

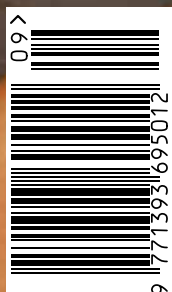
# LAW SOCIETY Gazette

€3.75 Aug/Sept 2009



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# Challenging times

**W**ell, I hope you had a chance to take some time out over the summer – it is important to step back from time to time to recharge the batteries and get some perspective on the way forward.

Part of my vacation was spent as a guest at the annual conference of the American Bar Association and, given that this is a worldwide recession, it was not surprising that they face problems very similar to our own. However, Americans are known as a people who accept that there will be ups and downs in business life. Rather than dwell on their predicament, they have a great 'can do' attitude and a willingness to treat the downturn as a real challenge.

This is not to minimise the difficulties we face here. As you will know from previous messages, our focus has been firmly on helping those who have unfortunately become unemployed. Our new career development advisor, Keith O'Malley, has been very busy since he started in May.

## PII renewal deadline

There is now also a significant build-up of prospective trainees who cannot get training contracts and this, already, has had a knock-on effect on the professional training courses in Blackhall Place. The inevitable drop in numbers has unfortunately meant that the Law Society has had to make nine employees redundant in the Law School. We now have a significant excess of supply over demand and, until such time as private practice starts to recover, the challenge will be to find opportunities for career development.

*"Our focus has been firmly on helping those who have unfortunately become unemployed. Our new career development advisor has been very busy"*

On the practice side, the annual deadline for the renewal of professional indemnity insurance (PII) is now looming and we have been informed by all insurers that it has been a very difficult year for them. The main problems are the increase in the number of claims and the impact of the financial meltdown on the reserves held by insurers. Extensive consultations have taken place with the insurers, who have suggested some changes to the terms of minimum cover.

Bearing in mind that PII is as much a benefit for the solicitor as the client, such changes have to be carefully considered – but equally, it is imperative that cover is affordable.

I have now convened a special Council meeting for the end of August to consider new draft regulations, as these must be put in place immediately in order to apply for the coming year. Notwithstanding these changes, it is likely that there will be further increases in insurance

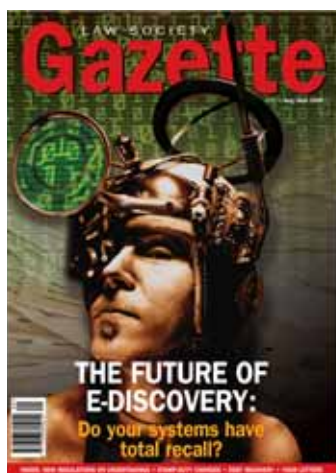
premiums this year, as the underlying factors noted above very much determine the level of premium.

On a brighter note, the 'Talk to your solicitor' advertising campaign, which ran in July, was well received and we expect to run more adverts in the coming weeks.

Onwards and upwards!

**John D Shaw**  
President





### On the cover

The day will surely come when an order for discovery involves reaming out your mind for salient memories. But in the meantime, there's enough in the new 2009 discovery rules to be going on with

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These days, there's a lot of debt out there to be collected, and solicitors are in a good position to assist individuals and companies in the recovery of their bad debt. Hugh Ward gets his pound of flesh

### 26 Talk is cheap

Next to meeting someone face-to-face, the telephone remains one of the most effective ways to communicate. With the internet, calls can cost much less than standard phones and, in some cases, nothing at all. Gordon Smith leaves a message after the beep

### 30 Out with it!

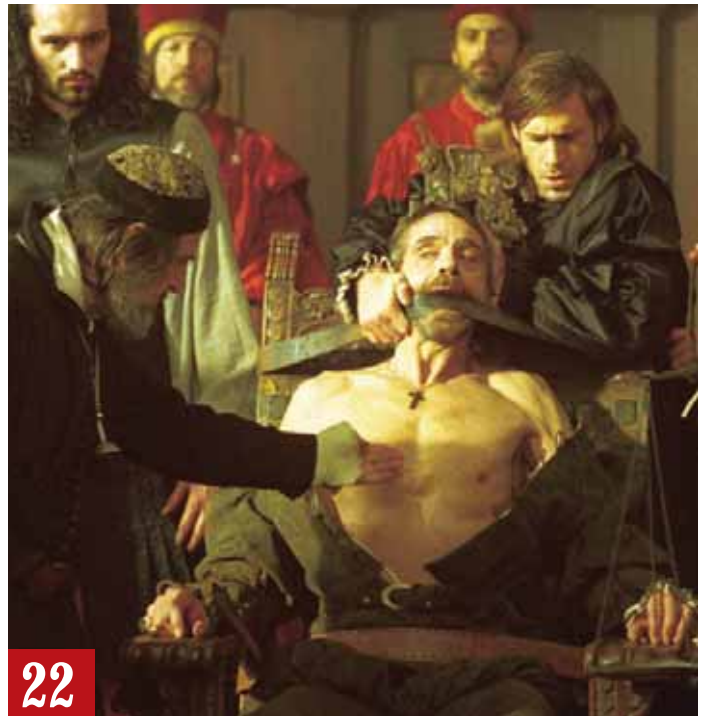
As companies strive to adapt to the current economic downturn, more and more businesses are choosing to outsource certain aspects of their work to external service providers. However, beware the legal obligations of outsourcing, warns Colm O'Connor

### 33 The price is right

Challenging times present the perfect opportunity to focus on maximising the value of your practice, and profitability is the key to this. Jason Bradshaw gets out his abacus

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## ■ CORK

Mortimer Kelleher has diaried 'Nationwide' that, as president of the Southern Law Association, he attended the congress of the Federation of European Bars (FBE), held at Bruges from 21-23 May. The congress was book-ended by the Festival of the Holy Blood, which has been held in Bruges on Ascension Thursday since medieval times, and a visit to the spectacular Charles the Bold exhibition in the world-renowned Groeninge Museum. Mortimer advises that they were lavishly treated by their hosts and, in particular, the dean or *batonnier* of the Bar of Bruges, Paul Baekert. The issues down for discussion at the congress were the financing of law firms and the financing of law associations. There was a lively debate on the latter topic. He was also amused to see how the French described him in the post-congress publication as "*Le Président de l'Association des Avocats d'Irlande de sud*". He has asked me to assure our president John D Shaw that no passing-off was intended! He also hopes to attend the intermediate congress in Valencia from 1-3 October.

On 15 July, the Southern Law Association hosted the annual reception in the Common Room at UCC for the fifth annual e-law seminar, jointly organised by the Franklin Pearce Law Center, Concord, New Hampshire and UCC. This was a resounding success. Special thanks are due to Professor Steve Hedley (dean of the Faculty of Law, UCC), Dr Aine Ryall, and, of course, Dr Bill Murphy and Professor Susan Richey of the Franklin Pearce Law Center.

The annual cricket match between the SLA and the bar



The Southern Law Association had a hard-won victory over the Bar at their annual cricket match, held at the Mardyke on 17 July

took place at the Mardyke on Friday 17 July. (Good to see that they could get a team together for that one, having let their Dublin cousins down!) Anyway, Mortimer reports that the SLA had a hard-earned 121-run victory over the bar, which was facilitated by a classical quarter century from John Jermyn, an Irish hockey international, a quick-fire 26 from Terry O'Sullivan and a ponderous, but defiantly resolute, innings of 20 not out from Mortimer himself. He reports that Terry O'Sullivan was the best of the bowlers, taking two wickets. There was a large attendance at the game, which was a great social occasion for everybody at the end of the Cork High Court personal injuries sessions. The fun continued at the Cork Family Law Association BBQ at the adjacent Sunday's Well Boating and Lawn Tennis Club.

For the first time ever, there will be a ceremony to celebrate the beginning of the new legal year in Cork. This will take place at 9.30am in St Francis' Church, Liberty Street, Cork.

The Choir of St Francis' Church will augment the liturgy and an eminent preacher is being recruited.

Grace Gleeson hopes to arrange a number of social nights in October and November.

## ■ DUBLIN

It was good to see a revival of the summer party, held on the eve of term-end. This had always been an event on the Dublin legal calendar that had been overlooked in recent years (or probably just rained off). A very good turnout of colleagues enjoyed plenty of sunshine in the delightful surroundings of the Rose Garden of Blackhall Place, where they enjoyed appetising food and refreshments, provided by Alan and his team. Geraldine Kelly, as always, is to be commended for organising the entire event.

The fact that the turnout of those travelling to Chicago has well exceeded expectations is a response to the great value on offer, helped by our generous sponsors, Custom House Capital and DX. A

stimulating programme of tours is available, including a trek through President Barack Obama's neighbourhood and a drive-by (no, not *that* kind) of his home place. I have also enjoyed great support from the Chicago Bar Association, and while the business programme has yet to be finalised, it will include a comparative analysis of legal practice on both sides of the Atlantic, a look at practice management issues, both here and in Chicago, and a number of ethical issues.

We were delighted to offer greetings and hospitality to our Canadian colleagues who honoured us by arriving in huge numbers in Dublin in mid August for the occasion of their annual conference. A huge programme of events took place over the five days and the DSBA was delighted to offer them a reception in the Mansion House, co-hosted by the Bar Council. **G**

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

PIC: DEE BAUMANN



# Law Society launches 'WorkSearch' initiative

'WorkSearch', a new initiative aimed at supporting solicitors not currently working, is about to be launched by the Society's Career Support service.

WorkSearch will suit people who are frustrated at the lack of work opportunities arising through traditional channels (such as advertisements) and those who want to hear about more jobs and take a more proactive approach to job seeking.

Based on a 'jobs club' model – but involving much more – the new service will bring participants together each week and facilitate the sharing of information.

Isolation and finding out about opportunities too late are typical problems facing people not working that WorkSearch is structured to address. The initiative is based on people in similar circumstances,



Career development advisor,  
Keith O'Malley

collaborating together, for mutual benefit. Competition between participants for particular jobs is not expected to be a stumbling block. There will be times when people are in competition, but there is significant variation in career aspirations and job suitability among solicitors, to the extent that cooperation between colleagues will generally provide a win-win outcome.

The first meeting of WorkSearch will take place on Monday 7 September 2009 in Blackhall Place, between 10am and 12 noon. Meetings will continue every Monday at the same time and participants will have ongoing contact between meetings – primarily by email – sharing information and providing support and encouragement to each other.

Once WorkSearch starts, it will join with the other initiatives already in place that support solicitors facing other career challenges. These include the 'Strategies for career success' evening seminars that have been run in Dublin and Cork and are now scheduled for Waterford, Galway, Donegal and Portlaoise over the coming months.

A whole host of information about job-seeking matters is available by email from [careers@lawsociety.ie](mailto:careers@lawsociety.ie), and online at [www.lawsociety.ie](http://www.lawsociety.ie).

## High Court positive callover

There will be a personal injuries positive callover at the start of the Michaelmas term. It is proposed to positively call 400 cases on 6 October and 500 cases on each day of 8 and 9 October 2009. Cases will be taken from the top of the master list for the Trinity Term, published on 10 June 2009. **The three lists were published on Monday 20 July 2009.** See 'Legal diary' at [www.courts.ie](http://www.courts.ie).

Where the action appeared in the positive callover at Michaelmas 2008, a date for hearing will be assigned. Where there is no appearance, the action will be struck out and the case removed from the list. Where, for other reasons, the notice of trial is set aside, the case will similarly be removed from the list. Parties may not serve a new notice of trial and set the case down again without application to the court on notice. They may not re-enter the original notice of trial. Practitioners should notify the registrar of any actions that are settled.

## Government consults on EU Services Directive

A consultation document has been published on the transposition into Irish law of the *Services Directive* in the internal market. The objective of the *Services Directive* is to create a single market in commercial services in the European Union. It will allow businesses and consumers to take advantage of the freedom of establishment and the freedom to provide services across borders – leading to greater price competition. The consultation process is an opportunity to provide input into the transposition into Irish law of the *Services Directive* (2006/123/EC, OJ L 376, 27.12.2006).

The directive contains important provisions on

consumer protection, and on administrative cooperation arrangements between member states. These arrangements will provide a means for supervising business activities and are intended to create trust and confidence in the single market for service providers, service recipients (including consumers) and supervisory authorities in member states.

The consultation document is available at [www.entemp.ie/trade/marketaccess/singlemarket/services/directive\\_cons.htm](http://www.entemp.ie/trade/marketaccess/singlemarket/services/directive_cons.htm). It should be read with the European Commission's *Handbook on the Transposition of the Directive* ([www.entemp.ie/trade/marketaccess/singlemarket/](http://www.entemp.ie/trade/marketaccess/singlemarket/)

[handbook\\_en.pdf](#)).

The document includes a preliminary draft of the regulations, together with explanatory notes on all its provisions.

This is the second element in the public consultation process on the transposition of the directive, which has been underway since early 2009. It complements the draft *Regulatory Impact Analysis* (RIA) on the directive (see [www.entemp.ie/trade/marketaccess/singlemarket/09RIA007a.pdf](http://www.entemp.ie/trade/marketaccess/singlemarket/09RIA007a.pdf), published last March). The RIA will be updated following the consultation process.

At the launch of the consultation document, Tánaiste Mary Coughlan

said: "I believe that the wide consultation process now being undertaken will greatly contribute to the proper transposition of this important piece of legislation. The proposed regulations, when they come into effect in December of this year, will have implications for the providers of most, though not all, services, for the bodies that authorise or otherwise regulate them, and for the users of services."

She urged all stakeholders to review the document thoroughly and to inform the Department of Enterprise, Trade and Employment of their views on the draft provisions before the 30 September deadline.

# Changes to services of the offices of the Supreme and High Courts

From 5 October 2009, two new initiatives to improve the service to court users in the Supreme and High Court offices are planned to come into operation, subject to ministerial concurrence in the court rules concerned, writes *Nuala McLoughlin*. Firstly, the offices will, in future, open at 10am and, also, personal attendance will no longer be required for most transactions. Non-personal filing will offer an alternative to queuing for those who do not require documents to be issued or lodged on a same-day basis.

The Courts Service will shortly be piloting the use of the service provided by DX, and so parties will have the option of using An Post, DX or deposit in a secure box for filing documents. Some documents are excluded from these new provisions, for example, Supreme Court books of appeal, original wills to be lodged in the Office of Wards of Court, and documents for the commercial list.

Personal service at the public counter in the Central Office will still be available, as this will be necessary for time-sensitive matters, for example, motions requiring early return dates or matters that are about to become statute barred. The same staff members who operate the public counters will deal with documents deposited by non-personal filing. They will be deployed to the counter or



deal with post as the pressure of business requires. However, if the option of non-personal filing is availed of to the extent anticipated, it will require diversion of resources from the counter to back-office processing.

Any person whose documents are not especially urgent, and who is not in a position to queue, will have the option of using the deposit box. Deposit-box items will be treated in the same way as those received through An Post and DX. External law clerks/agencies will be required to place the documents in a separate, sealed envelope for each solicitor or firm of solicitors they represent, and to indicate in writing whether copy documents or queries – which will be sent by DX or post – are to be directed to the law agent or to the instructing solicitor.

Court offices will record the receipt of all materials received through these new channels. The date of filing or issue of such

documents will be the date on which the correct and complete documents are entered on the office's case-tracking system – not the date on which they are received in the court office.

Court fees will continue to have to be paid where required by the *Court Fees Orders*. Unless they are required to be assessed by the court office (for example, the Probate Office), fees must be paid before the documents are sent to the offices. Offices will return documents on which fees are unpaid, or which are accompanied by a cheque or cash for fee payment.

The Courts Service is also working on standardising the criteria for accepting or querying court documents and will be aligning the checking of court documents across the High Court, the Circuit Court and the District Court. The same criteria for acceptance will apply to documents presented at the

counter and those received via non-personal filing. While this may result in a reduction of queries when documents are presented, it should be emphasised that it will in no way reduce the requirement for compliance with the *Rules of the Superior Courts*. What it will do, however, is transfer the onus of checking documents back to the legal representatives of the respective parties.

Further information on the procedures to be adopted under the new rules will be posted on the Courts Service website, [www.courts.ie](http://www.courts.ie). Offices with particular requirements will prepare information leaflets to provide guidance on how best to use this system.

Feedback from Law Society members on any issue would be welcome, especially issues arising from the implementation of these service-improvement initiatives.

## SECTION 68 LEAFLET (SEPTEMBER 2008)

Solicitors are reminded that the current edition of the *Legal Charges* leaflet was printed in September 2008. *Earlier versions of the leaflet should no longer be used.*

Supplies of the leaflet in packets of 100 can be ordered by sending a cheque for €30.07 (includes €8.50 postage), payable to Law Society of Ireland, to Publications, Blackhall Place, Dublin 7.

The leaflet can also be accessed via the Law Society website [www.lawsociety.ie](http://www.lawsociety.ie). Select 'Consumer information/Legal charges'.

## Financial aspects of elder abuse

The most up-to-date and nuanced version of the practice note on enduring powers of attorney, from the Guidance and Ethics Committee's Subcommittee on Financial Aspects of Elder Abuse, is now available on the Society's website, [www.lawsociety.ie](http://www.lawsociety.ie).

(This practice note was originally published in the *Gazette*, May 2009, p52.)

This, and all the other practice notes on financial aspects of elder abuse published by the committee, can be found in the 'Practice notes' section.

## Pre-Contract VAT Enquiries

The Conveyancing and Taxation Committees of the Society seeks to remind practitioners that, in May 2009, a joint subcommittee published a working draft of *Pre-Contract VAT Enquiries* (see *Gazette*, May 2009, p57). It invited feedback on the enquiries from the profession. The subcommittee intends to finalise the enquiries

in November 2009. Practitioners are therefore requested to submit any comments or suggestions by email to [vat@lawsociety.ie](mailto:vat@lawsociety.ie). The practice note and linked enquiries can be accessed by logging into the members' area of the Society's website and clicking on 'Society committees', and either 'Conveyancing Committee' or 'Taxation Committee'.



# Nine redundancies at the Law Society

The economic recession has brought a deep decline in the overall level of work for the solicitors' profession. The almost complete collapse in one of the mainstays of the profession's income – residential and commercial conveyancing – has been only one element of this. Hundreds of solicitors are now unemployed. These are primarily, but not exclusively, newly-qualified solicitors. A total of 609 solicitors have had their names entered on the Roll for the first time from 1 January 2009 to date. It may well be the case that the majority of these are currently without work.

With so many solicitors and other staff very regrettably having to be let go by solicitors' firms, and with other staff on a reduced working week, it is hardly surprising that these firms are also reducing the



number of new trainees they are taking on. There are over 1,000 trainee solicitors currently in the education system.

In September 2007, 671 students enrolled on the Society's Professional Practice Course – Part I (PPCI). In September 2008, that annual intake figure dropped to 595. Based on current enrolments, there are unlikely to be more than 400

trainees commencing the PPCI course in September 2009 – a drop of 40% in just two years. The fee income needed to run the training course has also reduced proportionately.

