKechnie, in sentencing Mr Manning, noted that Mr Manning would have gone to prison only for the declining state of his health.

Separately, in June 2007, the DPP initiated proceedings before the Central Criminal Court against an individual who was summonsed in relation to the charge of aiding and abetting members of the Citroen Dealers' Association in distorting competition in the car market by fixing the selling prices of cars. In January and in February 2008, further proceedings were issued in relation to allegations of the existence of a price-fixing agreement for the sale of Citroen motor vehicles. In May 2008, James Durrigan pleaded guilty on his own behalf and as a director of his company to two counts of entering into an agreement to distort or directly or indirectly fix the price of Citroen cars between 1997 and 2002. He received a suspended three-month sentence, while the company was fined €12,000. There are a number of similar cases due before the Central Criminal Court against other motor dealers in relation to this cartel. The Competition Authority discovered minutes of meetings showing how dealers met in hotels around the country and discussed price fixing. The delivery charges for new cars were set by the association and were the same around the country. Extras, such as metallic paint, were allegedly fixed at a certain rate. Maximum discounts that salesmen were allowed to give cash customers were devised. Prices were also fixed from time-to-time on second-hand cars. Each member of the cartel paid in €1,000 that would be forfeited in the event that a member broke any of the price fixing rules. 'Mystery shoppers' periodically would ensure the agreement was policed.

Overview of prosecutions

The first year to see the enforcement of competition law in regard to actions against cartel cases was 2006. The criminal cases pursued by the Competition Authority and the DPP are yielding increased fines, and sentences are being

handed down. This should act as a deterrent to anyone who is participating or considering participation in price-fixing activities. Throughout the course of the proceedings relating to the home heating oil cartel, several undertakings entered a guilty plea that acted in their favour when it came to sentencing. Therefore, this should be persuasive to those who are facing prosecution for involvement in cartel activity. Practitioners would do well to advise company clients to have a competition compliance programme to ensure that staff do not become involved in price-fixing, market-sharing or bid-rigging arrangements. Convictions for hard-core offences have serious consequences for businesses and individuals. The risk of detection is increasing, as the authority, the DPP and similar competition authorities in other jurisdictions (such as the US and Britain) are increasing their detection and enforcement activity. A reduction in the number of active cartels will ultimately have a beneficial effect on the consumer. It should be recalled that, when prosecutions for cartels first commenced in the US, *de minimis* fines and suspended sentences or short custodial sentences were handed down. This is certainly no longer the case in that jurisdiction. G

Niamh Connery is a legal advisor with the Commission for Communications Regulation.

Recent developments in European law

ENVIRONMENTAL LAW

Case C-188/07, *Commune de Mesquer v Total France SA, Total International Ltd*, 24 June 2008. ENEL is an Italian company that concluded a contract with Total International Ltd for the supply of heavy fuel oil from France to Italy. To carry out the contract, Total chartered an oil tanker flying the Maltese flag. In late 1999, the ship sank off the coast of Brittany, spilling part of her cargo and oil into the sea and causing pollution along the French Atlantic coastline.

The municipality of Mesquer brought proceedings against the companies in the Total group for reimbursement of the cost of cleaning and anti-pollution operations on its coast, relying on the *Waste Directive* (775/442, as amended). The municipality argued that the cargo spilled at sea was waste within the meaning of the directive, so that Total should be liable for the cost of disposal as "previous holders" or "producers of the product from which the waste came".

The Cour de Cassation referred a number of questions to the ECJ. The court initially considered whether the heavy fuel oil carried by the ship could be classified as waste. It held that it was not. The fuel oil is exploited or marketed on economically advantageous terms and is capable of actually being used as a fuel without requiring prior processing. However, when the oil spilled, mixed with water and sediment, and drifted along the coastline until being washed ashore, it must be classified as waste. In this form they were substances that their holder did not intend to produce and that were discarded, albeit involuntarily, while being transported.

The court then moved to consider the consequences of the waste disposal and who should bear the cost of the clean up. The *Waste Directive* provides that the costs must be borne by the "previous holders" or the "producer of the product from which the waste came".

In the event of a shipwreck, the owner of the ship carrying hydrocarbons has them in his possession immediately before they become waste. In those circumstances, the shipowner may be regarded as having produced the waste and on that basis be classified as a 'holder' within the meaning of the directive.

However, the national court may consider that the seller of the hydrocarbons and charterer of the ship carrying waste has 'produced' the waste if it finds that the seller/charterer contributed to the risk that the pollution caused by the shipwreck would occur. This arises in particular if he failed to take measures to prevent such an occurrence, such as his choice of ship.