Director general Ken Murphy said: "Extensive cuts in non-staff-related costs have been implemented by the Society over the last year. However, these cuts in expenditure have

been insufficient to prevent the Society's Law School potentially incurring very significant losses on the course beginning in September 2009. Consequently, payroll costs have had to be reduced also.

"Very regrettably, but inevitably, a number of staff positions – nine in all – are redundant. Meetings took place in mid-July with all of the staff affected.

"The number of trainee solicitors increased massively earlier in this decade, with a 91% increase between 2001 and 2006. Many additional Law School staff were recruited to deal with this expansion in numbers. The recession has caused a great reduction in those trainee numbers and, very sadly for the excellent colleagues concerned, the Society must deal with that reality also."

## Special Council meeting on insurance crisis

It is very rare that the Law Society Council holds a special meeting on a single issue – particularly in the month of August – but on 27 August (just after this *Gazette* goes to print) such a meeting will be held.

The Society has, for many months, been monitoring developments in the professional indemnity insurance (PII) market, taking independent expert advice and consulting with all of the current approved insurers and with some potential market entrants.

The insurance market is ultimately beyond the control of the Society or, indeed, of anyone. As the near collapse (but for the saving intervention of the US government and the Federal Reserve) of the world's biggest insurance company AIG demonstrated, the insurance

industry is subject to global financial forces.

The industry has suffered massive investment losses, with the collapse in international investment markets over the last two years. AIG, of course, plays a major role in the professional insurance market for solicitors in Ireland.

### Huge premium increases

The Society is anxious to examine anything it might be able to do to assist practitioners. Undoubtedly, the profession will have to face major issues – in terms of limited insurance availability and potentially huge premium increases – when PII policies fall due to be renewed by solicitors' firms at the end of 2009.

The insurers have produced convincing evidence to the Society that the PII market

for the solicitors' profession in Ireland has been making substantial losses for many years. These losses have greatly increased recently due to the much-increased frequency, size and speed (now that many cases are being brought through the Commercial Court) of successful claims.

### Escalation in claims

An escalation in claims inevitably follows an economic downturn. However, this is no ordinary economic downturn and no ordinary escalation in claims. The number and size of negligence claims relating to property transactions, including failures to comply with undertakings, following the collapse in the over-valued property market have produced unsustainable losses for all insurers in the Irish market.

The most recent example of this was the case of *AIB v Maguire* in which Mr Justice Peart gave judgment in the High Court on 28 July 2009. He found in negligence against the solicitors' firm involved, where an assistant in the firm, in fundamental and deliberate breach of an undertaking, misapplied the loan proceeds in a €3 million commercial property transaction. The judgment in this case will be reported on and analysed in the next issue of the *Gazette*.

While it is the factors referred to above that have caused the current crisis, rather than the Law Society's PII regulations, at its meeting the Council will consider certain changes to the regulations that might help reduce the very substantial increases in premiums that are inevitably on the way.

# Overwhelming case for extra judicial resources says Court of Appeal report

The report of the Working Group on a Court of Appeal has been published. The report was submitted to government on 7 August by the group, which is chaired by Supreme Court judge Mrs Justice Susan Denham. It finds that there is an overwhelming case for additional judicial resources at the highest appeal stage.

The appointment of additional judges in recent years, combined with innovations such as the Commercial Court and the use of refurbished regional courthouses for hearings, has had a huge impact on reducing delays in the High Court lists.

The number of Supreme Court judges, however, has remained at eight since 1995. As a result, a substantial backlog has developed at Supreme Court level, with cases taking up to 30 months for listing. This is impacting negatively on many areas of Irish life, from business to the environment, and on individual's access to justice.

The working group considered a number of options and their possible implications, including:

- Preserving the existing court structure,
- Increasing the number of Supreme Court judges,
- Establishing a court of civil appeal, modelled on the Court of Criminal Appeal,
- Establishing a statutory court of appeal with both civil and criminal jurisdiction, and
- Establishing a combined court of appeal by Constitutional amendment.

It has recommended that the best option is to establish a court of appeal, provided for in the Constitution, and then established by law.



Mrs Justice Susan Denham chaired the working group

The government has agreed to examine the report's recommendations in detail, but has said that it will be seeking to identify how these could be implemented at minimal cost. A referendum on the recommendations has not been ruled out, though the government has refused to commit to a final decision on the matter until the examination has been completed.

Minister for Justice Dermot Ahern said that it was essential that people could access justice

as speedily as possible. "The delays at Supreme Court level are of concern," he said. "However, I am anxious to ensure that additional costs to the state are minimised, and I have therefore asked my officials to devise a cost-effective solution. It is also necessary to make certain that multiple avenues of appeal, which would have a negative impact on costs and delays, are not allowed to develop."

The report is available on the Courts Service website, [www.courts.ie](http://www.courts.ie).

## Autumn 2009 diploma programme – reduction of 15% to unemployed solicitors

The Law Society's diploma team has an expanded and diverse portfolio of courses in its autumn 2009 programme. The Education Centre is offering a 15% reduction to solicitors who are out of work at present. A 10% reduction is available to applicants who have attended two previous diploma programme courses.

Fourteen courses are on offer, including the launch of three new diplomas:

- Diploma in Insolvency and Corporate Restructuring, providing an in-depth knowledge of the practice and procedure of insolvency and corporate restructuring in Ireland,
- Diploma in Intellectual Property and Information Technology Law, giving a comprehensive overview of this area of law and practice, including discussion on the current issues, case law and trends, and
- Diploma in Civil Litigation, examining civil litigation

practice and procedure in this jurisdiction. Significant emphasis will be placed in module three on practice and procedure in medical negligence cases in Ireland.

The Certificate in Human Rights will introduce participants to the international, regional and national human rights framework. The Certificate in Taxation Law (in Cork) will provide professionals who have not yet specialised in tax with an understanding of taxation issues that they need to be aware of as advisers. The Certificate in Litigation (in Cork) aims to expose practitioners to some key areas, including judicial review, property litigation, probate litigation, Commercial Court, and insolvency, to name a few.

In addition, a number of courses will be video-linked on a weekly basis to the Law Society of Ireland, Cork –

namely the Diploma in Trust and Estate Planning and the Diploma in Insolvency and Corporate Restructuring. (The video-link is subject to sufficient numbers attending in Cork).

The diploma team has designed a number of 'blended learning' courses that combine periodic on-site lectures and workshops with a weekly online release of lecture materials – encouraging students to work through lecture material at their own pace. From autumn 2009, such courses will include the Diploma in Family Law, the Certificate in Criminal Litigation and Procedure, the Certificate in Human Rights and the Certificate in Judicial Review.

For details on any of these courses, call Freda Grealy (diploma manager) at 01 672 4946, refer to the diploma programme pages at [www.lawsociety.ie](http://www.lawsociety.ie), or email: [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie) or tel: 01 672 4802.



# Keeping in touch with reality

**"T**he Tánaiste is mistaken. We are facing an arctic gale, not a chill wind," director general Ken Murphy told *The Irish Times* when queried about comments made recently by Tánaiste Mary Coughlan.

The Tánaiste was reported as saying that some sectors had yet to feel the chill winds of economic reality and had specifically mentioned architects, engineers and lawyers in this regard.

All of the professions took umbrage at these remarks, particularly the architects' profession, where letter writers to *The Irish Times* pointed out that 40% of architects are currently unemployed and questioned whether the Tánaiste was "out of touch with reality". The engineering profession was also noted as facing record levels of unemployment and financial distress.

## Putting the record straight

Murphy was interviewed on RTÉ radio's *Morning Ireland* on 24 July. He sought to put the record straight, saying: "We sometimes thought that the solicitors' profession might be immune from recession. That is most certainly not the case now. The number of solicitors unemployed – it's very difficult for us to get an exact figure on this – but it's certainly of the order of hundreds."

To show the informed basis for his comments he revealed: "We're in daily contact with solicitors in all types of practice and in all parts of the country. In just the last couple of weeks, the Law Society president and I visited solicitors' associations in Sligo, Donegal, Leitrim and Cavan. We also visited the managing partners of the country's largest commercial law firms. Just last week, we met with representatives of



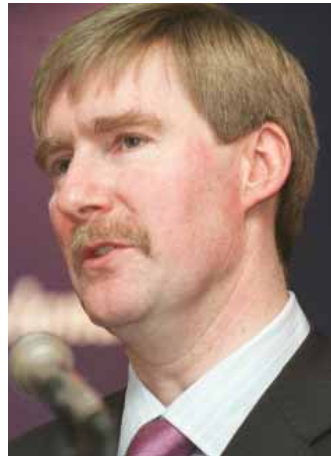
Tánaiste Mary Coughlan: "Some sectors had yet to feel the chill winds of economic reality"

more than 600 solicitors who've just come on the Roll this year – probably the majority of these are without work at present."

Murphy acknowledged that the collapse in income from property work was the headline issue for the profession, but it was by no means the whole story. "One of the mainstays of the profession's income traditionally was residential and commercial conveyancing. That's almost completely collapsed. But it's not just that. All sorts of transaction-type work – commercial transactions, mergers and acquisitions work, family law where it's almost impossible to sell the house to conclude the case, all of this kind of work has really dried up to a large extent."

## Cash-flow problems

For balance he added: "I don't want to be too doom-and-gloom about it. There are other areas of work that are up – litigation, as we saw from the Courts Service annual report yesterday, debt recovery, insolvency-type work, employment law and crime. But even in that type of work, solicitors tell us they're having quite a lot of difficulty getting paid because of cash-flow



Ken Murphy: "The Tánaiste is mistaken. We are facing an arctic gale, not a chill wind"

problems that their clients have. There's some areas where the work is buoyant, but it does not make up in any way for the major collapse in property."

## Completely untrue

Pressed by interviewer Richard Downes to respond to what the Tánaiste had implied about the legal profession being protected, refusing to reduce fees and "still charging an arm and a leg and getting away with it", Murphy replied: "That's completely untrue. An already competitive marketplace has become much more so as a result of the recession, and when solicitors are really scrabbling for work of any kind, it's impossible to believe that fees aren't falling. We know anecdotally that fees are falling."

In a separate interview some weeks later on RTÉ radio's *Drivetime*, on the subject of the fall in points required for law under the newly-announced CAO requirements, Murphy said: "On any objective analysis, there is a significant oversupply of lawyers in the country at present, and likely to be for some considerable time. If people choose because of that not to do law, well then maybe, to a certain extent, it is a market righting itself."

## ■ DEATH OF JOHN CARRIGAN

The death has taken place, at the age of 92, of the very popular and respected Tipperary solicitor John Carrigan.

Remarkably, it was more than 50 years since he had served as president of the Law Society in the term 1957/58. He had served some 15 years earlier than the next most senior surviving past-president. *Gazette* readers may recall the profile of John, which appeared in the March 2006 issue under the heading 'Tipperary Star'.

The current Law Society president, John D Shaw, attended John Carrigan's funeral in Thurles, as did many of the Society's past-presidents.

An obituary appears at page 39 of this *Gazette*.

## ■ LITIGATION DEVELOPMENTS

A CPD seminar entitled 'New Developments in Litigation: the *Defamation Act 2009*' will be held for practitioners on Wednesday 4 November 2009.

The speakers are Hugh Mohan SC, Michael Kealey (in-house counsel, Associated Newspapers) and Karyn Harty (McCann FitzGerald Solicitors). It will be chaired by Mr Justice Adrian Hardiman.

Full details of the seminar are available on the Law Society's website: [www.lawsociety.ie](http://www.lawsociety.ie).

## ■ HOPE LEGAL CHALLENGE

The first HOPE Adventure Race – featuring the HOPE Legal Challenge – will take place in Avon Rí, Co Wicklow, on 19 September 2009. It will feature kayaking (1km), cycling (25km) and running (5km). The race is open to beginners and experienced multi-sport enthusiasts. Individual participants are asked to raise €350 and teams €600 for The Hope Foundation, working for the street children of Calcutta. Register online at [www.hopefoundation.ie](http://www.hopefoundation.ie); contact 021 429 2990; or email [susan@hopefoundation.ie](mailto:susan@hopefoundation.ie).



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For more information on our autumn programme and exemptions for members of the Law Society of Ireland, please contact our education team on +353 1 6631700 or visit [www.taxireland.ie/education](http://www.taxireland.ie/education).

## IMPORTANT INFORMATION REGARDING LAND CERTIFICATES AND CERTIFICATES OF CHARGE

Pursuant to the provisions of the Registration of Deeds and Title Act 2006, the Minister for Justice, Equality and Law Reform made an order providing for the commencement of section 73 of the Act. From January 1<sup>st</sup> 2007 the Property Registration Authority ceased to issue, or reissue, land certificates or certificates of charge.

From then until December 31<sup>st</sup> 2009, production of an existing certificate to the Authority is still required for the registration of a dealing with the property whose ownership it certifies. After this date, all remaining land certificates and certificates of charge, not already cancelled, shall cease to have any force or effect.

The following provisions apply where a person claims to hold a lien on registered land or on a registered charge through deposit or possession of a land certificate or certificate of charge or, in the case of a property or charge where a land certificate or certificate of

charge had not issued from the Land Registry prior to 1<sup>st</sup> January 2007, an undertaking to furnish the land certificate or certificate of charge:

- A holder of such a lien may apply to the Authority for registration of the lien in such manner as the authority may determine
- The application shall be on notice by the applicant to the registered owner of the land or charge and be accompanied by the original certificate
- The lien is deemed, for the purpose of section 69 of the Registration of Title Act 1964, to be a burden which may be registered as affecting registered land
- The Authority shall register the lien without charging any fee.

The foregoing provisions cease to apply after 31<sup>st</sup> December 2009.

**For further information, please visit [PRAI.ie](http://PRAI.ie) or [landdirect.ie](http://landdirect.ie)**



**The Property Registration Authority**  
**An tÚdarás Clárúcháin Maoine**



# Restrictions on undertakings

New regulations have been approved that restrict the giving of undertakings to mortgagees in secured loan transactions, warns John Elliot

The *Solicitors (Professional Practice, Conduct and Discipline – Secured Loan Transactions) Regulations 2009* (SI No 211 of 2009) came into force on 1 September 2009. The subject of a practice note in the July 2009 issue of the *Gazette*, this article is intended as a reminder to the profession about the new regulations.

Certain recent high-profile cases caused damage to public confidence in solicitors' undertakings. The Law Society decided to take action to address legitimate public concerns and do what could reasonably be done to restore confidence. The Council of the Law Society approved regulations creating a restriction on the giving of undertakings to mortgagees in secured loan transactions, in which the solicitor, or a person closely connected, is beneficially interested. Members should refer to the 'News' area of the Law Society's website, [www.lawsociety.ie](http://www.lawsociety.ie), for the full text of the new regulations.

## Purpose of the new regulations

The purpose of the regulations is to prohibit solicitors from giving undertakings to, or for the benefit of, a bank or, indeed, any other persons in relation to a secured loan transaction, in which the solicitor or a connected person has a beneficial interest – unless the solicitor has given specified notice and the bank or other person has both acknowledged receipt of such notice and consented to the solicitor providing the undertaking.

## Exceptions to the prohibition

The prohibition does not apply:

- 1) To an undertaking given prior to the coming into force of the regulations that remains to be



- honoured in whole or in part after the coming into force of the regulations, or
- 2) To a statement of fact or declaration of intention made by a person who is a solicitor as a necessary requirement of that person's application to a bank as part of a secured loan transaction – provided that the making of such a statement or declaration would be a similar requirement for another applicant who is not a solicitor, and that that person, in doing so, is not acting as a solicitor in the course of his or her legal practice, or
  - 3) In respect of an undertaking given by a solicitor who is a sole principal or a partner in a firm in relation to a secured loan transaction in which another solicitor in the firm, who is not a partner, has a beneficial interest, but where neither the solicitor giving the undertaking nor a connected person has a beneficial interest.

## Definitions

The introduction to the definition of 'undertaking' in the regulations tracks directly the language of 'undertaking' in paragraph 6.5.1 of the second edition of *A Guide to Professional Conduct of Solicitors in Ireland*. The specific items listed in the definition of undertaking in the regulations include certain

items that form part of the new certificate of title arrangements agreed between the Law Society and the Irish Bankers' Federation in respect of residential mortgage lending.

Not all the specific items listed in the definition (for example, undertakings in relation to the execution of guarantees) are included in the new certificate of title arrangements. The last subset of the definition is a 'catch-all' to ensure that, for example, if a transaction is effected by means of a corporate structure, undertakings that a bank might seek in relation to filings to be made in the Companies Registration Office are captured.

The definition of 'connected person' in relation to the interested solicitor covers his or her spouse or life partner or fiancé(e), and a sole principal or partner in the same firm.

## Beneficial interest

A solicitor cannot avoid the requirements of the regulations by arranging his or her interests so that they are held through the means of a company, a partnership (or similar arrangement) or a trust. The definition of a company controlled by a solicitor for this purpose is taken from the *Companies Act 1990*. This definition is used widely as a test for ascertaining control of a company. The application of a threshold of 25% is in recognition of the fact that, in any co-ownership arrangement, an individual with an interest of less than that amount should have minimal influence or control over the affairs of the partnership and, therefore, minimal means of exercising undue influence on their solicitor. Co-ownership agreements customarily require

75% approval of any matter to be undertaken by that group.

Nothing in the regulations is to be construed as lessening the obligations of:

- 1) Solicitors to honour undertakings given by them, and
- 2) Banks engaged in the funding of secured loan transactions to engage in appropriate due diligence before placing reliance on undertakings.

## Redemption of loans

Since the practice note on the regulations was published, I have been asked if giving an undertaking in connection with redeeming a loan is intended to be caught by the regulations, and I have answered that it is not. In the definition of 'secured loan transaction', the expression 'being funded' points to the process of borrowing only, not extending to the process of repaying. The regulations are aimed at the improper use of undertakings to raise funds.

The regulations do not prohibit a solicitor acting for him or herself as such; they just restrict the giving of undertakings.

## Cases of doubt

In any situation of doubt as to the interpretation of the regulations, one possible approach is to give the specified notice, and obtain from the bank or other person both acknowledgement of receipt of the notice and consent to the provision of the undertaking, which will have the effect of disapplying the regulations in the case in question. **G**

*John Elliot is the Registrar of Solicitors and Director of Regulation of the Law Society.*

# The Three Wise Monkeys

This year's Human Rights Lecture, "The Three Wise Monkeys visit the Marketplace of Ideas: Censorship in a Free Society", was given by Lord Justice Stephen Sedley, writes Elaine Dewhurst

As the eminent jurist approached the podium, a hushed silence filled the Presidents' Hall. The 120-strong audience of judges, solicitors, barristers, academics and students sat silently, listening to the tale of the 'Three Wise Monkeys'. One of them covers its eyes, one its ears and one its mouth, enjoining us 'to see no evil, to hear no evil and to speak no evil'. The silence was broken by laughter as the speaker, Lord Justice Sedley, regaled the audience with tales of a 'fourth monkey', "whose message is 'to do no evil'. He conveys this by covering his private parts."

Stephen Sedley, of the Court

of Appeal of England and Wales, delivered the Law Society's Fifth Annual Human Rights Lecture on 27 July 2009. Entitled "The Three Wise Monkeys Visit the Marketplace of Ideas: Censorship in a Free Society", the lord justice considered the issue of censorship from various perspectives.

He argued that official censorship is generally a self-defeating exercise, in retrospect often absurdly so, but that all societies need to draw a line at the point where the marketplace of ideas stops working. Where that point is, and what censorship it justifies, is a critical and poorly-understood issue.

The lecture considered some illustrations of both the absurdities and the genuine difficulties of political and moral censorship. The lord justice explained that, wherever the boundaries are for the time being set, they are patrolled by the three wise monkeys who "illustrate perfectly what most moral censorship is about: keeping from others what embarrasses the censor. The consequentialist assumption commonly deployed in support of it – of which the ability of literary works to corrupt and deprave their readers is the classic but by no means the only example – tends not only

to be casuistic and intellectually dishonest but, worse, to obscure occasional serious issues about real consequences."

## Junk science journalism

The lecture then turned to a quite different kind of censorship: the suppression of fact, not by the state but by the media of communication – "the uncontrolled misrepresentation of fact, not through simple error or incomprehension, but through the wilful distortion and abuse of information. It is seen perhaps at its sharpest in what sometimes passes for science journalism."

He decried the "supposedly

## ONE TO WATCH: NEW LEGISLATION

### Enforcement of Court Orders (Amendment) Act 2009

The *Enforcement of Court Orders (Amendment) Act 2009* was enacted to remedy the constitutional difficulties identified by the High Court in the recent case of *McCann v Judge of Monaghan District Court* and amends sections 6, 8 and 9 of the *Enforcement of Court Orders Act 1940* by introducing warning systems for debtors and a requirement that such warnings be communicated to the debtor in 'ordinary language', and by removing the possibility of imprisonment in cases where the debtor is unable to pay the debt and allowing for legal aid to be granted for various stages in the debt-enforcement process. The following are some of the most significant changes to the

current debt enforcement regime.

#### Appearance before the court

Whereas section 6 of the 1940 act provided for arrest and imprisonment of a debtor in cases where the debtor failed to pay an instalment order, the 2009 act provides for the creditor to apply to a District Court clerk for the District Court area where the debtor resides for a summons directing the debtor to appear before the District Court. The summons, which must be served personally on the debtor, must contain details, in ordinary language, of:

- The consequences of a failure to comply with an instalment order,
- The possibility of imprisonment, and
- The fact that the debtor may

be arrested if he or she fails to appear.

#### Failure to appear

If a debtor fails to appear, without reasonable excuse, the District Court judge shall issue a warrant for the arrest of the debtor or fix a new date for the hearing, at which date the debtor will be required to attend. Where the debtor is arrested in such circumstances, they shall be brought as soon as practicable before the District Court. A new date shall be fixed for the hearing of the summons and the creditor shall be informed in writing of this new date. The debtor shall be informed in ordinary language that he or she is entitled to apply to the court for a certificate of legal aid and must attend before the court at the next date fixed for the hearing of the

summons. The debtor should also be informed of the consequences that may follow a failure to comply with an instalment order and to attend before the court as required.

#### The hearing

At the hearing, the judge shall explain to the debtor, in ordinary language, that he or she is entitled to apply for legal aid. The debtor should also be informed of the consequences of a failure to comply with an instalment order and, in particular, the possibility of imprisonment.

The judge may:

- Vary the instalment order,
- Request the creditor and debtor to seek resolution by mediation,
- Fix a term of imprisonment not exceeding three months and postpone the execution of



# human rights and censorship



scientific news stories, which not only misinform or disinform but sometimes do demonstrable harm". As an example, he referred to the MRSA scare in British hospitals where "the press's evidence of dirty hospital premises came principally from a single self-advertised microbiologist who, it turned out, was effectively unqualified and worked in a garden shed. Finding that he alone was returning positive reports, in contrast to the reputable laboratories to whom they also submitted swabs, tabloid journalists started taking all their swabs to him. They then had to elevate him



to 'Britain's leading expert' on MRSA and to denounce as a cover-up every official attempt to refute him."

Lord Justice Sedley identified these types of stories as a form of censorship that, like state

censorship, "distorts or blots out known or knowable fact in pursuit of a private agenda".

Lord Justice Sedley concluded: "The censorship of fact by the ignoring or misrepresentation of rational

inquiry is as heavy a handicap on our intellectual life and development as the press censorship against which Milton railed four centuries ago and the political censorship against which William Hone stood up. If the rolling back of official censorship of what we are allowed to say and hear has simply made way for an unofficial censorship of what we

are allowed to know, we will not have come very far." **G**

*A copy of the paper of Lord Justice Sedley is available on the Human Rights Committee page of the Law Society website, [www.lawsociety.ie](http://www.lawsociety.ie).*

the order until such time and on such conditions, if any, as to payment of the outstanding debt and costs (if such an order is made, the debtor may, if her ability to comply has changed, apply for a variation order),

- Order the arrest and imprisonment of the debtor for a period not exceeding three months, and the debtor shall be arrested and imprisoned accordingly.

## Order for imprisonment

A judge shall not make an order for imprisonment unless he or she is satisfied that the creditor has established that:

- The failure to pay the sum in respect of which the debtor has made a default is not due to his or her mere inability to pay, but is due to his or her wilful refusal or

culpable neglect, and

- The debtor has no goods that could be taken in execution under any process of the court by which the judgment order or decrees for the debt was given.

## Imprisonment for debt

Where imprisonment for debt is sanctioned, the debtor:

- May, if his circumstances change, apply to have the matter re-entered and dealt with as if the matter was a rehearing of the summons,
- Is entitled to be released immediately upon payment of the sum of money consisting of all instalments of the debt and costs.

## Legal aid

Where it appears to the judge of the District Court that the means

of a debtor are insufficient to enable him or her to obtain legal aid, the judge shall grant the debtor (on application by the debtor) a certificate for free legal aid (debtors' legal aid certificate). This order for imprisonment can be appealed and the debtor may also apply for free legal aid in such circumstances (debtors' legal aid (appeal) certificate). Where the judge refers a question of law to the High Court by way of case stated or states a case in relation to the proceedings for the opinion of the High Court and the debtor applies for legal aid, the certificate for free legal aid shall be called 'the debtors' legal aid (case stated) certificate'.

## Maintenance orders

The 2009 act also amends section 8 of the 1940 act to

the effect that it extends the new provisions of section 6 to payments made or not made under maintenance orders.

## Release of persons

Where a person is in prison under an order of a court, the minister may, at any time and for any reason that appears to him or her sufficient, direct that the person be released either immediately or after payment of a specified part of that money. The minister may consult with the judge who made the order for imprisonment in relation to the release. Where a direction for release is made, the person shall be released in accordance with the direction. **G**

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



## letters

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

### Putting the brakes on 'Nought to sixty'

From: John Casey, CEO, Motor Insurers' Bureau of Ireland, Molesworth Street, Dublin 2

I refer to the article entitled 'Nought to sixty' in the July 2009 edition of the *Law Society Gazette* (p32).

As the subject matter of the article was the Motor Insurers' Bureau of Ireland (MIBI) agreement with the government dated January 2009, I was somewhat surprised that no contact was made by the author with the MIBI prior to the article's publication.

Nonetheless, having recovered from my surprise, I read the article and would like to make the following points:

- a) The 2009 MIBI agreement was necessitated mainly by the *Fifth EU Motor Insurance Directive*, which was transposed into Irish law in July 2008. This directive contains many changes to motor insurance law, was originally published in May 2005, and its coming into force was signalled well in advance to all stakeholders, including the legal professions across all member states of the EU.
- b) The comment in the article that "the agreement looks like it was drafted on the back of an envelope" is



disingenuous and not supported by anything else in the article. Appearing as it is in the *Law Society Gazette*, it is also ironic, as the final text of the agreement was reviewed in detail by two sets of lawyers, one for the MIBI and one for the government. It is unfortunate that this comment and others of a similar ilk in the article seem to have the sole purpose of adding flippancy to what is a serious and important subject.

- c) There are a number of inaccuracies that need to be addressed, as follows:
  - i) Clause 3.6 stipulates a period of two months, not three months, for

notification to the MIBI.

- ii) Clause 3.8.3 states that the owner and/or user of an allegedly offending vehicle shall be given notice of proceedings or application to the Injuries Board. The purpose of this is clear – that is, to ensure transparency and fair procedures.
- iii) Clause 5.1 arises from an ECJ ruling in February 2008 and not the case of *Farrell v Whitty*. It uses the exact wording as is contained in the second EU directive.
- iv) Clause 5.2 is also from the second EU directive and requires the MIBI, not the claimant, to

prove that the claimant knew that a vehicle was uninsured.

- v) The expression in the article "from left field" is, I believe, a baseball one. However clause 7.1, rather than coming "from left field" comes instead from the fifth EU directive, where the term "substantial personal injuries" originated.
- vi) Clause 7.3 provides for an excess of €220 for property damage caused by a stolen car. This is unchanged from the 2004 agreement. The previous excess of €440 for property damage caused by an uninsured vehicle has been removed.

I hope that the foregoing is useful and helps to correct any misunderstandings that may exist about the 2009 MIBI agreement. The full text of this agreement and all its predecessors is included on the MIBI website, [www.mibi.ie](http://www.mibi.ie).

The MIBI has always cooperated with legal and other professionals who wish to write about this bureau and welcomes contact from any of your readers who may have an interest in this area.



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## Lisbon II – caught in a bind?

From: Robert Pierse, Pierse & Fitzgibbon, Solicitors, Market Street, Listowel, Co Kerry

One of the frustrations of the Lisbon I referendum was the lack of proper information on the contents of the ‘new treaty’: what articles were being amended; also, of course, what was being added and subtracted.

I am pleased to say that I have discovered a 2008 publication by the Institute of International and European Affairs (IIEA), which forms part of a ‘Lisbon’ pack issued by the IIEA, Europe House, 8 North Great Georges Street, Dublin 1 for a modest €50, telephone: 01 874 6756.

The main publication is a 421-page *Annotated and Consolidated Version of the*



*Treaties: as amended by the Treaty of Lisbon*, edited by Peadar Ó Broin. It is a multi-coloured production. It shows different aspects in different colours, for example, deleted text in red. It

seems unbiased.

However, other items of the pack seem to indicate that there is no downside to the treaty, for example, democratic deficit, which I believe is a serious flaw

in Europe.

It is a pity the Irish government is not taking steps to strengthen our national safeguards in a manner such as the German government has recently been directed by its constitutional court.

The IIEA's website ([www.iiea.com](http://www.iiea.com)) has a publication on the so-called guarantees of the heads of state meeting on 19 June. The documents show that, in fact, they are not legal *guarantees* but are alleged to be “legally binding *clarifications* [with emphasis] on sensitive areas of Irish sovereignty” – binding on whom?

It behoves lawyers to objectively read and interpret all this material.

## Debt collection and European regulations

From: Manus Sweeney, Manus Sweeney & Co, Solicitors, Mary's Abbey, Dublin 7

Time was when practice and procedure in relation to debt collection was a relatively straightforward procedure and practitioners would pay little heed to laws emanating from beyond our shores. However, under SI no 388, the *European Communities (Late Payment in Commercial Transactions) Regulations 2002*, where there

is a ‘commercial transaction between undertakings’ and not a consumer transaction, said regulations apply to such transactions.

As an example, if a commercial transaction took place during the second half of 2006, the reference rate applicable to such a transaction would be 4.25%, being the rate in force on 1 July 2006 in respect of fixed-rate tenders for main refinancing operations of

the European Central Bank.

The interest rate applicable to such a transaction as above would be 11.25%, being the reference rate plus 7% as provided by section 5(1) of SI no 388.

The *Official Journal of European Communities* shows the ‘European reference rate’ applicable to a given half year, and this can be viewed online.

The above rate applies from 30 days after the date of first

furnishing an invoice, and on a daily basis at simple interest.

At a time when commercial debts are more frequently written off in their entirety, a slavish adherence to SI 388 may be considered neither practical nor conscionable. However, practitioners may have no option but to at least seek same in their ‘letter before action’, though it can still be claimed when seeking judgment. **G**



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# Lording it over

Britain's Law Lords issued their final judgment on 30 July, bringing a 133-year tradition to an end. Cornelius T O'Connor looks at their legacy – and looks forward to the arrival of the new Supreme Court on 1 October

On 30 July 2009, a seismic shift took place in Britain's legal system. Resisted by many, the reforms of the then prime minister Tony Blair have come to fruition and the Law Lords have heard their last appeal hearings and judgments, although some judgments have yet to be handed down and are still trickling through the system. The final judgments were delivered by the Law Lords on 30 July in the House of Lords' Chamber – all 12 Law Lords being present to mark the occasion.

This brings to an end 133 years of tradition and precedent and is a result of the *Constitutional Reform Act 2005*, which brings into being the new Supreme Court. This change began in July 2003 in what was then the Department of Constitutional Affairs, when a public consultation was initiated to get the views of the judiciary, legal professionals and the public on the form and the responsibilities of a proposed Supreme Court. This culminated in the *Constitutional Reform Act 2005*, part 3, section 23, establishing the new court.

## Jurisdiction

From 1 October 2009, this court will assume jurisdiction on points of law for all civil law cases in Britain and Northern Ireland and all criminal cases in the jurisdictional area of England and Wales and Northern Ireland. As well as



Twelve lords a leaping – over to the new Supreme Court

these, the Supreme Court will have jurisdiction in matters of devolution under the *Scotland Act 1998*, the *Government of Wales Act 2006* and the *Northern Ireland Act 1988* – these being transferred from the Judicial Committee of the Privy Council.

Britain and Northern Ireland do not have a unified judicial system, but the Supreme Court is now the final arbiter and will hear pleadings from the following courts: Scotland – the Court of Session; Northern Ireland – the Court of Appeal and the High

Court in some limited cases; England and Wales – the Court of Appeal (Criminal Division), the Court of Appeal (Civil Division) and the High Court in some cases.

## Transitional system

The transitional system in place is that the current Lords of Appeal in Ordinary (the 'Law Lords') are to become the first judges of the Supreme Court. They are disqualified from sitting or voting in the House of Lords, thus hammering home the principle of separation of powers.

However, when they retire from the Supreme Court, they can return to the House of Lords as full members. When new members of the Supreme Court are appointed, they will not, however, have a seat in the Lords. These judges appointed after 1 October 2009 will not have peerages.

What of the Supreme Court? In a word – independence. While the public had the feeling (critics would say misguided, proponents would say justifiable) that the Law Lords were a quasi arm of government – a perception shown again and



# no more

again by judgments over the years as being manifestly untrue – the Supreme Court is being established by the relatively new Ministry of Justice.

## Openness and transparency

The function of the Supreme Court is to continue the work currently undertaken by the appellate committee of the Lords, thus enhancing openness and transparency between the arms of government and the judicial system of Britain and Northern Ireland.

In order to enhance the perception of independence in the public mind, the Supreme Court will be sited at Middlesex Guildhall at Parliament Square

in London, moving the court away from where the current appellate committee of the Lords is located.

The argument could be made of ‘old wine in new bottles’, particularly as the current incumbents of the Lords are transferring en masse on 1 October. The Law Lords had their origins in the *Appellate Jurisdiction Act of 1876*, each lord serving until 70 years

of age, or 75 years of age if extended by the government.

The lords were appointed by the queen on the advice of the prime minister of the day. With the passing of the *Constitutional Reform Act 2005* and the coming into being of the Supreme Court on 1 October, justices of the Supreme Court will

be appointed by the queen on the advice of the Judicial Appointments Commission.

***“When new members of the Supreme Court are appointed, they will not, however, have a seat in the Lords”***

In its history, the Law Lords have presided over women’s rights under sharia law, the so-called ‘right to die’ cases, and the groundbreaking *Donoghue v Stevenson* ([1932] AC 562) enunciating the neighbour principle of Atkin LJ.

It will be interesting to see what the next century brings. One thing will be sure: practitioners and students alike will be keeping a weather eye on the influential judgments of the new chamber. **G**

*Cornelius T O’Connor qualified and practised in Ireland as a solicitor before moving to England to practise there. He is a senior prosecutions solicitor for Wigan Council.*

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# TOTAL

**New rules in relation to the discovery of electronically-stored information – were introduced in the *Rules of the Superior Courts (Discovery) 2009*. Liam Kennedy and Sinead Grace separate science fact from science fiction**

**T**he May *Gazette* summarised the new discovery rules ('One to watch', p14). Here, we focus on electronic discovery requirements and their implications for solicitors and clients. The electronically-stored information (ESI) rules have significant implications for the way solicitors advise clients and prepare for discovery in civil litigation.

The electronic discovery rules are a welcome codification of existing law and practice. Electronic disclosure was previously governed by principles largely developed in a different era. The new rules implement recommendations in the Law Society Litigation Committee's recent report, *Civil Litigation – Discovery in the Electronic Age: Proposals for Change*. They contain useful provisions on issues such as security and confidentiality.

## Plan 9 from outer space

The rules introduce a new term – 'electronically-stored information' (ESI). ESI encompasses all electronically-stored information, including data held on computer, voicemail, SMS text message, email, BlackBerry-type devices, mobile telephones, CDs, DVDs, back-up tapes and other digital media. The absence of a definition may allow the term to encompass emerging media. ESI is a 'document' for discovery purposes, reaffirming existing law that the discovery obligation extends to ESI. The rules now require the discovery applicant to distinguish between ESI and other documents. The discovery request must state the extent to which discovery of ESI is sought, whether it is required in searchable form, or whether IT assistance or even access to the other side's equipment is required.

The ESI rules reinforce requirements already imposed by the *Rules of the Superior Courts* (RSC) or already within the court's jurisdiction. Discovery was traditionally ordered in respect of 'documents', which included ESI. Accordingly – although not everybody appreciated this – the term 'document' meant that, even before the new rules, ESI was discoverable. At least since the Insurance Corporation of Ireland/Ernst & Whinney (ICI) litigation in the early 1990s, courts

in Ireland and elsewhere confirmed that discovery obligations extended to ESI in appropriate cases, and to disclosure in a searchable form, which could extend to making systems available for inspection. (Order 50, rule 4 powers have also been used.) The 2007 Supreme Court decision in *Dome v Telecom Éireann* is a recent example of the Irish courts' willingness to apply existing discovery principles to new information media. The new ESI provisions are in line with these and other authorities. They do not radically change discovery responsibilities. Their real benefit is in codifying the issue, ensuring greater consistency.

## The Andromeda strain

In practice, relevant information is increasingly likely to be ESI rather than hard-copy information. Discovery would be ineffective without ESI. However, there are significant costs. Technology has vastly increased the volume of data generated. This dramatically increases the volume of potentially relevant information. Far from creating a 'paperless office', the volume of hard-copy data has generally increased, but there has been an exponentially greater increase in the volume of ESI. Making ESI discoverable has significant consequences.