The *Waste Directive* does not preclude member states from providing, pursuant to the *Convention on Civil Liability for Oil Pollution 1969* and the *Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971*, for limitations or exemptions of liability for the benefit of the shipowner or charterer from establishing a central fund.

If the cost of disposing of the waste is not or cannot be borne by that fund and national law prevents that cost from being borne by the shipowner and the charterer, even though they are regarded as 'holders', such a national law will have to make provision for that cost to be borne by the "producer of the product from which the waste came".

In accordance with the 'polluter pays' principle, such a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck will occur. 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 7 November 2008)

Regd owner: Noel Reddy; folio: 291F; lands: south side of Browneshill Road in the townland of Carlow and barony of Carlow; **Co Carlow**

Regd owner: Noel Reddy; folio: 11336F; lands: north side of Staplestown in the townland of Carlow and barony of Carlow; **Co Carlow**

Regd owner: Carlow County Council; folio: 10474F; lands: Seskinryan and barony of Idrone East; **Co Carlow**

Regd owner: Patrick McNamara (deceased); folio: 23170; lands: townland of Cloondrinagh and barony of Clonderalaw; area: 19.9901 hectares; **Co Clare**

Regd owner: Flannon McMahon; folio: 15425F; lands: townland of Cranagher, Cloonkerry, Curraderra and barony of Bunratty Upper; **Co Clare**

Regd owner: William Duffy and Grainne Kearney; folio: 27062F; lands: townland of Lifford and barony of Islands; **Co Clare**

Regd owner: Declan Fennell and Geraldine McTigue; folio: 30513F; lands: townland of Brisla East and barony of Moyarta; **Co Clare**

Regd owner: Maurice P Carroll; folio: 45582; lands: plot of ground situate in the parish of St Anne's-Shandon P in the townland of Ballyvolane and in the barony and county of Cork; **Co Cork**

Regd owner: Anne Good; folio: 53828F; lands: plot of ground situate in the townlands of (1) Bawnavota, (2) Ardbrack and barony of Kinsale in the county of Cork; **Co Cork**

Regd owner: Mary Crowley; folio: 52977F; lands: plot of ground situate in the townland of Pallas and barony of Duhallow in the county of Cork; **Co Cork**

Regd owner: Mary Crowley; folio: 61763F; lands: plot of ground situate in the townland of Pallas and barony of Duhallow in the county of Cork; **Co Cork**

Regd owner: Christopher O'Leary and Margaret O'Leary; folio: 45521F; lands: plot of ground situate in the townland of Cooranig and barony of Carbery East (west division) in the county of Cork; **Co Cork**

Regd owner: James Tobin; folio: 47959F; lands: plot of ground situate in the townland of Peafield (ED Templebodan) and barony of Barrymore in the county of Cork, **Co Cork**

Regd owner: John Sullivan (deceased); folio: 26984; lands: plot of ground situate in the townland of Ardgroom Outward and barony of Bear in the county of Cork; **Co Cork**

Regd owner: Wolf Bohlen; folio: 6584F; lands: plot of ground situate in the townlands of Coorlacka and Enaghoughter West and barony of Carbery West (west division) in the county of Cork; **Co Cork**

Regd owner: Robert Lane; folio: 27059; lands: plot of ground situate in the townland of Knockacullata and barony of Fermoy in the county of Cork; **Co Cork**

Regd owner: Marguerite Von Geyr (deceased); folio: 45006; lands: plot of ground situate in the townland of Kilmichael East and barony of Kerrycurrihy in the county of Cork; **Co Cork**

Regd owner: Eamonn Wiseman; folio: 411F; lands: plot of ground situate in the townland of Rooska East and barony of Bantry in the county of Cork; **Co Cork**

Regd owner: John Kelleher and Josephine Kelleher; folio: 9358; lands: plot of ground situate in the townland of Ballycunningham (ED Kilcullen) and barony of Muskerry East in the county of Cork; **Co Cork**

Regd owner: Patrick Gerard Doogan, Lisahully, Ballyshannon, Co Donegal; folios: 27949 and 19203; lands: Ardloughill; **Co Donegal**

Regd owner: James Cunningham, Kille, Kilcar, Co Donegal; folio: 16508F; lands: Kill; **Co Donegal**

Regd owner: Fergus Hayes (Developments) Ltd, 13 Herbert Street, Dublin 1; folio: 4700F; lands: Finner; **Co Donegal**

Regd owner: Annie Quigley, Ballyhallion, Clonmany, Co Donegal; folio: 39255; lands: Straid; **Co Donegal**

Regd owner: Joan Magera; folio: DN28069F; lands: a plot of ground known as 716 Virginia Heights, in the parish of Tallaght and in the town of Tallaght; **Co Dublin**