The upside is that discovery may reveal important information that would not otherwise have been available. Furthermore, while paper records can be lost or destroyed, it is harder to lose ESI. ESI disclosure potentially offers greater access to evidence. The downside is that the volume of data to be reviewed is greatly increased, with a potentially huge impact on cost. An entire ESI-discovery service-provider industry has mushroomed in the US, adding significantly to the cost of litigation. The £2 million ESI discovery costs reportedly incurred by one side in the British *Digicel* case demonstrates that this experience will not be confined to the US.

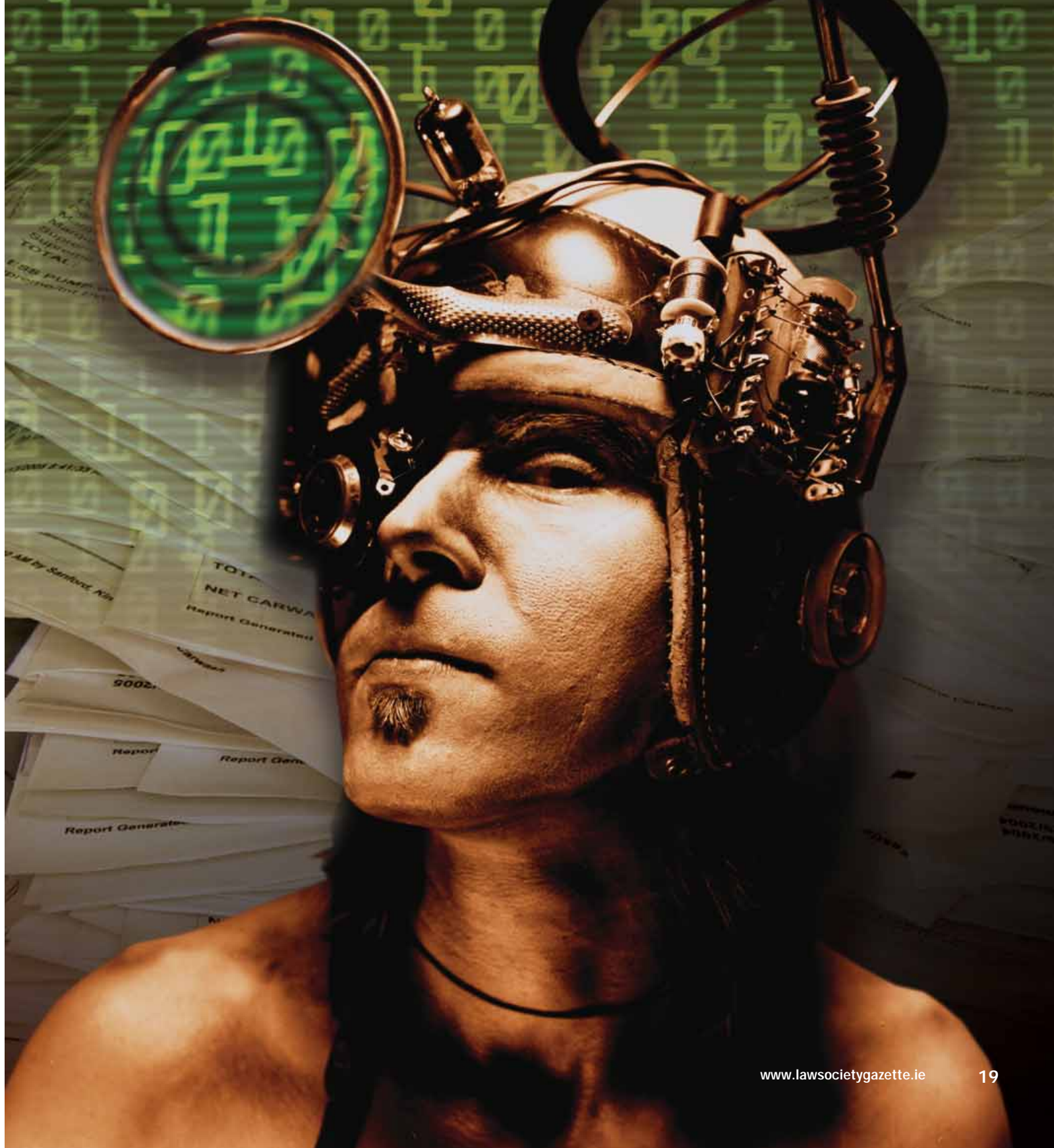
Furthermore, while ESI may well be relevant, searching repositories such as back-up tapes or decommissioned servers may be prohibitively expensive and duplicative. Whether it is necessary depends on the case. The outcome at trial in a simple claim may

## MAIN POINTS

- Discovery of electronically-stored documents
- *Rules of the Superior Courts (Discovery) 2009*
- Implications for solicitors and clients



# RECALL



New systems for recovering electronically-stored information are in development



hinge on emails creating a contract and records of performance or payment. Other marginally related or duplicate documents would generally not advance such a claim, so why should a party be put to expense discovering them? On the other hand, the examination of every possible ESI repository could be necessary in a fraud case or where the record available from more immediate sources was incomplete.

The term ESI is sufficiently broad to require disclosure of metadata or other 'embedded' information – the electronic trail showing the evolution and amendment of a document. This could be relevant in some cases but, generally, disclosure of metadata would be an excessive and unnecessary burden unless it went to an issue – for example, showing whether a key document was an authentic contemporaneous record. Although the discovery obligation should encompass ESI, the ambit of ESI discovery requires scrutiny to avoid an excessive cost burden. ESI discovery should be limited to ensure that the information is both relevant and also required for the fair disposal of the matter or for saving costs. These criteria apply to all discovery applications, but are of particular importance because of the costs involved with ESI disclosure.

#### Soylent green

ESI costs arise for three reasons. Firstly, the volume of data can dwarf anything in hard copy. Secondly, information can be in different media, with costs involved in furnishing it in an accessible form. Thirdly, independent technological assistance may be required in order to produce the data (that is, from legacy systems) and to show that it has not been interfered with (for example, the metadata has been preserved)

– a significant cost. To maintain access to justice, it is important to control pre-trial procedural costs. The costs of electronic discovery could prevent parties from advancing a valid claim or defence.

The new rules adopt a nuanced approach to ESI disclosure. Firstly, they force the applicant to specify (and justify) ESI requirements. Lawyers may routinely demand extensive ESI disclosure, IT assistance and so on. The courts should rigorously scrutinise such applications to ensure balance, allowing disclosure genuinely necessary for a fair trial, but avoiding unnecessary expense. The new rules mandate this – the court is precluded from directing the discovery of ESI available in a searchable format if this would involve 'significant cost' to the discoveror. It can instead require the party to allow the applicant access to the discoveror's technology so as to allow the applicant to do its own searches. There is also an interesting provision allowing the court to appoint a third party to review computers to identify the relevant discovery – the cost is initially borne by the applicant, but is recoverable as costs in the cause.

#### Logan's run

However, clients and lawyers must appreciate the extent to which ESI discovery may be required. Although the client swears the affidavit of discovery; solicitors have a huge responsibility to the client – and to the court – in relation to the proper conduct of the process. From the first consultation, a solicitor should remind the client to preserve relevant documents, including computer data. The new rules make this even more important.

Also, the obligation to discover ESI is not confined to an order under order 31, rule 12(2)(c). That provision allows the court to give special directions with regard to the manner of making ESI discovery; but an order for 'ordinary' discovery under rule 12(2) (b) would also encompass ESI to the extent that the documents within that category were ESI rather than hard-copy documents.

#### Close encounters

At the outset, the clients' lawyers should frame the discovery request appropriately, particularly as far as ESI is concerned. Failure to do so could lead to difficulties at trial. Conversely, solicitors should ensure that the client and legal team understand the practical extent and implication of the discovery request before agreeing to it. If the request could expose the client to enormous costs, identifying documents of low probative value, it should be opposed. The rules (implementing another recommendation from the Law Society report) now allow for variation of existing discovery orders. A variation could be sought with regard to ESI if it becomes apparent that compliance as ordered would involve disproportionate expense. However, there are costs and risks in seeking to vary discovery orders. It is better, where possible, to frame discovery appropriately in the first place.

## LOOK IT UP

### Cases:

- *Digicel v Cable and Wireless* [2008] EWHC 2522 (Ch)
- *Dome v Telecom Éireann* [2007] IESC 59

### Legislation:

- *Civil Procedure Rules* (Britain)
- *Rules of the Superior Courts (Discovery)* 2009

### Literature:

- *Civil Litigation – Discovery in the Electronic Age: Proposals for Change*, Law Society Litigation Committee report



It is prudent, in keeping with the rules, for the parties to seek agreement as to the parameters of ESI disclosure and how this should be furnished. The English *Digicel* case provides a cautionary tale. The discoveror went to trouble and expense identifying ESI discovery by sophisticated electronic searches. Its adversary argued that the searches were insufficient. The discoveror had spent £2 million and argued that it would be unreasonable to expose it to additional costs. This received short shrift. The unilateral approach meant that the discoveror was required to make further and better discovery when its adversary subsequently challenged the adequacy of its approach.

Accordingly, both sides should try to agree a practical approach to discovery. It is also important that the courts adopt a balanced approach – whether under rule 12(2)(b) or (c) – requiring appropriate ESI but rejecting discovery requests that place an unnecessary or unfair technological burden or expense on either side. Otherwise, a discoveror could insist on hard-copy discovery when it could readily furnish the same information electronically, avoiding unnecessary expense in the analysis of the information. For example, in the ICI litigation, ICI offered to disclose voluminous hard-copy claims-data computer printouts. The defendant would have had to manually re-enter huge volumes of financial data in order to analyse it. However, the court directed the plaintiff to disclose the information on floppy disc (remember those?). At the other extreme, it might be unnecessary and oppressive to require exhaustive searches of entire computer systems, including back-up tapes. The discoveror must take all reasonable steps to identify relevant documents. What is required must be judged in the particular context, taking into account factors including:

- The issues in the litigation and the amount at stake,
- The extent to which information is already available and that such disclosure can be regarded as comprehensive, and
- The cost and technological difficulty or otherwise involved in accessing information held in particular media.

The concept of conducting reasonable searches to identify potentially relevant documents resonates strongly with the position in Britain. Under the *Civil Procedure Rules* there, parties required to make standard disclosure must make reasonable searches for documents. The reasonableness of the search is judged by reference to factors such as the nature and complexity of proceedings, the number of documents involved, the ease or expense of retrieval of a particular document, and the significance of any document likely to be located during the search.

#### Back to the future

A litigant's computer system may be vast. In many cases, it would not be possible to identify relevant electronic data on a client's computer system by

reviewing the individual contents of the whole system – a process that could take years and be prohibitively expensive. It will assist if the discoveror operates a sophisticated electronic filing system, but this is unusual. Parties often don't have time for e-filing.

When reviewing files held on paper, a solicitor would concentrate on departments (or sections or individuals) likely to hold relevant documentation and disregard less promising sources. A similar approach is often appropriate for ESI. Furthermore, electronic searches can identify material likely to be relevant, either because it was created during critical periods, refers to or was exchanged by the main protagonists, or because it contains crucial terminology. This is known as 'filtering' or 'keyword searching'. De-duplication is also standard in most e-discovery software (to remove duplicate emails).

Such techniques have benefits in terms of speed and cost, reducing a vast electronic repository into a more manageable population that is more likely to be relevant. There are dangers. Firstly, if the search terms are too broad, there may be false positives. More importantly, keyword searching is not an exact science. Such searching may only identify documents containing the precise term or a close variant. A search using 'auditor' would generally not pick up documents containing the word 'accountant'. However, keyword searching provides a powerful, relatively cost-effective tool and some tools can be sophisticated (for example, 'fuzzy' searches, which would include common typographical errors and misspellings of the key words). Filtering searching may be unavoidable if a more detailed search of ESI would be prohibitively onerous or expensive. However, as *Digicel* demonstrates, all parties need to be offered a chance to agree the parameters, so as to obtain a reasonable assurance that the right questions have been asked and increasing the prospect that the relevant documents will be identified.

#### Ghost in the machine

Discovery is a crucial phase of civil litigation. It is also often the most expensive, laborious and time-intensive phase, apart from the trial itself. Extensive ESI discovery can increase the likelihood of the fair disposal of the matter, but it could also dramatically increase the costs in others. In order to maximise the likelihood of the first possibility, not the second, the parties need to adopt a constructive approach to the parameters of discovery. The courts should encourage them to do so. Order 31, rule 12 specifies that discovery should only be granted if it is "necessary for fairly disposing of the cause or matter or saving costs". The necessity test will be more important than ever where there is potentially large-scale ESI discovery. **G**

*Liam Kennedy is a partner in the Litigation and Dispute Resolution Department of A&L Goodbody. Sinead Grace is a professional support lawyer on the A&L Goodbody Knowledge Team.*



***"The necessity test will be more important than ever where there is potentially large-scale ESI discovery"***



These days, there's a lot of debt out there to be collected, and solicitors are in a good position to assist individuals and companies in the recovery of their bad debt. Hugh Ward gets his pound of flesh

**T**here is an old Chinese tripartite curse that includes the sentiment 'may you live in interesting times'. The interesting times mentioned had to do with marauding Mongol hordes breaching security and letting loose with rape and pillage – not too dissimilar to what's currently happening to Ireland's banking system and its shareholders. (I will address the other two parts of the curse later.)

Nobody will deny that we live in interesting times in Ireland – the country is probably facing the greatest economic test since the foundation of the state. A few short months ago, it would have been unthinkable to see a line of garda cars arriving at one of the major banks in this country to begin investigations.

One result of these interesting times is that there is a lot of debt out there to be collected. The exact value of the debt is unknown and will remain a mystery for

there will be a percentage that slips through the net.

Having exhausted all internal procedures, a percentage of these will be required to be placed with a legal firm. After all, phone calls and dunning letters will only get your client so far.

A number of early questions should be asked by solicitors retained to assist in the debt-recovery process:

- Is there a contract?
- What was the date of the contract?
- What did the contract relate to – goods sold and delivered or supply of services?
- What date did the debt become due and owing?
- Who was your client trading with:
  - Individual?
  - Limited company?
  - Business name?
  - Partnership?



# NEITHER A B NOR A LEND

some time. The valuation placed on the debt to be purchased by NAMA will be part of that process.

Solicitors are in a good position to assist individuals and companies in the recovery of their bad debt. One interesting statistic thrown up by the current situation is that, in the first quarter of 2009, court judgments against companies in Ireland totalled €8.7 million – an increase of 96% on the same period last year.

## Credit control

I once heard credit control defined as involving the giving, restricting, stopping and retrieving of credit. However, having put all the procedures in place to ensure that the credit given is properly controlled,

The monetary jurisdictions of the courts are:

- District Court – debts up to €6,348.69,
- Circuit Court – debts greater than €6,348.69 and up to €38,092.14,
- High Court – debts greater than €38,092.14,
- Commercial Court – on application, commercial disputes over €1,000,000.

## Enforcement of judgments

It is well known, however, that a judgment in itself may not produce the repayment of the debt and must be enforced. Rules of the various courts all state that a judgment may be enforced within six years from the date of its making and may be

## MAIN POINTS

- The debt-recovery process
- Enforcement of judgments
- Need for early decision on availability of funds



The merchants of Ennis know a bit about credit control

# ORRORWER ER BE

extended. Judgments attract post-judgment interest at a rate of 8%.

The standard forms of enforcement are:

- Examination and instalment order,
- Committal order,
- Sheriff,
- Registration and publication,
- Garnishee orders,
- Receiver by way of equitable execution,
- Insolvencies – liquidations, receiverships and examinership,
- Judgment mortgage, well charging order and order for sale,
- Bankruptcy.

An examination and instalment order is used only against individuals, and not against companies. The District Court has jurisdiction for all the monetary amounts.

The summons for attendance requires the debtor to appear before the court for examination as to his means and also requires the debtor to lodge a statement of means. The court may make an order requiring the debtor to pay the debt by instalments.

#### **Committal order procedure**

Over the last few months, the whole area of committal was reviewed by way of a High Court judgment and new legislation. Section 6 of the



*Enforcement of Court Orders Act 1940*, whereby a debtor could be imprisoned for non-payment of a court-ordered instalment, was found to be unconstitutional.

This left a big gap in the enforcement procedure and, in particular, the enforcement of court orders for payment relating to small creditors and family law maintenance orders.

Under the new law, the *Enforcement of Court Orders (Amendment) Act 2009* (see also 'One to watch', p12), the position now is that, on non-payment of a court-ordered instalment, the creditor can apply to the court for a summons directing the debtor to appear before the court.

#### **The sheriff**

If the debtor still fails to appear, the court can issue a warrant for arrest in order that the debtor can be brought before the court.

The court will hear the debtor and satisfy itself that the debtor has wilfully refused to pay and that all other steps possible, including instalment payments and mediation, have been taken to recover the debt. The court will not imprison the debtor unless it is satisfied that the debtor has the means to pay. There is provision for legal aid in circumstances where the debtor is at risk of imprisonment.

The new law strikes the right balance between creditors and debtors and makes the crucial distinction between people who can't pay and people who won't pay. People who can afford to pay, but choose not to, will be sent to prison. It was, and will, be used sparingly by the courts, and its value lies in its persuasive powers.

Once a judgment has been obtained, an order may be sent to the sheriff for execution. The order directs the sheriff to seize and, if necessary, sell the judgment debtor's goods to cover the debt, plus interest at 8%

per annum, and costs of execution and sale. With some exceptions, the sheriff can seize all the debtor's moveable goods.

#### **Registration of judgments**

The judgment may be registered in the Registry of Judgments, which is kept in the High Court Central Office, where judgments from the High Court, Circuit Court and District Court can be registered. Details of unregistered judgments are also available online at websites operated by agencies such as Business Pro.

Care should be taken when registering a judgment that the judgment has not been satisfied prior to registration, as opinion is that this would be defamatory.

#### **Garnishee proceedings**

Where a creditor knows that a third party owes the debtor monies, the creditor may apply to the court for an order that the third party pay the creditor the said sums, or as much as is sufficient to satisfy the judgment. However:

- The relationship of debtor and creditor must exist,
- The debt must be enforceable by the debtor, and
- There must be something in existence that the court recognises as a debt.

#### **Receiver by way of equitable execution**

Similar to the garnishee order, this allows the appointment of a receiver to receive monies payable by a third party to the judgment debtor. This can extend beyond actual debts owing to future debts or to debts arising through an equitable interest.

#### **Insolvencies**

The main forms of insolvency are: liquidations, receiverships and examinerships for corporations; and bankruptcy and schemes of

arrangement for individuals. Before commencement, it is good practice to confirm that the debt is not disputed and that the debtor company has sufficient assets to fund the liquidation procedure.

A point to consider in relation to the winding-up procedure is that it may make settlement between creditor and debtor more difficult, because the company's assets may be 'frozen' once the advertisement appears in the daily papers.

#### **Judgment mortgage**

Once you have obtained a judgment, it may be registered as a judgment mortgage on any property that the debtor has an ownership interest in. It is

***"The new law strikes the right balance between creditors and debtors and makes the crucial distinction between people who can't pay and people who won't pay"***



essential that the creditor confirms that the debtor actually owns the property.

The judgment mortgage can be further enforced by applying to court for a well charging order and an order for sale of the debtor's property. A judgment mortgage will normally prevent the debtor from dealing further with the property by way of sale or remortgage without discharge or addressing the judgment that has been registered as a judgment mortgage.

### Bankruptcy

This procedure is only available for individuals and can be commenced without obtaining judgment, but it is preferable to have judgment obtained first. The objective is to hand over assets, liabilities and affairs of the bankrupt to a trustee or assignee for the purpose of realising the bankrupt's assets, and then distributing the proceeds of sale among the creditors. Notice of the adjudication is required to be published by the petitioner as directed by the court.

### No mon, no fun

All the above are methods of enforcement that may be used by the judgment creditor. However, an early decision should be made not to pursue a debtor if there are no funds available to meet the enforcement

– it is not advisable to throw good money after bad.

It is also worth noting that the Law Reform Commission intends to publish a report on debt recovery later this year. Among many issues they may review is the regulation of debt recovery and enforcement options.

The Nobel prize-winning economist Paul Krugman's article in the *The New York Times* entitled 'Erin go broke' described Ireland as a model for the worst-case scenario for the global economy. This was a very insightful use of 'Erin go bragh' and, as all Irish language scholars know, this was an Irish blessing used to express allegiance to Ireland. However, more ominous translations include: 'Ireland till doomsday', 'Ireland until eternity', 'Ireland until the end (of time)' or 'Ireland until the Day of Judgment'. We may need more than a blessing to see us through this one!

By the way, the other two parts to that old Chinese curse are 'may you come to the attention of those in authority' and 'may you get what you wished for'. This may be a very appropriate curse to be used by all those who have been at the wrong end of the current financial crisis. **G**

*Hugh Ward is the principal in the law firm Hugh J Ward & Co Solicitors, which specialises in debt recovery and commercial litigation.*

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# Talk is

**Next to meeting someone face-to-face, the telephone remains one of the most effective ways to communicate. With the internet, calls can cost much less than standard phones and, in some cases, nothing at all. Gordon Smith leaves a message after the beep**

**I**nternet telephony, also known as 'Voice Over Internet Protocol' (VOIP), routes phone calls through the internet instead of the traditional phone network. Since telecoms operators can't charge a fee for these calls, firms can make considerable savings.

Despite such a tempting proposition – especially in the current economic climate – Irish businesses aren't getting the message. The latest quarterly survey from the telecoms regulator ComReg shows that small companies in Ireland are not using VOIP in great numbers.

## Take a letter, Maria

There are no figures available specifically for the legal sector, but the survey estimates that only 13% of all businesses in Ireland currently use VOIP. It's safe to say that many legal firms are among that remaining 87% and, as such, could be missing out on the chance to reduce one of their main monthly bills.

For many people, VOIP is synonymous with Skype, the free software program that lets its users call each other at no cost over the internet, or call landlines, mobiles and international numbers for a fraction of the cost of calls over traditional phone networks. A call from Skype to an Irish landline costs less than 2c per minute, and calling an Irish mobile is 16c per minute.

Such is its popularity that, last year, Skype alone accounted for around 8% of total international telephone traffic. While its developers make it very clear that it's not intended as a replacement for the phone, they have added more features to it – including voicemail, caller ID and call forwarding – to make it more attractive to businesses.

Joerg Steegmueller, a telecoms consultant based in Dublin, believes that software like Skype can be a good way for a small firm to test how a VOIP service would

work – with some caveats. "If you have to talk to a client that you have to win, then I would be prepared to pay a higher price for the phone call, but if it's a regular contact and you have a good cooperative relationship with them, it should work fine," he says.

One of the criticisms levelled at VOIP – and programs like Skype in particular – is the occasional poor line quality. Other times, calls drop without warning. This is because a VOIP phone call has to fight for space on the internet with all the other data being sent at that moment. A few seconds' delay matters little for email, but it can be the difference between a civilised call and a shouting match. Internet calls can also be at risk of background noise or echo.

## Mr Telephone Man

For a legal firm, that scenario hardly conveys the best impression to a client. Aaron McKenna, country manager of Komplett, an online IT products store, does not believe that bad call quality is a deterrent to using VOIP services. "It's probably no worse than trying to talk to somebody on their mobile when they are moving between two masts," he says.

Steegmueller adds that there are ways of getting around the quality issue. "If you use the public internet, nothing is guaranteed, but if you have a dedicated line directly to your VOIP provider, then there's no reason why there should be an issue. I don't have any significant quality concerns anymore."

It's worth remembering that Skype and similar packages, such as Jajah, are at the entry level of the market. Companies prepared to spend more money will get better quality of service, says McKenna. "The more upmarket services come with more support," he points out. "For a small business owner, you can get a tailored solution you can be really confident in."

Firms looking for more professional internet

## MAIN POINTS

- Internet telephony
- Cost savings for firms
- Advanced IP communications options





# cheap

Ordinary phone lines  
are for the birds

telephony services can choose from a range of providers. The list includes VOIP-only specialists such as Blueface and Freespeech, through to internet service providers like Digiweb, Magnet and UPC, as well as the traditional telecoms operators like Eircom, BT and others. Many IT service companies also partner with these companies and can give advice and consultancy to firms thinking about implementing VOIP.

## Call me

Unlike the free software programs, the internet and telecoms providers promise higher quality of calls and are able to do so by allocating a set percentage of a company's broadband connection to voice calls in order to guarantee acceptable levels of service.

Moreover, what makes this option attractive is that firms don't have to throw out their current PABX (private automatic branch exchange) phone systems to make the switch to internet telephony. The technology provider can simply set the PABX to connect to the internet but, within the office, all of the phone handsets can remain the same, with the same features as before,

such as voicemail and call forwarding.

Services from specialist VOIP providers like Blueface offer a dedicated connection to the network and, as such, there is a higher quality of service than calls sent over the public internet, claims Feargal Brady, director of Blueface Business. "You have no problems with calls breaking up. It's light years away from the Skype model," he says.

The potential for even more significant savings exists where a practice has multiple offices, since using VOIP between the branches avoids both phone line rental and call charges. "You no longer have the call costs between the offices," Brady points out.

## Rikki don't lose that number

"What IP communications does is enable companies to break free from using the phone network in the traditional way," Brady adds. Put simply, that means that companies can choose to stop using their phone lines – eliminating the monthly line rental charges at a stroke. "We dealt with one company that had phone bills of between €5,000 and €10,000 per month. We



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were able to save up to €2,500 a month for them,” claims Brady.

The savings involved will vary from firm to firm, but costs will always be lower, says McKenna. “VOIP always delivers a saving, and that is simply because of cutting out line rental and reducing the cost of each call, so naturally, in time, you will recoup the outlay involved” – for example, connecting your PABX to an internet telephony provider, or the cost of handsets and headphone equipment.

“The speed with which you do it will depend on how often you use your phone,” he explains. “The cost of getting into it isn’t that high and, for anyone wanting to figure it out, sit down with your last telephone bill, take a look at the number of calls you made and get out your calculator. It’s a very simple sum.”

Alan Millett, chief technology officer with the internet and phone provider Digiweb, offers more specifics. “As a rule of thumb, savings would be of the order of 20% to 50%. Calls to mobiles would be a 20% to 35% saving and international calls would be closer to 50%. If most of your calls are local or national, you’ll see lower savings, but still around 20% to 25%.”

Brady acknowledges that the level of reliability for VOIP still doesn’t quite match that of the analogue phone. “A pitfall of internet telephony is that it does rely on your broadband connection,” he says. As such, a loss of internet service would leave a firm without the ability to make calls – a potentially serious inconvenience for any company that relies heavily on the phone.

#### My ding-a-ling

A belt-and-braces solution to this problem is simply to keep the analogue phone line as a backup, although the disadvantage is that it leaves the firm having to incur line rental charges, which could cancel out much of the potential savings.

Despite the low take-up in Ireland to date, internet telephony is mature – so there’s no need for a ‘buyer beware’ approach. As with most business purchases, though, it never hurts to ask a few questions. Millett offers some advice: “Firms should look for a provider’s ability to do quality of service and for the provider to understand how you want to use the calls. They should certainly ask the provider how many simultaneous calls the system is designed to support and they should ask about the quality of encoding. The higher it is, the better the quality of call.”

VOIP is not a ‘here-today-gone-tomorrow’ fad. New developments are constantly happening, so it’s worth taking the time to see how it could improve your business beyond just low-cost calls. “What we’ll see now is more functionality: conferencing functions,

video being added and PABX features on VOIP, such as call forwarding and voicemail. It will move from being a cheap phone call to being an alternative way of building your phone infrastructure,” says Niall Feely, director of business markets with Eircom.

#### Ground control to Major Tom

For medium and large firms, more advanced IP communications options are available. Some service providers offer a hosted IP communications service, which removes the need for firms to manage their own PABX phone systems. This is handled by the provider for a fixed monthly fee, which usually includes a certain amount of call minutes as part of the package. “A small practice of five or six people would not be experts

in technology. They should look at a basic managed service, and that can be done very cheaply,” says John McCabe, managing director of Damovo, a communications technology supplier.

Larger firms with more integrated IT systems arguably get the most payback from internet telephony, according to McCabe. The real benefits come from linking the phone system into a firm’s important software packages, such as its billing system, he contends.

A solicitor could be offsite at a client’s premises, or working from home. With internet telephony, it’s straightforward to have calls to a solicitor’s office landline routed to their mobile or home phone.

Treating the phone as another software application on the network means that it can be combined with other communications tools, such as email and instant messaging, adds McCabe. “If you are a junior solicitor, you can see if a partner is available and

you can send them an instant message if you have a query relating to a client. You have the ability to collaborate with your partner, wherever they happen to be. You could be in a client’s office in Kerry and the partner is in the office in Limerick. Being able to make a record of written and voice communication, from a client’s point of view, is covered. It’s all linked through. It’s very simple, pretty intuitive and you’ll pick it up very quickly.”

Naturally, these systems can be expensive, but the payback is in being able to work more efficiently, says McCabe. “If you’re looking at collaboration, recording and having everything linked in to your billing system, it’s definitely worth doing.”

This sentiment rings true for internet telephony as a whole – with a low cost of entry and the promise of savings, it may be time to pick up the phone and make the switch. **G**

*Gordon Smith is a freelance technology journalist.*

*“A loss of internet service would leave a firm without the ability to make calls – a potentially serious inconvenience for any company that relies heavily on the phone”*

As companies strive to adapt to the current economic downturn, more and more businesses are choosing to outsource certain aspects of their work to external service providers. However, beware the legal obligations of outsourcing, warns Colm O'Connor

# OUT WITH

**O**utourcing occurs when a business chooses to contract out certain parts of its work – for instance, its accounting, information technology or administrative requirements – to an external service provider.

In the present economic climate, the ability to outsource is a key tool for any business seeking to adapt its business model in a competitive and radically changing marketplace. Not only does outsourcing allow a business to reduce fixed cost overheads, such as employees' salaries, it also permits a business to devote more time to its core activities, thereby enabling productivity and efficiency gains to take place.

However, any party seeking to enter into an agreement to outsource should be aware of the potential legal issues that frequently arise in an outsourcing situation. Most importantly, it is crucial that practitioners advise their clients of the obligations and legal constraints imposed by the *European Communities (Protection of Employees on the Transfer of Undertakings) Regulations 2003*, which may apply to an outsourcing transaction.

## Considerable protection

When they apply to an outsourcing transaction, one of the key aspects of the regulations is the protection they afford to the contracts of employment of employees whose jobs are being outsourced. Generally speaking, when a business chooses to outsource work conducted by certain of its employees to an external service provider, the relevant

employees' contractual 'rights and obligations' automatically transfer to the new provider of the outsourced work. In such circumstances, the application of the regulations is not contingent upon any action or inaction by the outsource provider or particular employee. It happens by operation of law.

Some of the practical implications of this aspect of the regulations may be summarised as follows:

- An outsource provider will be obliged to observe the various terms of the contracts of employment of the employees whose jobs have been outsourced,
- An outsource provider may acquire liability for potential employment law claims – for instance, if a business unfairly dismisses employees in advance of outsourcing their jobs, liability for any such dismissals will lie with the external service provider once the outsourcing agreement becomes operational,
- In certain circumstances, case law in this area suggests that an outsource provider may acquire legal responsibility for tortious obligations. For instance, liability for injuries sustained by employees in the workplace whose jobs are being outsourced may pass to a service provider.

The automatic transfer of employment rights in an applicable outsourcing situation is a significant development in the area of employee rights generally. It is a form of statutory exception to the common doctrine of privity of contract, which states that a contract cannot confer rights or obligations on a non-party. Indeed, it is worth highlighting this issue





# IT!

to clients who seek to enter into an outsourcing agreement, lest they surmise that such an agreement is a straightforward means of circumventing the contractual rights of employees.

### Is there a transfer?

For the regulations to apply, there must be a 'transfer' of an 'economic entity', or part thereof, which retains its identity after transfer. This is often not clear, given the particular facts of many outsourcing transactions and, accordingly, a number of relevant factors have been laid down by the European Court of Justice in order to assist national courts and tribunals in answering this question. A non-exhaustive list of these factors is as follows:

- The type of work being transferred,
- Whether or not labour and/or assets transfer,
- The degree of similarity between the work carried on before and after the outsourcing agreement comes into operation,
- The transfer of goodwill, and
- The transfer of customers.

It is important to emphasise the fact that the Employment Appeals Tribunal (EAT) will adopt a multi-factorial approach to deciding if an outsourcing transaction comes within the scope of the regulations, and there are no hard and fast rules. However, it is evident that the following generalisations may aid the practitioner new to the subject:

- Asset reliant activities – if the work being outsourced is asset reliant (such as a transport service), then the application of the regulations

to such a transaction will generally be more dependent on the transfer of 'material' assets under the outsourcing agreement,

- Labour intensive activities – if the work being outsourced is labour intensive (such as a cleaning service), then the application of the regulations to such a transaction will generally be more dependent on the transfer of a majority of labour in numbers or skill under the outsourcing agreement.

### Is there a gap in the law?

In Ireland, the EAT has seen fit to take a narrow view when interpreting outsourcing transactions. For instance, in many industries that are labour intensive – such as contract cleaning – decisions by the tribunal indicate that the safeguarding of employees' rights under the regulations can be purposefully, and legally, avoided in the context of an outsourcing agreement. This can be done in certain instances by making it a condition of a service contract that neither employees nor assets shall pass under such an agreement.

An example of this restrictive approach can be seen in the recent case of *OCS One Complete Solutions v Daly*. Here, the changeover of service providers engaged for the purpose of cleaning a school was, curiously, held not to constitute a transfer as defined within the regulations. This was by virtue of the fact that no staff or equipment transferred as part of the agreement. Indeed, it was a specific condition of the service contract that this would be the case.

Another example of the application of the regulations to outsourcing transactions is the slightly older – but still highly relevant – determination of

## MAIN POINTS

- Outsourcing – the legal implications
- Protections afforded to employees by EC regulations
- Obligation to consult with employees

## IT'S GOOD TO TALK

If they apply to an outsourcing agreement, a significant aspect of the regulations is the clear obligation on parties to such a transaction to provide certain information to their employees. Practitioners should note that section 8(1) of the regulations sets out the information that, at a minimum, must be provided to affected employees:

- The date of the proposed outsourcing,
- The reason for the outsourcing of the employees' jobs,
- The legal implications of the outsourcing agreement for employees, and
- Any measures envisaged in relation to employees.

Note that this information should, where reasonably practicable, be provided to employees no later than 30 days before the outsourcing of their jobs and, in any event, in good time before their jobs are transferred to an external service provider.

Furthermore, and within a similar time frame, practitioners should note that a consultation requirement is imposed by the regulations where any "measures" (such as redundancies, for example) are

envisaged in relation to the employees concerned. Such consultation should take place with employees' representatives and, in instances where no employees' representatives are in place, employers should put in place a procedure whereby employees may choose a person or persons to represent them.

Any employee who is not consulted with or provided the required information by an employer, as provided for under section 8(1), may avail of the right to make a complaint to a rights commissioner under the regulations. While the compensation payable under a successful claim for non-consultation is limited to four weeks' pay, the potential cost to a large business for not consulting employees could be considerable.

For instance, if sufficient numbers of employees in such a business take such a claim for non-consultation, compensation costs can ratchet up fairly quickly. Furthermore, employees acting under the advice of a union may choose to act tactically and stagger the lodgement of their claims, so that employers are obliged to defend claims before a multitude of rights commissioner hearings, putting the ambushed employer at a distinct tactical disadvantage.

the EAT in *Cannon v Noonan Cleaning Ltd and CPS Cleaning Services Ltd*. In this case, the EAT concluded that the regulations did not apply to the loss of a service contract for the cleaning of Balbriggan Garda Station because there was no transfer of tangible assets or labour.

The irony that the regulations can be avoided in certain instances by a service provider refusing to employ workers whose jobs are being outsourced has not, it seems, been lost on the EAT. Indeed, in the *Cannon* case it was stated by a tribunal member that: "It is difficult to understand how, where an employer refuses to take on the workers of a previous contractor, he can escape the rigours of the directive, while a contractor who takes on a major part of the workforce, perhaps out of magnanimity, will be caught by it. It would seem that the directive, in the former instance, has not addressed the mischief in the law that it was intended to."

### Contracting for certainty


Given the number of contingent employment liabilities that a service provider may inherit when an outsourcing agreement becomes operational, it is imperative that legal advisors ensure that the principle

of *caveat emptor* ('let the buyer beware') is heeded by the acquiring party. In particular, businesses and employers should take note that proper due diligence plays a crucial part in any such transaction – the extent of such due diligence, of course, being dependent on the client's instructions and their particular needs. At the very minimum, however, the importance of carrying out some form of 'red flag' due diligence should be impressed on a service provider in such circumstances.

Furthermore, extensive warranties should be obtained regarding such diverse issues as whether or not any litigation is in train, or threatened, by employees whose positions are being outsourced. A warranty should also be obtained that the terms and conditions of employment of such employees will not be altered by the business outsourcing work in the period between the provision of warranties and the completion of the outsourcing agreement. There may, for instance, be a tendency on the part of businesses outsourcing work to 'featherbed' their favoured employees' contracts if such a precaution is not taken.

Finally, some provision should be made for a comprehensive indemnity to cover all conceivable eventualities that might erode the value of the transaction.

### Don't be blinded

The recognised commercial benefits of outsourcing shouldn't blind the employer, and must be seen in light of the clear obligations imposed by the regulations. The consequences of contravening them will be costly and impede a successful transaction from taking place. 