Regd owner: John Stafford & Sons; folio: DN100724F; lands: property known as unit 4, Ballymount Industrial Estate; **Co Dublin**

Regd owner: Isobel Walton; folio: DN6512; lands: property situated in the townland of Knocksedan and barony of Nethercross; **Co Dublin**

Regd owner: George F Farmer; folio: DN33470L; lands: property situate in the townland of Pelletstown and barony of Castleknock; **Co Dublin**

Regd owner: Barbara Mullen; folio: 2349F; lands: townland of Shannagurraun and barony of Moycullen; area: 0.4325 hectares; **Co Galway**

Regd owner: Francis King; folio: 57362; lands: townland of Ard East and barony of Ballynahinch; **Co Galway**

Regd owner: Michael Keady; folio: 24544; lands: barony of Moycullen and townland of Ballynahown; **Co Galway**

Regd owner: Terence McDonagh; folio: 28941; lands: townland of Carrowroe West (Moycullen By) and barony of Moycullen; **Co Galway**

Regd owner: Stephen Folan (deceased); folio: 30712; lands: townland of Carna and barony of Ballynahinch; area: 0.1064 hectares; **Co Galway**

Regd owner: John Joseph McHugh (deceased); folio: 6987; lands: townland of Coothagh and barony of Ballymoe; **Co Galway**

Regd owner: Thomas (Tommy) Folan; folio: 32296F; lands: Doughiska and barony of Galway; **Co Galway**

Regd owner: Michael Larkin and Margaret Larkin (deceased); folio: 30285F; lands: townland of Cloonshee (Trench) and barony of Killian; **Co Galway**

Regd owner: Thomas McHugh; folio: 8049F; lands: townland of Ballybaan More and barony of Galway; **Co Galway**

Regd owner: Michael Teahan (Junior); folio: KY6657; lands: townland of Moularostig and Lomanagh South and barony of Dunkerron South; **Co Kerry**

Regd owner: Denis Kelliher; folio: KY12114; lands: townland of Emlagh East and barony of Corkaguiny; **Co Kerry**

Regd owner: Eamonn Breen and Rita Breen of Clane Road, Sallins, Co Kildare; folio: 18297; lands: townland of Sallins in the barony of Naas North in the electoral division of Bodenstown; **Co Kildare**

Regd owner: Industrial Development Authority (body corporate) of Landsdowne House, Ballsbridge, Dublin; folio: 277; lands: townland of Kildare and barony of Offaly East; **Co Kildare**

Regd owner: Seamus Doorley and Niamh Fitzgerald; folio: 36922F; lands: property known as 137 Barrington Court, Prosperous, Co Kildare, being part of the townland of Curryhills and barony of Clane; **Co Kildare**

Regd owner: Richard Newman and Lareina Smith, 20 The Elms, Newbridge, Co Kildare; folio: 33839F; lands: south of Strandhouse Road in the town of Newbridge, situate in the townland of Ballymany and barony of Offaly East; **Co Kildare**

Regd owner: TJ Farrington Lim of Monread, Naas, Co Kildare; folio: 2338F; lands: townland of Moortown (Ikeathy and Oughterany by) in the barony of Ikeathy and Oughterany, in the electoral division of Balraheen; **Co Kildare**

Regd owner: T&J Farrington Limited (limited liability company) of Rathcoffey, Donadea, Naas, Co Kildare; folio: 13486; lands: townland of Moortown (Ikeathy by) and barony of Ikeathy and Oughterany; **Co Kildare**

Regd owner: Bridget Howe (widow) (deceased) of Levitstown, Athy, Co Kildare; folio: 14130; lands: townland of Levitstown (ED Grangemellon) and barony of Kilkea and Moone; **Co Kildare**

Regd owner: Richard Tierney and Josette Tierney; folio: 3366F; lands: Inistioge and barony of Gowran; **Co Kilkenny**

Regd owner: Daniel Rogers and Geraldine Rogers (deceased); folio: 116F; lands: Leugh and barony of Crannagh; **Co Kilkenny**

Regd owner: Bernard McGee, Church Street, Drumshanbo; Co Leitrim; folio: 19026; lands: Carricknabrack; **Co Leitrim**

Regd owner: John McKenna, George O'Rourke and James Stokes; folio: LK14450F; lands: townland of Kildimo and barony of Kenry; **Co Limerick**

Regd owner: Ross A Cosgrove, Shooland, Ballinalee, Co Longford; folio: 9643; lands: School Land; **Co Longford**

Regd owner: John Conroy (deceased); folio: 15559; lands: townland of Frenchbrook North, Kilmaine, Claremorris, Frenchbrook