*Colm O'Connor is a solicitor specialising in employment law and corporate governance. He holds diplomas from the Law Society of Ireland in commercial litigation, corporate governance and employment law.*

## LOOK IT UP

### Cases:

- *Ayse Suzen v Zehnacker Gebaurdereinigung GmbH Krankenhausservice* ([1997] IRLR 255)
- *Cannon v Noonan Cleaning Ltd and CPS Cleaning Services Ltd* ([1998] ELR 153)
- *OCS One Complete Solutions v Daly* (TU61/2006)
- *Oy Liikenne AB v Liskojarvi and Juntunen* ([2002] IRLR 171 (ECJ))

### Legislation:

- Council directive no 2001/23
- *European Communities (Protection of Employees on the Transfer of Undertakings) Regulations 2003*

# THE PRICE IS RIGHT



Challenging times present the perfect opportunity to focus on maximising the value of your practice, and profitability is the key to this. Jason Bradshaw gets out his abacus

**T**he landscape of the professional legal practice has changed drastically over the last 12 months, with the dramatic decline in conveyancing and commercial fee income. However, against such a challenging environment, it is a perfect time to refocus on the strategic direction of your practice, including maximising the value of that practice.

So, what is the key to increasing the value of your practice? In one word, profitability. We can define profitability as the amount needed to cover drawings, tax, pension and lifestyle improvements. You must plan to make enough profit to enable you to achieve your goals.

The key criteria that equate to a strong practice valuation are:

- High fee income,
- Good quality of work,
- Strong profit record.

Legal practices need to focus on quality when trying to maximise profitability within their firm:

- Quality of client – clients who bring good work to the practice and/or require a professional service and who are prepared to pay for the advice they receive,
- Quality of staff – ability to get the job done in a timely manner and commitment to care

## MAIN POINTS

- Background to valuation
- Basis of valuation
- Buyer's perspective





Not everyone will be able to secure an inflated Price for their practice

and attention,

- Quality of work – commercial, insolvency, family law and good litigation work,
- Quality of systems – technology/time management and costing systems.

#### Deal or no deal

There are three bases for valuing legal practices:

- 1) A multiple of annual gross fees,
- 2) A multiple of the maintainable profit before tax,
- 3) A value based upon net assets (including a full work in progress valuation) plus an additional and very negotiable figure for practice goodwill.

The multiplier used for annual gross fees will vary greatly, depending on the actual breakdown of the fees. In today's market, the multiplier can vary from 0.2 to 0.9 times annual gross fees. This basis of valuation is not widely used for overall valuations and is more often used in conjunction with options 2 and 3, with payment based on future business generated from the existing client base.

The second option involves using a multiplier of earnings (profits); in this regard, the range of multiplier can vary between three and six times earnings. This is now the most common way to value a practice, in that it will give the most accurate reflection of projected cash flow for the business, which is now imperative for all businesses. The banks will usually now only value a legal practice on a multiple of earnings.

The third option mixes hard fact (the real value of work in progress on a case-by-case basis) with a subjective add-on for goodwill. The main

considerations in evaluating the add-on for goodwill are considered below.

The value of work in progress should be the cost value of the files being handed over at the date of the sale of the business. A practice that utilises time-management systems and case-management software will find the listing and valuation of work in progress a relatively straightforward task. In other cases, a list of all current files should be made, with a calculation of the work carried out to date estimated and agreed. In larger transactions, it may be advisable to use legal cost accountants to assist in the valuation of work in progress.

In almost all cases, the vendor retains ownership of debtors and the payment of creditors, including VAT and PAYE. Due consideration should be given by the vendor to the cash-flow implications of the transaction from their viewpoint.

#### Bargain hunt

When there is a freehold property involved, it is normal practice to have the property independently valued by a reputable firm of auctioneers. This can involve both parties agreeing to secure valuations but, given that it is likely to lead to a difference in valuation, it makes much more sense to agree on the appointment of a single firm and that both parties will be bound by that valuation.

#### Countdown

Having regard to all of the above points, the main considerations that the prospective purchaser will have to evaluate are:

- 1) The past profitability of the practice as a guide to its future earnings potential,
- 2) Factors governing the future continuation of the practice, and
- 3) The nature and timing of the consideration to be paid on the satisfactory completion of a deal.

In seeking to determine the value of a practice, it is profitability that matters – not gross fee income. Although vendors may have expectations that their practice is worth a multiple of gross fees, no well-advised purchaser would consider buying a practice on this basis.

The first stage for a would-be buyer is to determine past profits by getting a chartered accountant to review the accounts for the past three years and adjust for exceptional or non-recurring items. The average for the past three years should be a good starting point in assessing future profitability. However, with the legal profession having been turned upside down over the last 12 months due to the recession and the fall in the property market, the buyer should be aware that profits earned in the past will not guarantee future profits. This means that the prospective purchaser will have to examine in detail the current work-in-progress of the practice to assess future fee income/profits.

In addition, the purchaser should be aware of attempts to 'window dress' the historic accounts to achieve an artificially high profit figure. A failure to write off irrecoverable outlay or the absence of a bad debts provision may indicate that the profits figure are being massaged for the vendor's benefit. Again, your chartered accountant should be able to spot and adjust for any manipulation of the figures.

The second stage that should be examined in arriving at the ultimate purchase price is the amount of assurance the buyer has that the clients will remain and will continue to refer new work. Two factors are important here. Firstly, the purchaser should include a 'pay if they stay' clause to protect him from a sudden haemorrhage of clients. This can be achieved by including a clause that values goodwill on an average of past fees (say, over the last three years) and an average of future fees from the same clients (say, over two years following purchase). This may result in a higher price being paid for the goodwill – but then, the purchaser should not mind paying for what they get, as long as they get what they are paying for!

Secondly, it is very desirable from the purchaser's point of view that the vendor should appear to retain a connection with the practice. The stronger and more obvious the contact is, the greater the amount the purchaser should be willing to pay. The inclusion of the retiring practitioner as a 'consultant' on the headed notepaper can assist with this transition, with their attendance at some of the firm's public relations activities. Similarly, a marketing letter from the retiring vendor to clients on a periodic basis can assist to create the illusion of stronger continuity in some circumstances.

Other factors affecting the continuation of the practice are the overall number of clients and the average fee per client. A practice with a small number of very large clients is much more vulnerable than a practice with a large number of small clients. Somewhere between these two extremes lies the optimum mix. However, it should be borne in mind that there are no hard and fast rules in this area, and there are exceptions to every rule.

In most acquisitions of a practice, the marketing of the transaction is often referred to as a 'merger' of the two firms. This is to be recommended, as clients do not like to be thought of as been 'bought' by another firm. However, it is important in these instances to ensure that the agreement allows for marketing in this manner – without the purchaser taking on any liability for any claims or liabilities that pertain to the vendor prior to the transaction contract closing.

Thirdly, in relation to point 3 above, the nature and

timing of payments from the purchaser's and vendor's perspective may be quite different. At its simplest, the vendor will generally want a once-off capital payment, whereas the purchaser will want to pay over an extended period. These different viewpoints may well be linked to differing taxation implications for the vendor and purchaser. Tax implications can have a major effect on the nature and timing of payments. On the one hand, it may very well suit the vendor to pay capital gains tax on a capital receipt, but the purchaser will get no tax relief on the payment other than the interest relief on the money borrowed to fund the payment. On the other hand, it may be preferable from the purchaser's point of view to

make a stream of future payments to the vendors in respect of the latter's continuing involvement with the practice. It is vital that professional tax advice is obtained to ensure that both parties understand the tax implications of the eventual decision.

#### **Blankety blank**

In relation to the valuation of legal practices, there is now one key word and that word is 'profitability'. It is essential that profitability is now the cornerstone and focus of each and every legal practice.

There is no definitive scientific and correct value that can be placed on a practice for sale. Everything depends on the precise circumstances of each case; the nature, age, and style of the practice; and the particular requirements of the vendor and purchaser.

So what should the buyer be looking for? Just as the valuation of property is often described as being dependent on location, location, location, so the valuation of a legal practice can be said

to be dependent on quality, quality, quality. In this case, quality of client, quality of staff, quality of work and quality of systems.

It is vital that the vendor does the necessary homework and knows exactly what is being offered for sale and is clear in his or her mind about the extent to which he or she is prepared to be associated with the practice under review.

Finally, it must be reiterated that it is essential for purchasers and vendors to secure adequate professional advice on all aspects of the proposed acquisition or sale of a practice.

Turnover is for vanity – profit is for sanity – think profit! **G**

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*Jason Bradshaw is director of corporate finance and strategic development at Hilary Haydon and Company, Chartered Accountants.*

***'Although vendors may have expectations that their practice is worth a multiple of gross fees, no well-advised purchaser would consider buying a practice on this basis'***

## Sligo shows the way at summer meeting



PIC: PICS8.L8.LD.SLIGO

At the AGM of the SCSBA on 8 July 2009 were (*front, l to r*): Ita Lyster, Niamh Ni Mhurchu, Trevor Collins, John Shaw, Seamus Monaghan, Michele O'Boyle and Hugh Sheridan. (*Middle, l to r*): Leonie Hogge, Caroline Connolly, Elaine Coghill, Lorraine Murphy, Orla Moran, Aoife Crowley, Scarlett Griffin, Sinead Roycroft, Caroline McLaughlin, Sinead Maguire, Tom MacSharry and Peter Martin. (*Back, l to r*): Shane McDermott, Roger Murray, Carol Ballantyne, Noelle Galvin, Tom Martyn, Brian Gill, Eddie Henry, Gerry McGovern, Eamon Creed, Brendan Johnson, Tommy McNamara, Noel Kelly, Fergal Kelly and Declan Gallagher

**S**ligo and County Solicitors' Bar Association (SCSBA) held its summer meeting and AGM at the Embassy Rooms, Sligo, on 8 July 2009, *writes Lorraine Murphy (PRO SCSBA)*. Special guests included President of the Law Society John D Shaw, director general Ken Murphy and the president of the Sligo Chamber of Commerce, Kevin Quinn Jnr. There was a significant turnout of members on this occasion, with particular interest in the future of the profession in the recession, the Society's radio advertising

campaign and issues relating to professional indemnity insurance.

Outgoing president Seamus Monaghan highlighted the events that had taken place during his two-and-a-half year term of office and thanked outgoing committee members Trevor Collins (secretary), Eiteain Cunningham (PRO) and the other committee members for organising various CPD and social events during his time as president. Special mention was made of the social events in the Yacht Club, Rosses Point, and the retirement ball

for Judge Oliver McGuinness in Castledargan. Noel Kelly was commended for his great endeavours as treasurer during the past 17 years. It was decided unanimously that he should remain on in the position for the coming year.

The newly elected committee for 2009 is: Tom MacSharry (president), Caroline McLaughlin (secretary), Noel Kelly (treasurer) and Lorraine Murphy (PRO).

New president Tom MacSharry extended a special word of thanks to the Quinn

family of the Embassy Rooms, Sligo, for their kindness and generosity to the SCSBA down the years. The president of the Sligo Chamber of Commerce, Kevin Quinn Jnr, welcomed the president and director general to Sligo. The new committee members are planning a number of CPD courses and social events, which will be announced in the coming months. Separately, the SCSBA is alive and kicking, as witnessed at a recent inter-firms soccer game that took place at the Showgrounds in Sligo on Wednesday 22 July 2009.



**Donegal Bar Association**

At a recent meeting of the Donegal Bar Association, with President of the Law Society John D Shaw and director general Ken Murphy were (*front, l to r*): Barbara Curran, Garry Clarke, Paddy Sweeney, Mairin McCartney, Kieran O'Gorman, John D Shaw (president), Ken Murphy (director general), Dermott Barry, Alison Parke and Brian McMullin. (*Middle, l to r*): Róisín Doherty, Michael Cunningham, Dominic Brennan, Brendan Twomey, Niall McWalters, Joanne Carson, Diarmuid Barry, Paul Johnson, Catherine O'Doherty and Raymond Lannon. (*Back, l to r*): John Studdert, Patsy Gallagher, Kieran Dillon, Eunan Gallagher and Terence Sweeney



## Roscommon's day at the races

The Roscommon Bar Association had an enjoyable and dry(!) day at the races

recently. Afterwards, everyone adjourned to a local restaurant. It's hoped to make this an annual

event – plans are already being made for next year. The social committee will be organising a

bowling night for its members and those of the neighbouring associations later in the year.



Doing it in style were (l to r): Padraig Kelly, Ailbhe Hanmore, Corrina Harlow, Mary Rose McNally, Anne Marie Nolan and Terry O'Keefe



Adding glamour to the race meeting were (l to r): Mary Rose McNally, Marie Conroy, Stephen Mulvey, Natasha Dunne, Caroline McHugh, Niamh Mahon



PIC: LENS MEN

Attending the launch of a series of career seminars on 29 July 2009 at Blackhall Place were (l to r): Attracta O'Regan (head of CPD), Keith O'Malley (career development advisor) and Gerard Doherty (senior vice-president)



PIC: LENS MEN

The Law Society invited a group of recently-qualified solicitors to Blackhall Place on 14 July 2009 to discuss issues of concern to them, chiefly relating to difficulties they are facing in finding employment. Attending the meeting on behalf of the Society were: president John D Shaw, senior vice-president Gerard Doherty, past-president James MacGuill, director general Ken Murphy, deputy director general Mary Keane and career development advisor Keith O'Malley. The solicitors included: Nicholas Blake-Knox, Darina Cochrane, Neil Dunne, Mary Fitzgerald, Catherine Fitzsimons, Morgan Fullam, Sinead Kane, Kevin Lavin, Karl Murphy and Emma O'Dolan

## ON THE MOVE



McDowell Purcell Solicitors has added two new solicitors to its employment law unit. Sinead Likely was admitted as a solicitor in 2007. Julie O'Neill was admitted as a solicitor in 2009. (From l to r): Sinead Likely, Julie O'Neill and Peter McInnes (partner)



Lavelle Coleman of Hatch Street, Dublin, has appointed Edward Johnston as partner in its corporate and commercial department (l to r): James-Paul Galligan (partner), Edward Johnston (partner) and Michael Lavelle (managing partner)

# Irish lawyers lay down marker at world cricket festival

The lawyers' all-Ireland cricket squad has returned home – heads held high – from the Lawyers' Cricket World Cup (LCWC) 2009, writes *Duncan Grehan (solicitor)*. Held in Cambridge, England, from 26 July to 4 August, the exhausting cricket-fest included six matches against lawyers' teams from 12 countries.

The Irish team comprised lawyers of varying ages and experience, including solicitors, barristers, public-service lawyers and one law student. The squad did Ireland proud, ending well up in the world ranking, with victories over over teams from New Zealand and the West Indies.

It fared less well, however, against the might of India, which went on to be beaten in the World Cup final against Australia, played on 4 August at the world-renowned Oval in London. The same day, the Irish team travelled to the Oval, where a 'Twenty20' match between select 'Pool A' and 'Pool B' teams took place before the main event. Tim Browne flew back to represent Ireland, alongside Michael Foster, Chris Spelman and Ian Kavanagh. Foster had the privilege of opening the bowling. The game was shortened to a 'Ten10' due to some rain, but Tim got to open and took his chance with 36 (not out).

Although the Irish participants finished on the losing 'Pool A' side, they described it as "an unforgettable experience to play at this historic venue, to use the home dressing room and to walk down those steps to the pitch. Amazing!" (No doubt they'll be talking about it for the rest of their lives – given half a chance!)

This was the second LCWC,



A post-match get-together of the Ireland and Trinidad teams

the first having been hosted by India in Christmas 2007. About 300 lawyers and guests were accommodated at Churchill College, with the matches played at a dozen of Cambridge's 28 grounds.

The competition was coupled with a continuing legal education programme. The topics were delivered by eminent experts and covered overviews of the

International Criminal Court and war crimes tribunals, issues relating to sports law, and the self-regulation of sports disputes and standards, including dope testing. Participants were treated to a fascinating illustrated paper from a judge of the Supreme Court of India on the laws of cricket.

The next LCWC will take place in Barbados in August 2011,

following the end of the Trinity sittings of the courts here.

Applications are expected now and in future months from Irish cricket-playing lawyers who wish to offer themselves as players, sponsors, back-up support staff or any other convenient role that will justify the two-week trip with their families!

The squad made many friends at this year's event, played some good cricket, but most importantly never forgot the spirit with which the tournament was meant to be played.

The team is most grateful to its sponsors, including the Bar Council of Ireland, the Law Society of Northern Ireland, Tottel Publishing, David Ensor (solicitor) and Duncan Grehan and Partners Solicitors. Thanks to manager and team captain Roland Budd BL, playing captains Tim Browne and Michael Foster, and meticulous score-keeper Helen Caird. Michael Carson SC represented us in the exhibition game played at Fenners, Cambridge, against an international judges' 11. **G**

## PLAYERS

Tim Browne (solicitor, Peden & Reid, Belfast), Michael Blair (solicitor, Leech & Co, Manchester), Niall Buckley (barrister, Dublin), Roland Budd (barrister, Dublin), Charles Butler (solicitor, Wicklow), Michael Carson SC (Dublin), Michael Foster (barrister, Government Legal Service for Northern Ireland, Belfast), Duncan Grehan (solicitor, Dublin), Ian Kavanagh (barrister, Office of the Attorney General, Dublin), Anthony Kerr (lecturer, UCD), Michael McCracken (barrister, Belfast), John Salley (solicitor, Byrne & O'Sullivan, Co Offaly), Chris Spellman (law student, UCD) and David Staunton (barrister, Dublin).

## GUESTS AND SUPPORTERS

David Block (brother of Michael Block, barrister), Mr and Mrs Justice Declan Budd, Helen Caird (chartered accountant – score-keeper), Charles Lysaght (honorary bencher, King's Inns), Christopher Kane (solicitor, Jones Day, London – squad member), Mary O'Dwyer (barrister), Ciaran O'Kane (student/barman) and Keith Spencer (barrister, Dublin – squad member).



# JOHN CARRIGAN

## 1917–2009



The Tuesday morning papers brought us some very sad news. John Carrigan had died suddenly on 9 August in West Cork while on holiday there.

The many tributes that have been paid to him since his death and at his funeral have been more than well merited, as he was, firstly, a wonderful husband, father and grandfather; secondly, a highly accomplished and successful solicitor; and, above all, a companion whom it was a delight to meet and share company with, and who always found time for people and who never let his work affect his capacity to enjoy life, which he lived to the full.

John qualified as a solicitor in Hilary term 1939 and practised with his father in Thurles to continue a wonderful tradition of legal service to the community (his father having qualified in 1896). Knowledge of the law, a keen and intuitive approach to a client's problems, and adherence to the highest standards are all attributes required of a successful solicitor. John possessed them all in abundance and was held in the highest esteem by his clients and colleagues alike.

In due course, he served in many capacities in the Tipperary Solicitors' Bar Association, the Provincial Solicitors' Association, and the Council and Committee of the Law Society, culminating in his election as president in 1957/58. In that capacity, as with all his other offices and appointments, he served with great distinction and was one

of the first members of the Council to frequent the International Bar Association meetings.

He was by far the senior past-president of the Law Society and, even through he had hung up his practising boots in recent years, he always maintained a very keen interest in events in the legal world and very much liked to be kept up to date. It was indeed a pleasure for the writer to participate in

a dinner in his honour as one of the most esteemed members of our profession and senior past-president.