South, and barony of Kilmaine; **Co Mayo**

Regd owner: Eamonn McGaugh (deceased); folio: 45473; lands: townland of Brownsisland, Glasvally, Ballycurrin Demesne and barony of Kilmaine; **Co Mayo**

Regd owner: Nuala Scanlon; folio: 2457F; lands: townland of Ballyholan and barony of Tireragh; **Co Mayo**

Regd owner: Thomas J McKeown, Bryanstown, Drogheda, Co Louth; folio: 9893 and 11879F; lands: Prioryland; **Co Meath**

Regd owner: Paul Carolan, Carrickleck, Kingscourt, Co Meath; folio: 15650F; lands: Carrickleck; **Co Meath**

Regd owner: Kathleen Monaghan, Caulstown, Dunboyne, Co Meath; folio: 33586F; lands: Caulstown; **Co Meath**

Regd owner: Neil Myer and Yvonne Cladingboel, 26 Castle Close, Ashbourne, Co Meath; folio: 1018L; lands: Killegland; **Co Meath**

Regd owner: John Carolan, Rathmore, Athboy, Co Meath; folio: 4658F; lands: Rathmore and Clonymore; **Co Meath**

Regd owner: Martin O'Hanlon and Ann O'Hanlon, Branstown, Dunshaughlin, Co Meath; folio: 20318; lands: Branstown; **Co Meath**

Regd owner: Colm Faulkner, Dunmoe, Navan, Co Meath; folio: 13907F; lands: Mullagh, Graigs; **Co Meath**

Regd owner: John J Connell; folio: 3416; lands: townland of Emlagh and barony of Castlereagh; area: 17 acres, 2 roods, 21 perches; **Co Roscommon**

Regd owner: Sean McNeill; folio: 35393; lands: townland of Carrownabricka and barony of Ballintober South; area: 16 acres; **Co Roscommon**

Regd owner: Thomas Kevin O'Toole; folio: 22619; lands: townland of Foghanagh Beg and barony of Ballymoe; area: 9.1206 hectares; **Co Roscommon**

Regd owner: Robert Sharkey; folio: 10248; lands: townland of Cloonfad and barony of Frenchpark; **Co Roscommon**

Regd owner: Kevin McHugh; folio: 10122F; lands: townland of Rosses Upper and barony of Carbury; **Co Sligo**

Regd owner: White Brothers Joinery Limited; folio: 4970F; lands: townland of Knappagh More, Sligo, and barony of Carbury; **Co Sligo**

Regd owner: Donal O'Brien and Aisling Gavin; folio: 23403F; lands: plot of ground known as no 6 Magenta Grove, Grange Manor, in the parish of St John's Without Division, Grange Upper, in the county borough of Waterford; **Co Waterford**

Regd owner: Kelly and Dollard Ltd; folio: 25313F; lands: plot of ground situate in Block 4, Carriganard Business Park, in the parish of Kilbarry Division Carriganard and in the county borough of Waterford; **Co Waterford**

Regd owner: Kevin Clancy; folio: 3231; lands: plot of ground situate in the townland of Churchtown and barony of Upperthird in the county of Waterford; **Co Waterford**

Regd owner: Martin Cullen and Bernie Cullen, Garden City, Gorey, Co Wexford; folio: 29341F; lands: Middletown and barony of Ballaghkeen North; **Co Wexford**

Regd owner: Padraig McManus and Mary McManus; folio: 9712F; lands: Ballybanoge and barony of Ballaghkeen South; **Co Wexford**

Regd owner: Karl Mullen of 'Altamont', Stoney Road, Dundrum, Dublin 14; folio: 4623; lands: townland of Tulfarris and barony of Talbotstown Lower; **Co Wicklow**

Regd owner: John Moody and Philomena Moody, 6 Lower Kindlestown, Greystones, Co Wicklow; folio: 10656; lands: townland of Kindlestown Lower and barony of Rathdown; **Co Wicklow**

Regd owner: Joseph McGrath and Elaine Dromey of 7 Broomhall Court, Rathnew, Co Wicklow; folio: 26832F; lands: townland of Merrymeeting and barony of Newcastle; **Co Wicklow**

Regd owner: Robert O'Neill of 6 Glenlucan Court, Killarney Road, Bray, Co Wicklow; folio: 12985F; lands: the west side of Killarney Road in the town of Bray, being part of the townland of Killarney and barony of Rathdown; **Co Wicklow**