No tribute could be permitted to be paid to John without mention of his wonderful wife for 68 years, Shirley – to whom he was absolutely devoted, and who looked after John so well that he had no problem reaching 92 years. His family was, at all stages, the centre of his life and his love. His care and attention to his wife, children and grandchildren and wider family was so much to be admired, and they in turn responded by showing the same affection and respect to him.

Few of us leave a mark in life, but there are exceptions. One of these is John Carrigan. The way that he showed example and led his life, both as a solicitor and a family man, will serve as an example that we can all aspire to follow.

Deepest sympathy is extended to his widow Shirley, his children Richard, Michael and Janet, his grandchildren and wider family.

May he rest in peace.

TDS





## council report

### Law Society Council meeting, 22 May 2009

#### Motion: secured loan transactions

*'That this Council approves the Solicitors (Professional Practice, Conduct and Discipline – Secured Loan Transactions) Regulations 2009.'*

**Proposed:** John O'Connor

**Seconded:** John P Shaw

John O'Connor outlined the text of the *Solicitors (Professional Practice, Conduct and Discipline – Secured Loan Transactions) Regulations 2009* and explained that, in essence, the regulations were intended to prohibit the giving of undertakings by solicitors on their own behalf. He noted that a 'full disclosure and informed consent' proviso had been included, at the suggestion of a number of Council members and bar associations, so that the prohibition would not arise in circumstances where a financial institution was made aware of the situation and consented in writing to a solicitor giving an undertaking on his/her own behalf.

The Council discussed whether this proviso would be sufficient to prevent a recurrence of the situations that had arisen in relation to Mr Lynn and Mr Byrne and concluded that, while it would not do so, the regulations combined with the new certificate of title arrangements should make a recurrence less likely or, at least, easier to detect at an earlier stage. Advances made by the

Property Registration Authority in respect of e-discharges, and the extension of compulsory registration to all counties except Dublin and Cork, would also assist.

Following a lengthy debate on the regulations, with differing views being expressed in relation to the proposed proviso, the Council adopted the regulations, including the proviso to allow for 'full disclosure and informed consent', and with agreement that the Regulation of Practice Committee would keep the matter under review and would revert to the Council in relation to any difficulties that might arise.

#### Proposed radio advertisement campaign

Patrick Dorgan outlined the development of the proposed radio advertisement campaign and Fiona Scott from McConnells Advertising presented the draft audio versions of each of the draft advertisements to the Council. Following suggestions in relation to each of the proposed advertisements, the Council approved the proposal that the campaign should be run on national radio during July 2009 and should be reviewed thereafter.

#### Appointment of representatives

The Council approved the following appointments of representatives to other bodies:

- The reappointment of Philip Joyce to the Medical Bureau of Road Safety,
- The reappointment of Patrick Dorgan to the IAVI Disciplinary Committee,
- The appointment of Dara Robinson to the Criminal Courts' Complex Users' Group,
- The appointment of Alvin Price as director of the Irish Takeover Panel, replacing David Beatty,
- The appointment of TP Kennedy to the CCBE Free Movement of Lawyers Committee, replacing John Handoll.

#### Annual Report of the Lay Members of the Complaints and Client Relations Committee

The Council noted the *Annual Report of the Lay Members of the Complaints and Client Relations Committee*, which covered the period from August 2007 to September 2008 and pre-dated the *Civil Law (Miscellaneous Provisions) Act*, aspects of which had come into force on 1 January 2009, including a lay majority and the introduction of three divisions instead of two.

#### Career Support Service

The president reported on the appointment of the career development advisor, Keith O'Malley, on 5 May 2009, and the development of a career support service since that date. He outlined

a range of new initiatives being planned by career support under four main headings.

In relation to (1) *the provision of support* – an online career development programme called 'EXPAND' had already been launched and it was also intended to provide a CV review and feedback service, a group programme of support, single issue up-skilling seminars and one-to-one consultations, although on a limited basis.

In relation to (2) *the provision of information* – it was intended to provide information on job interviews, alternatives outside of practice, sabbaticals, volunteering and so on.

In relation to (3) *event organisation* – it was proposed to hold a series of events on strategies for career success, a seminar on new and emerging opportunities and an alternative careers expo.

In relation to (4) *the generation of opportunities* – a campaign would be launched within the profession to 'Support your colleague', encouraging members of the profession to share information and ideas with the career support service, which could then be networked to the entire profession.

#### Financial statements for 2008

The Council approved the audited financial statements for 2008, which were to be promulgated to the profession during the following week.



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## council report



## Law Society Council meeting, 17 July 2009

### **Motion: conveyancing transactions where one party vulnerable**

*'That this Council approves regulations to prohibit solicitors acting on both sides of a conveyancing transaction where one party is vulnerable.'*

**Proposed:** James Cahill

**Seconded:** Brendan Twomey

James Cahill outlined a proposal from the Guidance and Ethics Committee that regulations should be introduced to prohibit solicitors acting on both sides of a conveyancing transaction where one party was vulnerable. He emphasised the distinction between vulnerable clients and those who had a lack of mental capacity. He outlined particular issues that arose in the context of a 'family solicitor' and he also addressed the issue of informed consent.

Mr Cahill said that many clients, particularly vulnerable transferors, only took a short-term view of their circumstances and, in such instances, clients should be protected from themselves. They needed to be reminded of their own financial needs in the future, should their circumstances change; they needed independent information in relation to any tax or social welfare consequences arising from a transaction; and they needed to be reminded of the expectations, needs and rights of other family members, including siblings. It was the view of the committee that regulations were necessary to ensure that vulnerable clients were separately represented.

Brendan Twomey noted that the Superior Courts had been deeply critical of solicitors who

had acted on both sides of a transaction. If a solicitor acted on both sides of a transaction that was subsequently overturned, the repercussions could lead to considerable distress for clients, as well as a financial fall-out of several multiples of any potential fees involved.

John Costello noted that the HSE had indicated that one-quarter of all elder abuse involved financial abuse. However, not all elderly people were vulnerable and the prohibition did not apply in general terms to the elderly. In addition, a vulnerable adult should have the option of choosing their own solicitor.

Some Council members expressed the view that solicitors should simply be prohibited from acting on both sides of a transaction in all circumstances. Other Council members disagreed with a broader prohibition. It was agreed that there was a real difficulty in assessing what constituted vulnerability and that the regulations would need to be closely defined. It was also agreed that, while the regulations might create issues for solicitors, it would also protect solicitors in circumstances where they were being pressured to act on both sides of a transaction. It was agreed that the Guidance and Ethics Committee should draft regulations giving effect to the motion, for further consideration.

### **Motion: solicitors administering statutory declarations**

*'That this Council directs that all necessary steps be taken to achieve the repeal of section 72(2) of the Solicitors (Amendment) Act 1994, so that solicitors can exercise*

*the powers conferred by the section to enable them administer statutory declarations for their own clients.'*

**Proposed:** James Cahill

**Seconded:** Brendan Twomey

Brendan Twomey noted that section 72(2) empowered solicitors to take oaths and declarations in certain circumstances. The proposed repeal of the section would enable solicitors to administer statutory declarations for their own clients. In litigation matters, it would still be necessary for clients to swear before an independent commissioner for oaths or a practising solicitor. However, the proposal would make conveyancing transactions more manageable and was supported by the Conveyancing Committee. The Council approved the motion.

### **Radio advertisement campaign – 'Talk to your solicitor'**

The Council noted that the radio advertisement campaign run on national radio from 2-19 July had been well received by the profession and that the Society had secured excellent advertising rates for 200 broadcasts.

### **Criminal Justice (Amendment) Bill 2009**

The Council noted that, despite extensive coverage in the media of the Society's concerns, and those of other organisations, the *Criminal Justice (Amendment) Bill 2009* had been enacted with a certain amount of fanfare. It was the Society's view that the legislation involved a certain amount of 'smoke and mirrors'

and would do nothing to address the real problems of organised crime.

### **Report of the Business Disputes Resolution Task Force**

Liam Kennedy outlined the work of the task force and noted that the purpose of the report was to identify opportunities for the profession and to clarify the extent to which non-litigators would benefit from a greater understanding of the benefits and pitfalls of the different dispute-resolution mechanisms. It sought to build on the trend towards mediation and other dispute-resolution mechanisms and to help Irish solicitors to capitalise on the available opportunities by engaging in education and training. The task force had been very impressed with the extent of education and training already provided by the Society and was unanimously appreciative of the commitment shown by Law School staff in the delivery of both pre and post-qualification training. The Council approved the report for dissemination to the profession.

### **Council election dates 2009**

The Council agreed that the final date for receipt of nominations for the Council election should be Monday 14 September 2009, and the close of poll date should be Thursday 29 October 2009. It was also agreed that, in order to secure a significant cost-saving in postage, the Council election ballot papers would issue by DX to those practitioners who were members of the DX. **G**



notes

PRACTICE DIRECTION IN RELATION TO THE INSPECTION OF INLAND REVENUE AFFIDAVITS

On 25 May last, the attached practice direction came into force and the Inland Revenue Affidavit is no longer a document of public record. The only persons now entitled to view the Inland Revenue Affidavit are a beneficiary under a will,

a family member on intestacy, or a government employee with a provable interest in the information supplied. Anyone seeking to view an Inland Revenue Affidavit must complete the form (shown below) confirming this.

The Probate, Administration and Trusts Committee welcomes this development, which it had sought for some time now. Probate, Administration and Trusts Committee

Representation, such documents are to be made available for inspection by the public with the exception of the Inland Revenue Affidavit to which the following conditions shall apply:

THE HIGH COURT Notice and practice direction: probate

Succession Act 1965 Section 42: "42(1) The following documents: a) All original wills of which representation is granted in the Probate Office, b) Copies of all wills and originals of which are to be preserved in District Probate Registries, and c) Such other documents as the President of the High Court may direct, shall be deposited and preserved in the Probate Office under the control of the President of the High Court and may be inspected in accordance with his directions."

Pursuant to subsection (1) of section 42 of the Succession Act 1965, I hereby direct as follows: 1) The reference at paragraph (c) of the said subsection to such other documents as the President of the High Court may direct to be deposited and preserved in the Probate Office shall comprise such documents as are required to make application to the Probate Office or District Probate Registry for the issue of a Grant of Representation in a deceased person's estate. 2) On the issue of the Grant of

A) The inventory of a deceased person's estate as is contained in the Inland Revenue Affidavit may be inspected by a person who is: i) A beneficiary named in the will of the deceased person which has been proved in the Probate Office or a District Probate Registry, ii) Entitled to share in the estate of a deceased person, B) All information as is contained in the Inland Revenue Affidavit and in which a government department or government agency has a legitimate interest may be inspected by an employee of such department or agency, provided that the person/s seeking to inspect such documentation under (A) or (B) establishes to the satisfaction of the Probate Officer, District Probate Registrar or Judge of the High Court exercising probate jurisdiction, as the case may be, that it is appropriate to authorise such inspection.

Date: 25 May 2009 The Honourable Mr Justice Richard Johnson, President of the High Court

**INLAND REVENUE AFFIDAVIT**  
Permission to inspect

**BLOCK CAPITALS ONLY**

1. Name of deceased .....  
2. Address of deceased .....  
3. Date of death ..... Date of grant .....  
4. Name of applicant.....  
5. Address .....  
6. Contact number .....  
7. Form of picture identification produced .....

8. Are you: (i) A Beneficiary under the deceased's Will? Yes No  
Or  
(ii) Where there is no will – are you a person entitled to a share in the estate of the deceased? Yes No

Indicate relationship to the deceased .....

(Persons under either (i) or (ii) above are entitled to inspect the inventory of the deceased's estate - the assets and liabilities in the sole name of the deceased)

Or  
(iii) An employee/representative of a Government Department or Agency (including Local Government) Yes No

(Persons under (iii) are entitled to inspect any information contained in the Inland Revenue Affidavit in which their department/agency etc. has a legitimate interest)

**PLEASE NOTE – PERSONS WHO DO NOT COME WITHIN (i) (ii) or (iii) ABOVE HAVE NO LEGAL ENTITLEMENT TO INSPECT THE DOCUMENT**

**Explain your reasons for seeking to access the Inland Revenue affidavit or attach a letter explaining same**

Office use only		
Approved by:	Identification checked by:	
Date:	Inspection Fee paid? €5	Copy ordered?
	Date:	



## UNDERTAKINGS IN THE CONTEXT OF THE ABOLITION OF LAND CERTIFICATES

Practitioners will be aware of the provisions of the *Registration of Deeds and Title Act 2006* regarding the abolition of land certificates. As and from 1 January 2007, the Property Registration Authority (the PRA) ceased to issue, or reissue, land certificates or certificates of charge.

Until 31 December 2009, production of an existing land certificate to the PRA is still required for the registration of a dealing with the property to which it relates. On completion of the application, the certificate is cancelled and does not reissue. From 1 January 2010, all remaining land certifi-

cates and certificates of charge not already cancelled shall cease to have any force or effect. Practitioners should be mindful of the circumstances in which undertakings can be given in light of these rules.

The recommendations concerning undertakings have been well set out by the Law Society over the years in various practice notes and include that, in order to give an undertaking, a solicitor must:

- Have irrevocable written authority from his/her client, and
- Be personally capable of performing the undertaking.

The impending abolition of land certificates limits the circumstances in which a solicitor will be in a position to give an undertaking in relation to registered land. For example, if a land certificate is lodged in connection with a sale or otherwise, it will not be reissued by the PRA, and an undertaking to hold it in trust or to relodge it with a bank following completion of a related transaction cannot be honoured. Even where a solicitor has possession of a land certificate, it will cease to have effect from 1 January 2010. Solicitors should examine the circumstances of each case

to see if they are in a position to give any undertaking in respect of land certificates.

Practitioners are reminded that the period within which liens under section 73 of the *Registration of Title Act 2006* may be registered expires on 31 December 2009.

This practice note is being issued at a time of change, as land certificates are still in existence. The committee will continue to monitor the situation and issue any further recommendations as it deems necessary.

*Conveyancing Committee*

## CHANGES TO VAT INFORMATION EXCHANGE SYSTEM EFFECTIVE FROM 1 JANUARY 2010

Practitioners should note that, on foot of Council Directive 2008/8/EC (amending directive 2006/112/EC), with effect from 1 January 2010, Irish VAT-registered suppliers – including suppliers of legal services – must submit a VAT Information Exchange System (VIES) statement to Revenue, de-

tailing all the VAT registered clients in other member states to whom they have supplied services, in respect of which that client is liable for payment of VAT. The EU legislation is presently being transposed into Irish law. Practitioners who supply services to clients in other EU member states must register

with Revenue's VIMA section in advance of the implementation date. Returns in respect of services are to be submitted on a quarterly basis. Although e-filing of returns through the ROS system is Revenue's preferred option, Revenue has confirmed to the Society that hard-copy returns

may also be submitted.

Further information can be obtained from the VIES section in VIMA – LoCall: 1890 251 010 (extensions 53422, 53426 or 53421) or email: [vimahelp@revenue.ie](mailto:vimahelp@revenue.ie).

*Taxation Committee*

Publication of advertisements in this section is on a fee basis and does not represent an endorsement by the Law Society of Ireland.

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**PROPERTY**  
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**PROBATE**  
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## LOCAL GOVERNMENT (CHARGES) ACT 2009

From Friday 31 July 2009, practitioners completing the purchases and sales of certain residential property (that is, non-principal private residences) should have regard to the above act and the regulations made thereunder. Solicitors can obtain a copy of the act from [www.oireachtas.ie](http://www.oireachtas.ie). The regulations (SI no 278 of 2009) provide, in summary, as follows:

- The minister commenced the act on 24 July 2009 and made procedural regulations thereunder.
- July 31 was assigned as the liability date in 2009. The liability for payment of the charge falls upon any person who is the 'owner' (within the meaning of the act) of a 'dwelling' (within the meaning of the act) on the liability date.
- A period of two months was prescribed for the purposes of section 3(4) of the act (the period within which the charge is to be paid).
- The declaration for the purposes of section 5(1) may be

made by the internet ([www.nppr.ie](http://www.nppr.ie)), or in writing, to a local authority.

- Prescribes the information that the declaration shall contain, that is, the name (or in the case of co-owners, names) of the owner of the residential property in respect of which the declaration is made; the address (and if necessary a description) of the property; an address for correspondence of the owner or co-owners of the property; the personal public service (PPS) number of the owner or of each individual co-owner of the property (owner an individual) or the tax reference number (owner a company).
- Prescribes the means of payment to apply where the declaration is made in writing (cheque, postal order, bank draft and credit/debit card) or via the internet (credit/debit card).

The act and regulations were passed and made at short notice

and, regrettably, the Law Society's Conveyancing Committee did not have sufficient notice of either to make submissions or have any input into how they might impact on conveyancing practice and procedure. The committee will shortly arrange to give the matter full consideration and will issue any further guidance as is necessary in due course. Practitioners might follow the steps as recommended below as an interim measure until the committee has had an opportunity to properly consider the matter:

- 1) Because the act provides that the local authority charge is a charge on the property to which it relates, solicitors should, on or before closing a transaction on or after Friday 31 July 2009, seek confirmation of whether the property in sale is liable to the local authority charge, and if so, obtain a receipt for payment of the charge and/or a letter of discharge of the statutory charge on the property to place with the title deeds. If it

is claimed by the vendor that the property is not liable to the local authority charge, the purchaser's solicitor should seek confirmation of this by way of statutory declaration.

- 2) As there is a period of two months within which vendors may make the relevant payment, if due, it may be necessary to seek an undertaking from the vendor's solicitor to retain sufficient monies from the sale proceeds to discharge the sum due (to include any interest payable), and pay it to the local authority, and furnish a receipt for payment and/or a letter of discharge of the statutory charge, together with an apportionment account where the parties have agreed to apportion the charge. Practitioners should note that the Department of the Environment has informed the committee that local authorities will not accept apportioned payments.

*Conveyancing Committee*

## AMENDED PRECEDENT COMPLETION NOTICES

The committee would like to notify the profession that there are amended precedent completion notices now avail-

able on the Law Society's website.

Practitioners may access the amended precedents by

logging in to the members' area and clicking on either the 'Precedents for practice' page or on the Conveyancing Commit-

tee's subpage 'Precedent documentation'.

*Conveyancing Committee*

## HABEAS CORPUS APPLICATIONS – AVAILABILITY OF COURT REGISTRARS

Practitioners have expressed concern that, while the Courts Service has put in place an 'on-call' rota for High Court registrars at weekends (that is, Friday evenings to Sunday evenings), a similar system has not been put in place to provide cover on weekday evenings. The Society's Criminal Law Committee has been in correspondence with the Courts Service and the President of the High Court on the

point. In order to ensure that the occurrence of instances where cover is unavailable is recorded, the committee advises that practitioners who experience difficulties regarding the non-availability of registrars during weekday evenings should write directly to the Courts Service and copy same to the Criminal Law Committee, when such difficulties arise.