Regd owner: Rosemary Bayly of Ballyarthur, Woodenbridge, Arklow, Co Wicklow; folio: 2890; lands: property no 1 – townland of Ballanagh, known as Rose Cottage, Ballanagh, Avoca, in the barony of Arklow, in the electoral division of Ballyarthur, Co Wicklow; property no 2 – townland of Ballyarthur in the barony of Arklow, in the electoral division of Ballyarthur; **Co Wicklow**

Regd owner: Michael Doyle of Charvey Lane, Rathnew, Co Wicklow; folio: 1366F; lands: townland of Milltown North and barony of Newcastle; **Co Wicklow**

Regd owner: James Duggan (deceased) of St Killian's, Blacklion, Greystones, Co Wicklow; folio: 2816F; lands: the parish of Delgany, situate in the townland of Kindlestown Lower, known as Saint Killian's, Blacklion, Greystones, in the barony of Rathdown, in the electoral division of Delgany; **Co Wicklow**

WILLS

Chambers, Helena Gertrude (deceased), late of Killinure, Mountrath, Co Laois. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 28 June 1995, please contact Tom O'Grady, BCL, solicitor, Market Square, Mountrath, Co Laois; tel: 057 873 2214, email: ogrady@eircom.net

Coughlan, John (otherwise Sean) (deceased), late of Ballinacarra, Ennistymon, Co Clare. Would any person having knowledge of a will executed by the above-named deceased, who died on 30 September 2008, please contact Desmond J Houlihan & Company, Solicitors, Salthouse Lane, Ennis, Co Clare; tel: 065 684 2244, email: lburke@djhoulihan.ie

Kavanagh, Margaret (deceased), late of 24 Knocknarea Avenue, Drimnagh, Dublin 12, who died on 25 March 2006. Would any person having knowledge of a will made by the above-named deceased please contact Donal Farrelly & Co, Solicitors, Tullagh House, High Street, Tullamore, Co Offaly; tel: 057 932 1324, fax: 057 932 1328, email: donalfarrellysols@eircom.net

Kelly, Margaret (deceased), late of 56 Blarney Park, Dublin 12, who died on 30 November 2005. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Joseph P Gordon & Co, Solicitors, Burgery, Dungarvan, Co Waterford; tel: 058 41294/41494, fax: 058 43573

O'Brien, Michael Joseph (deceased), late of 53 Viking Place E10, Seymour Road, Leyton, London, and Caislean Rí, Tuam Road Park, Athenry, Co Galway, who died on 17 September 2008. Would any person

PROFESSIONAL NOTICES

having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Gilmartin & Traynor, Solicitors, 16 Mary Street, Galway; tel: 091 569 984, fax: 091 532 615

O'Shea, Helen (deceased), late of 12 Hazel Avenue, Caherdavin Heights, Limerick, who died on 30 April 2008 at St John's Hospital, Limerick. Would any person having knowledge of a will made by the above-named deceased please contact Michael J Kennedy & Company, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, fax: 01 839 3663, email: info@mjksolicitors.ie

Owens, Patrick (deceased), late of 47 Monastery Terrace, Blarney Street, Cork and Kilkenny, who died on 16 August 2006. Would any person with knowledge of a will executed by the above-named deceased please contact Murphy MacNamara & Co, Solicitors, 26/27 South Mall, Cork; tel: 021 490 7777

Rooney, John (deceased), late of 1 Ardmore Grove, Artane, Dublin 5, who died on 28 May 2005. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Murray Flynn Maguire, Solicitors, at 12-16 Fairview Strand, Dublin 3; fax: 01 836 5992 or email: sdefoubert@murrayflynn.ie

Quinn, Thomas Flannan (deceased), late of Knappogue, Quin, Co Clare, who died on 15 October 2008. Would any person with knowledge of a will executed by the above-named deceased please contact Desmond J Houlihan & Co, Solicitors, Salthouse Lane, Ennis, Co Clare; tel: 065 684 2244, email: lburke@djhoulihan.ie

MISCELLANEOUS

Kavanagh Joseph Jnr, last known address at 24 Knocknarea Avenue, Drimnagh, Dublin 12. Would any person having knowledge of the whereabouts of this gentleman please contact Donal Farrelly & Co, Solicitors, Tullagh House, High Street, Tullamore, Co Offaly; tel: 057 932 1324, fax: 057 932 1328, email: donalfarrellysols@eircom.net

Shared office space available in Dun Laoghaire area on flexible terms. Possible serviced facilities considered. Car parking optional. Suit professional person. Contact Maurice O'Callaghan; tel: 01 280 3399 or email: mauriceo@ocslegal.ie

Seven-day full ordinary on intoxicating liquor licence for sale. Contact: Elaine Lynch, solicitor, Lees Solicitors, Lord Edward Street, Kilmallock, Co Limerick; tel: 063 98003

Seven-day intoxicating liquor licence for sale. All inquiries to Chambers & Company, Solicitors, Ennistymon, Co Clare; tel: 065 707 1150 or email: chambers@securemail.ie

Full seven-day ordinary publican's licence for sale. Contact: Michael Quirk, solicitor, Carrick-on-Suir, Co Tipperary; tel: 051 640 019

Westside Bookkeeping Services, specialising in solicitors' accounts. Experienced bookkeeper available to maintain and update accounts – on site. Professional references available. Contact Michelle Ridge @ Westside Bookkeeping; mobile: 087 293 0347, email: mridge@indigo.ie

All persons claiming to be the next of kin of Francis (Frank) Conlon (deceased), who was born on 20 April 1914 in the county of Meath and died on 10 April 1999 in Our Lady of Lourdes Hospital, Drogheda, Co Louth, formerly of 19 Abbeyview, Slane, Co Meath, a son of Matthew and Annie Conlon (formerly Elliott), are required on or before 28 November 2008 to contact in writing John C Kieran & Son, Solicitors, 16 Castle Street, Ardee, Co Louth. All correspondence should be marked for the attention of Ms Nicola Kelly, solicitor, and should clearly state the nature and detail of the individual's relationship with Francis (Frank) Conlon (deceased).

Complex probate file? Munster-based probate solicitor, 15 years' experience, member of Society of Trust and Estate Practitioners, available to consult and deal with that difficult probate file and all related CAT/CGT problems. Contact: 086 609 8432

Self-contained/shared office, Harcourt Road – 750 sq ft approx. Prominent office space near Luas. Self-contained and possibility of sharing services. Reasonable rent. Contact: edavy@hayes-solicitors.ie; tel: 01 475 4766

TITLE DEEDS

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

Any person having a freehold estate or any intermediate interest in all that and those the plot of ground with the house and premises erected thereon and known as 6 Marino Crescent, Fairview, Dublin 3, formerly known as 6 Marino Crescent, Clontarf, in the city of Dublin, situate in the parish of Clontarf West, formerly in the county now in the city of Dublin, being the premises comprised in and demised by indenture of lease dated 8 April 1971 between Kathleen M Jennings of the one part and Maurice Brennan of the other part .

Take notice that Thomas McGrath and Mary McGrath, being the persons currently entitled to the lessees' interest under the said lease, intend to apply to the Registrar of Titles pursuant to section 21(1) of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* for the acquisition of the freehold interest and all intermediate interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Thomas McGrath and Mary McGrath intend to proceed with the application before the Registrar of Titles at the end of the 21 days from the date of this notice and will apply for such 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 premises are unknown and unascertained.

Date: 7 November 2008

Signed: Hughes & Liddy (solicitors for the applicants), 2 Upper Fitzwilliam Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by B&F Properties Limited

Any person having a freehold estate or any intermediate interest in all that and those that plot or piece of ground the subject of an indenture of lease dated 31 December 1869 between Lawrence Walker, William Henry Hoey, Anthony Lyster and Elfrida Lady Neville of the one part and Alexander Austin of the other part, for a term of 200 years from 1 November 1868 at a yearly rent of £24 and therein described as "all that piece or parcel of ground situate and being in the North Strand Road in the parish of Saint Thomas in the county of the city of Dublin containing in front towards the south east on the said Strand Road forty six feet or thereabouts in the rere towards the west of Annesley Place forty four feet six inches or thereabouts on the north side towards other ground of the said Lessors one hundred and sixty three feet or thereabouts and on the South side also towards other ground and buildings of the same lessors one hundred and forty feet or thereabouts together with the four messuages or tenements now standing and being on the said piece of ground being numbers 56 and 57 on the North Strand Road and Numbers 16 and 17 in Annesley Place as aforesaid and all other erections and buildings standing and being on the said piece of ground with their and every of their rights members and appurtenances as the said piece of ground with the said four messuages and tenements is more particularly delineated and described in the plan drawn in the margin of these presents".

Take notice that B&F Properties Limited, being the person currently entitled to the lessee's interest under the said lease in all that and those that portion of the above premises now known as no 5 Austin Cottages, North Strand, Dublin 3, intends to apply to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) are called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

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

Date: 7 November 2008

Signed: Murray Flynn Maguire (solicitors for the applicants), 12-16 Fairview Strand, Dublin 3

In the matter of the *Landlord and Tenant Acts 1967-1993*, in the matter of the *Landlord and Tenant (Ground Rents) Act 1967*, in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of premises situate at 38 Upper Clanbrassil Street, Dublin, parish of St Peter, Dublin, and in the matter of an application by Belcarrig Properties Limited

Take notice that any person having any interest in the freehold estate of the following property: all that and those property known as 38 Upper Clanbrassil Street in the parish of St Peter in the city of Dublin, held under an indenture of lease dated 12 February 1844 between George Benynge Rochford of the first part, Thomas Orsbrey of the second part and Thomas O'Reilly of the third part for a term of 999 years from 25 March 1843, subject to the rent thereby reserved in the conveyance and conditions therein contained. Take notice that the applicant, Belcarrig Properties Limited, intends to submit an application to the county registrar for the county and 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 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 the default of such notice being received, Belcarrig Properties Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as maybe appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 7 November 2008

Signed: Peter G Crean & Company (solicitors for the applicant), Milltwood, Carrigduff, Bunclody, Co Wexford

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of an application by Maurice B Fitzgerald

Take notice that any person having any interest in the freehold estate of, or any superior or intermediate interest in, all that and those the dwellinghouse, yard, garden and premises situated at The Cross, Ballyheigue, electoral division of Ballyheigue, barony of Clanmaurice and county of Kerry, measuring 0.186 acres or thereabouts statute measure, being the property held on foot of a yearly tenancy from the Reps General JD Crosbie at an annual rent of £2.14s.7d (= £2.77 = €3.51), should give notice to the undersigned solicitors.

Take notice that the applicant, Maurice B Fitzgerald, intends to apply to the county registrar for the county of Kerry for acquisition of the freehold interest and all intermediate interests (if any) in the above mentioned property, and any party asserting that they hold an interest superior to the applicant in the aforesaid property are called upon to furnish evidence of title to same to the below named solicitors within 21 days from the date hereof. In default of any such notice being received, the said Maurice B Fitzgerald intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Kerry for such directions as may be appropriate on the basis that the person or persons beneficially entitled to any such superior interest up to and including the fee simple in the aforesaid property is/are unknown or unascertained.

Date: 7 November 2008

Signed: Thomas J O'Halloran (solicitor for the applicant), Upper Ashe Street, Tralee, Co Kerry

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of Patrick Treacy and Angela Treacy and no 259 Crumlin Road, Dublin 12

Take notice any person having any interest in the freehold estate of the following property: 259 Crumlin Road, Dublin 12. Take notice that the applicants, Patrick Treacy and Angela Treacy, intend to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforement ioned premises to the below named within 21 days from the date of this notice.

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

Date: 7 November 2008

Signed: Brendan Clarke (solicitor for the applicants), Unit 3, Parnell Court, Granby Row, 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* and in the matter of an application by Montara Limited of 2 West End Business Park, Doughcloyne Industrial Estate, Sarsfield Road, Wilton, in the city of Cork

Take notice any person having interest in the freehold estate or any other estate of the following property: 181 Old Youghal Road, parish of St Anne's Shandon, city of Cork.

Take notice that Montara Ltd intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all superior interests in the aforementioned 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 premises to the below named.

In particular, such persons who are entitled to the interest of Swithin White, deceased, pursuant to a lease of 22 October 1745 between Swithin White of the one part and Noblett Johnson of the other part for a term of 999 years from 1 May 1745 in lands at Glauncatane in the county of Cork, should provide evidence of their title to the below named.

In default of any such notice being received, the applicant, Montara Limited, intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold in the premises are unknown and unascertained.

Date: 7 November 2008

Signed: Rachel O'Toole (solicitor for the applicant), 7/8 Liberty Street, Cork

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1987* and in the matter of an application by the Boylan Limited Partnership, the Teissier Limited Partnership and the McCarthy Limited Partnership (applicants): notice of intention to acquire fee simple

Take notice that the applicants, being the persons entitled under the abovementioned acts, propose to purchase the fee simple in the lands described in paragraph 1.

1. Description of land to which this notice refers: all that and those the lands and premises now known as 15/15A Bishop Street, Dublin 8, being part of the lands demised in a certain indenture of lease dated 21 May 1777 and therein described as "all that and those the messuage house or tenement situate lying and being on the south side of Bishop Street formerly called Bigg Butter Lane late in the possession of Charles Labonte and now in the possession of the said John Connoly and Alexander Gordon mearing and bounding as follows on the North with Bishop Street aforesaid on the west to Jeffrey Giblons holding on the east to Henry Rothers holding and on the south to William Peters holding containing in breadth in the front and the rere fifty feet or thereabouts and in depth from front to rere on each side one hundred and fifty six feet or thereabouts".

2. Particulars of applicants' lease: the applicants hold the lessee's interest in the said lands under the said lease dated 21 May 1777 and made between Robert Byrne of the one part and John Conolly and Alexander Gordon of the other part, whereby the lands and hereditaments as therein described (of which the premises herein form portion) were demised unto the said John Conolly and Alexander Gordon for the term of 999 years from 25 March 1778, subject to the yearly rent of £20.

Date: 7 November 2008

Signed: Creagh Joy & Company (solicitors for the applicants), 2 Prince of Wales Terrace, Bray, Co Wicklow

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Sheila Dorrington and in the matter of the property at the rear of 14 Longwood Avenue, South Circular Road, Dublin 8, in the city of Dublin (being also the property at the rear of 8a Bloomfield Park, Dublin 8, in the city of Dublin)

Take notice that any person having an interest in the freehold estate or any intermediate interests of that part of the property known as 14 Longwood Avenue, South Circular Road, Dublin 8, being the property at the rear of 8a Bloomfield Park, Dublin 8, in the city of Dublin, held under an indenture of lease made 13 March 1893 between George Elliott and Martha Anne Elliott of the one part and Elizabeth Smith of the other part (hereinafter 'the lease') for a term of 123 years from 1 March 1893 at the annual rent of £3 sterling and subject to the covenants and condi-

tions therein contained.

Take notice that Sheila Dorrington intends to submit an application to the county registrar for the county of Dublin at Áras Uí Dhálaigh, Inns Quay, in the city of Dublin, for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and that any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Sheila Dorrington 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 intermediate interests, including the fee simple, in the aforesaid property are unknown or unascertained.

Date: 7 November 2008

Signed: Gartlan Winters, Solicitors (solicitors for the applicant), 56 Lower Dorset Street, Dublin 1

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 James Tarrant

Take notice any person having any interest in the freehold estate of the following property: the garage, dwellinghouse and premises no 94 New Street, in the town and parish of Killarney, barony of Magunihy and county of Kerry, held under an indenture of lease dated 2 December 1957 and made between James RC Green, Madeleine Maxwell, Harold Homes Maxwell, Helena Frances Hewson, Margaret Jacklin, Enid Lawson and Alice Piegrome of the one part and William Tarrant of the other part for the term of 99 years from 2 December 1957, subject to the yearly rent of £39 and to the covenants and conditions therein contained.

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

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

Date: 7 November 2008

Signed: Downing Courtney & Larkin (solicitors for the applicant), 84 New Street, Killarney, Co Kerry; DX 51 006 Killarney

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1984* and in the matter of an application by Ann Sheppard for the premises known as Saint Conleth's, 28 Clyde Road, Ballsbridge, Co Dublin

To the unknown and unascertained owner of the fee simple and all intermediate interests.

Take notice that the applicant, being the person so entitled under the above-mentioned acts, proposes to purchase the fee simple in the lands described in paragraph 1.

1. Description of lands to which this notice refers: all that and those the lands and premises now known as Saint Conleth's, 28 Clyde Road, Ballsbridge, Dublin 4, in the county of the city of Dublin, being part of the lands demised in a certain indenture of lease dated 21 July 1891 and made between William Henry Hippisley and Charlotte Antonia Sullivan of the one part and the Reverend Richard Travers Smith of the other part and therein described as "all that and those the piece or plot of ground part of the lands of Donnybrook adjoining the boundary of the estate of the lessors at the rere of Morehampton Road containing five acres two roods and thirty one perches statute measure" and as more particularly delineated on the map attached thereto and further being the entire of the lands delineated and marked in blue on the map attached to a certain indenture of lease dated 16 June 1944 (which lease is more particularly described at 2 below).

2. Particulars of applicant's lease: the applicant holds the lessee's interest in the said lands under an indenture of lease dated 16 June 1944 and made between Georgina Elizabeth Evans Acton, Helen Mary Kewley, Cecily Mary Arthur and Nora Mary Wavish of the one part and Bernard Cecil Sheppard of the other part, whereby the lands and hereditaments herein were demised unto the said Bernard Cecil Sheppard for the remainder of the term of 128 years from 25 March 1891, save the last 3 days thereof, subject to the yearly rent of £12.16.00 thereby reserved (said rent being reserved in relation to the total of the lands herein, together with other lands not forming part of this application) and subject to the covenants and conditions therein contained.

3. Part of lands excluded: excluding all the lands comprised in the said lease of 21 July 1891 that do not form part of the land demised in the sublease of 16 June 1944, and further excluding all the lands comprised in the said sublease of 16 June 1944 that do not form part of the land demised in the lease of 21 July 1891.

Date: 7 November 2008

Signed: Eoghan P Clear, Solicitors (solicitors for the applicant), Alexandra House, The Sweepstakes, Ballsbridge, Dublin 4

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