*Criminal Law Committee*

## CRIMINAL LEGAL AID SCHEME – INTRODUCTION OF PAYMENT OF LEGAL AID FEES BY ELECTRONIC FUNDS TRANSFER

The Financial Shared Services (FSS) Division of the Department of Justice, Equality and Law Reform has advised that, as from 1 November 2009, all payments to solicitors under the Criminal Legal Aid Scheme and related ad hoc schemes will be made by electronic funds transfer.

An electronic remittance ad-

vice will issue to the solicitor's email address, the details of which will reflect the information currently contained in the hard-copy remittance advice. The FSS Division will contact individual solicitors in the coming weeks seeking the necessary bank details.

*Criminal Law Committee*

# legislation update



## 16 June – 10 August 2009

**Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – [www.lawsociety.ie](http://www.lawsociety.ie) (members' and students' areas) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. All recent bills and acts (full text in PDF) are on [www.oireachtas.ie](http://www.oireachtas.ie) and recent statutory instruments are on a link to electronic statutory instruments from [www.irish-statutebook.ie](http://www.irish-statutebook.ie).**

### ACTS PASSED

#### *Aviation (Preclearance)*

##### **Act 2009**

**Number:** 16/2009

**Contents note:** Gives effect to an agreement between the government of Ireland and the government of the United States of America done at Washington, 17/11/2008, relating to the provision of preclearance operations at airports in the state for persons travelling by air to the US. Repeals the *Air Navigation and Transport (Preinspection) Act 1986*, amends the *Freedom of Information Act 1997* and provides for related matters.

**Commencement date:** Commencement order(s) to be made (per s21(2) of the act)

#### **Broadcasting Act 2009**

**Number:** 18/2009

**Contents note:** Provides for the revision of the law relating to broadcasting services and content. Repeals all existing broadcasting content legislation. Provides for the establishment of a broadcasting content regulator to be known as the Broadcasting Authority of Ireland (BAI), which will perform the existing functions of the Broadcasting Commission of Ireland and the

Broadcasting Complaints Commission, as well as undertaking new functions. Provides for matters relating to television licences, and provides for related matters.

**Commencement date:** 12/7/2009; establishment day order to be made for the establishment of the Broadcasting Authority of Ireland, for the purposes of part 2 (ss5-38), s49, s157 and part 12 (ss174-179 - transitional provisions in relation to the dissolution of the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission) (per s5 of the act)

#### **Companies (Amendment)**

##### **Act 2009**

**Number:** 20/2009

**Contents note:** Removes certain exceptions contained in the *Companies Acts* that apply in the cases of companies that are licensed banks (or holding companies of such companies) regarding disclosure of loans to directors and transactions of an analogous nature. Amends the *Companies Acts* in respect of loans by companies (of whatever type) to directors or certain related parties and transactions of an analogous nature. Confers additional powers on the Director of Corporate Enforcement with respect to access to information in the possession of companies, including information kept by them in certain registers or books or in the possession of third parties. Amends sections 20 and 23 of the *Companies Act 1990* in relation to search warrants and procedures to be followed in cases of claims of legal professional privilege and provides for related matters.

**Commencement date:** 12/7/2009

#### **Criminal Justice (Amendment) Act 2009**

**Number:** 32/2009

**Contents note:** Amends the *Criminal Justice Act 2006* to introduce additional measures in relation to organised crime gangs, targeting those who direct the activities of criminal gangs and those who participate in the activities of such gangs. Makes provision for the use of the Special Criminal Court for the hearing of particular organised crime offences unless the DPP directs otherwise. Amends the *Bail Act 1997* and amends the *Criminal Justice Act 1999* to increase the penalty for intimidation of witnesses, jurors and others. Provides for jurisdiction over obstruction of justice offences and the offence of inducement of witnesses to give false testimony, where these offences are committed by an Irish citizen or a person ordinarily resident in the state on board an Irish ship, aircraft or in another jurisdiction. Amends garda detention, rearrest and search powers, and provides for related matters.

**Commencement date:** 23/7/2009

#### **Criminal Justice (Miscellaneous Provisions) Act 2009**

**Number:** 28/2009

**Contents note:** Makes a number of amendments to the *European Arrest Warrant Act 2003*, including the giving effect to council decision 2007/533/JHA of 12/6/2007 on the establishment, operation and use of the second generation Schengen Information System. Amends section 27 of the *Extradition Act 1965* as amended in relation to provisional arrest on foot of an alert on the Schengen Information System. Provides for amendments to the *Firearms*

*Acts 1925 to 2007*, including a ban, with limited exceptions, on the issuing of new licenses for handguns, greater control over the importation of firearms, and the regulation and use of realistic imitation firearms. Amends the *Bail Act 1997* and the *Criminal Justice (Theft and Fraud Offences) Act 2001*, amends a number of other acts, and provides for related matters.

**Commencement date:** Commencement order(s) to be made (per s1(3) of the act): 27/7/2009 for s28 (per SI 293/2009); 1/8/2009 for the following provisions: (a) part 1, (b) ss25 to 27, (c) ss29 to 33, (d) ss35, 37 and 39, (e) s40 (insofar as it inserts ss9A and 9B of the *Firearms and Offensive Weapons Act 1990*), and (f) ss41 to 44 and 1/1/2010 for s34 (per SI 310/2009)

#### **Criminal Justice (Surveillance) Act 2009**

**Number:** 19/2009

**Contents note:** Provides a statutory framework for the operation of secret surveillance by An Garda Síochána, the Defence Forces and the Revenue Commissioners in connection with the investigation of arrestable offences, the prevention of suspected arrestable offences and the safeguarding of the state against subversive and terrorist threats. Provides for the admissibility of evidence gained by surveillance either to support other direct evidence on criminal charges or as a basis on its own for a charge of conspiracy. Provides, in most cases, for a prior authorisation for surveillance for a period up to three months by a judge of the District Court. In urgent situations, authorisation can be given by a superior officer of An Garda Síochána, the Defence Forces or the Revenue



Commissioners for a period no longer than 72 hours. Provides for a complaints procedure and a system of judicial oversight of the operation of the act by a judge of the High Court. Amends the *Garda Síochána Act 2005* and the *Courts (Supplemental Provisions) Act 1961*, and provides for related matters.

**Commencement date:** 12/7/2009

#### ***Defamation Act 2009***

**Number:** 31/2009

**Contents note:** Revises in part the law of defamation; repeals and replaces the *Defamation Act 1961* and provides for related matters.

**Commencement date:** Commencement order(s) to be made (per s 1(2) of the act)

#### ***Enforcement of Court Orders (Amendment) Act 2009***

**Number:** 21/2009

**Contents note:** Substitutes a new section 6, 'Failure to comply with instalment order'; inserts a new section 6A, 'Entitlement to legal aid'; and amends section 8 of the *Enforcement of Court Orders Act 1940*, following the decision of the High Court in *McCann v Judge of Monaghan District Court and others* (Laffoy J, 18/6/2009, [2009] IEHC 276), which found that section 6 of the *Enforcement of Court Orders Act 1940* was incompatible with the Constitution. The new and amended sections provide that certain safeguards will apply to the provisions under which a court may hear an application or grant an imprisonment order against a debtor who has failed to comply with an instalment order. They provide that a debtor against whom an imprisonment order is made shall be entitled to apply for legal aid, and provide for related matters.

**Commencement date:** 14/7/2009

#### ***European Parliament (Irish Constituency Members) Act 2009***

**Number:** 17/2009

**Contents note:** Makes provision for the payment of salaries of Irish members of the European Parliament. Repeals the *European Assembly (Irish Representatives) Act 1979* and provides for related matters.

**Commencement date:** First day of the parliamentary term beginning in 2009 (per s10(2) of the act)

#### ***Financial Measures (Miscellaneous Provisions) Act 2009***

**Number:** 14/2009

**Contents note:** Contains a number of miscellaneous financial services provisions. Provides that existing direct debit mandates will continue to have legal effect in the Single European Payments Area (SEPA) direct debit scheme. Provides for the transfer of assets of pension funds of certain third-level institutions and non-commercial state bodies to the National Pensions Reserve Fund and the continued payment of benefits formerly payable from those funds. Makes provision in relation to the giving of certain guarantees for securities by the Minister for Finance. Provides that chapter VI of part II of the *Central Bank Act 1989* does not apply to acquisitions to which directive 2007/44 on the prudential assessment of acquisitions and increase of holdings in the financial sector applies. Amends the *Credit Institutions (Financial Support) Act 2008* to allow the extension of the period in which financial support under that act can be provided. Amends the *Insurance (No 2) Act 1983* and the *Insurance Act 1989* in relation to life insurance and reinsurance. Amends the *Netting of Financial Contracts Act 1995* to clarify whether certain persons are parties to a netting agreement. Amends the *Taxes Consolidation Act 1997* in relation to the taxation position of the National Pensions Reserve Fund Commission in relation to certain assets transferred from

pension funds to the National Pensions Reserve Fund, and provides for related matters.

**Commencement date:** 26/6/2009 for all sections other than section 17 (amendment of section 6 of the *Credit Institutions (Financial Support) Act 2008*), which requires a commencement order (per s17(2)). Regulations to be made providing for direct debit instructions to continue to operate as direct debit mandates after the SEPA scheme comes into operation (per s2). Transfer orders to be made providing for the transfer of assets of certain pension funds to the National Pensions Reserve Fund (per s5)

#### ***Financial Services (Deposit Guarantee Scheme) Act 2009***

**Number:** 13/2009

**Contents note:** Provides a statutory basis in primary legislation for the Irish deposit guarantee scheme, in line with the government's announcement of 20/9/2008, which involved increasing the statutory limit for the deposit guarantee scheme for banks and building societies from €20,000 to €100,000 per eligible depositor per institution, with effect from 20/9/2008; the discontinuance of the co-insurance requirement, whereby the depositor bore 10% of the loss up to the statutory ceiling on cover; and extending the guarantee scheme to apply to credit union savers. Provides for the making of regulations to give further effect to directive 94/19/EC on deposit guarantee schemes regarding the amount payable to a person maintaining eligible deposits with a credit institution; provides for the maintenance of the deposit protection account by the Central Bank and Financial Services Authority of Ireland; provides for the maintenance by credit institutions of deposits in the deposit protection account; provides for the amount of the deposit and its variation; amends the *Central Bank Act 1942* and provides for

related matters.

**Commencement date:** 18/6/2009 for all sections, except s4, for which a commencement order shall be made (per s2(2) of the act). Section 4 deals with the amount that a credit institution must maintain on deposit with the Central Bank and Financial Services Authority of Ireland's deposit protection account

#### ***Harbours (Amendment) Act 2009***

**Number:** 26/2009

**Contents note:** Transfers certain functions of the Minister for Transport to An Bord Pleanála in the context of the compulsory acquisition of land by port companies and amends the *Planning and Development Act 2000*. Makes provision for commercial activities of port companies outside their current harbour limits. Makes provision for the number of directors on a port company board. Makes certain provisions relating to the Irish Maritime Development Office. Amends and extends the *Harbour Acts 1996 to 2005*, repeals the *Harbours Act 1976*, and provides for related matters.

**Commencement date:** 21/7/2009

#### ***Health (Miscellaneous Provisions) Act 2009***

**Number:** 25/2009

**Contents note:** Provides for the dissolution of the National Council on Ageing and Older People and the Women's Health Council and the transfer of their employees, assets and liabilities to the Department of Health and Children. Provides for the dissolution of the National Cancer Screening Service Board, the Drug Treatment Centre Board and the Crisis Pregnancy Agency and the transfer of their employees, assets and liabilities to the Health Service Executive. Provides for the exercise of certain functions relating to superannuation by the Minister for Health and Children. Provides for the amendment of the *Hepa-*

*titis C Compensation Tribunal Act 1997* (as amended) to remove age limits for travel insurance benefit provided in accordance with that act. Amends the *Health Act 2007* and the *National Cancer Registry Board (Establishment) Order 1991* (SI 19/1991) and provides for related matters.

**Commencement date:** Commencement order(s) to be made (per s1(4) of the act): 1/8/2009 for part 1 and s65; 1/9/2009 for part 2 (ss4-14) (per SI 288/2009)

### **Health Insurance (Miscellaneous Provisions) Act 2009**

**Number:** 24/2009

**Contents note:** Amends the *Health Insurance Act 1994*, the *Taxes Consolidation Act 1997* and the *Stamp Duties Consolidation Act 1999*, in particular to ensure that, in the interests of societal and intergenerational solidarity, the burden of the costs of health services be shared by insured persons by providing for a cost subsidy between the young and the old, and provides for related matters. Addresses the position following the Supreme Court decision in *BUPA Ireland Ltd v Health Insurance Authority* (16/7/2008, [2008] IESC 42; [2009] 1 ILRM 81), which found that the previously operated risk equalisation scheme was *ultra vires* and should be set aside.

**Commencement date:** 19/7/2009

### **Housing (Miscellaneous Provisions) Act 2009**

**Number:** 22/2009

**Contents note:** Makes provision for the functions of housing authorities in relation to the making of housing service plans; the assessment of social housing needs for the purposes of social housing support and the allocation of dwellings; rental accommodation arrangements; housing authority management and control powers; the making of homelessness action plans; the making of an antisocial behaviour strategy; further provision

for tenant purchase of dwellings by incremental purchase arrangements; tenant purchase of apartments; the sale of certain dwellings under affordable dwelling purchase arrangements; standards for rented houses and the giving of improvement notices and prohibition notices to landlords. Amends and extends the *Housing Acts 1966 to 2004*, amends the *Housing Finance Agency Act 1981*, the *Planning and Development Act 2000* and the *Civil Registration Act 2004*, the *Residential Tenancies Act 2004* and the *Social Welfare Consolidation Act 2005*, and provides for related matters.

**Commencement date:** Commencement order(s) to be made for all sections, except s100 (per s1(4) of the act). Section 100, 'Amendments to the *Residential Tenancies Act 2004*' comes into force on the date of enactment, 15/7/2009

### **Land and Conveyancing Law Reform Act 2009**

**Number:** 27/2009

**Contents note:** Provides for the reform and modernisation of land law and conveyancing, repeals enactments that are obsolete or unnecessary, provides for the variation of trusts, modernises the law relating to *lis pendens*, amends the *Registration of Deeds and Title Acts 1964 and 2006* and certain other enactments and provides for related matters. Follows the publication of the Law Reform Commission consultation paper (LRC CP-2004) and report (LRC 74-2005) on reform and modernisation of land law and conveyancing law.

**Commencement date:** Commencement order(s) to be made (per s2 of the act)

### **Local Government (Charges) Act 2009**

**Number:** 30/2009

**Contents note:** Imposes on the owners of non-principal private residences an annual charge of

€200 in respect of each such property, to the local authority in whose area the residential property is situated, and provides for related matters.

**Commencement date:** 24/7/2009 (per SI 279/2009)

### **Nursing Homes Support Scheme Act 2009**

**Number:** 15/2009

**Contents note:** Provides for the establishment of a Nursing Homes Support Scheme, to be administered by the Health Service Executive, under which financial support may be made available to persons who require long-term residential care services. Amends the *Health Act 1970*, the *Health (Nursing Homes) Act 1990*, the *Courts and Court Officers Act 1995* and the *National Treatment Purchase Fund Board (Establishment) Order 2004* (SI 179/2004) and provides for related matters.

**Commencement date:** Commencement order(s) to be made (per s2 of the act): 3/7/2009 for the following provisions: (a) the definitions of 'approved nursing home' and 'long-term residential care services' in section 3 of the *Nursing Homes Support Scheme Act 2009* (the 2009 act), insofar as these definitions relate to section 40 of the 2009 act and the *National Treatment Purchase Fund Board (Establishment) Order 2004* (SI 179/2004) (as amended by section 41 of the 2009 act); and (b) sections 40 and 41 of the 2009 act (per SI 256/2009)

### **Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices Act 2009**

**Number:** 29/2009

**Contents note:** Amends the *Ministerial and Parliamentary Offices Acts 1938 to 2001* and the *Oireachtas (Allowances to Members) Act 1938*. Provides for the cessation of payment of long-service increments after the next general election for all members of the Houses of the Oireachtas and for withholding long-service

increments in the case of those members who would normally have qualified for these increments before the next general election. Applies similar provisions to members of the European Parliament who, being eligible to do so, opt to continue to be paid the same salary as TDs. Provides that ministerial pensions paid to members of the Houses of the Oireachtas and the European Parliament shall be reduced by 25% and that such pensions shall cease to be paid to members of the Houses of the Oireachtas after the next general election and to members of the European Parliament after the next elections to the European Parliament after the passing of this act, and provides for related matters.

**Commencement date:** Various – see act

### **Public Health (Tobacco) (Amendment) Act 2009**

**Number:** 23/2009

**Contents note:** Amends the *Public Health (Tobacco) Act 2002* as amended by the *Public Health (Tobacco) (Amendment) Act 2004*. **Commencement date:** 16/7/2009

### **SELECTED STATUTORY INSTRUMENTS**

#### **Charities Act 2009**

#### **(Commencement) Order 2009**

**Number:** SI 284/2009

**Contents note:** Appoints 1/9/2009 as the commencement date for sections 1, 2, 5, 10 (other than subsections (3) and (4)) and 99 of the act. Sections 10 and 99 regulate the sale of Mass cards.

#### **Circuit Court Rules (Actions for Possession and Well-Charging Relief) 2009**

**Number:** SI 264/2009

**Contents note:** Insert a new order 5B, 'Procedure in certain actions for possession of land and actions for well-charging relief', in the *Circuit Court Rules 2001* (SI 510/2001). This order introduces a new procedure for the preparation for trial of proceed-

ings for recovery of possession of land on foot of a legal mortgage or charge and proceedings to declare a mortgage well charged on land. Such proceedings will be initiated by a new form of civil bill supported by affidavit and defended by a replying affidavit, and will be returnable initially to a hearing before the county registrar at which the county registrar may make or give various orders or directions.

**Commencement date:** 8/7/2009

#### **Circuit Court Rules (Sittings) 2009**

**Number:** SI 235/2009

**Contents note:** Substitute new rules 1 and 2 in order 1 of the *Circuit Court Rules 2001* (SI 510/2001). The effect of the amendment is to dispense with the requirement in these rules of publication of notices of sittings of the Circuit Court outside Dublin in *Iris Oifigiúil* and in a newspaper circulating in the county concerned, and of publication of sittings in Dublin in *Iris Oifigiúil*.

**Commencement date:** 24/7/2009

#### **Companies Act 1963 (Alteration of Eighth Schedule) Order 2009**

**Number:** SI 302/2009

**Contents note:** Alters the eighth schedule (inserted by the *Companies (Fees) (No 3) Order 2005* (SI 517/2005)) to the *Companies Act 1963* by the substitution of a new part 1 (table of fees to be paid to the registrar of companies). Revokes the *Companies (Fees) (No 4) Order 2005* (SI 737/2005) and the *Companies (Fees) Order 2006* (SI 502/2006).

**Commencement date:** 1/9/2009

#### **Criminal Justice Act 2006 (Commencement) Order 2009**

**Number:** SI 309/2009

**Contents note:** Appoints 1/8/2009 as the commencement date for sections 28, 30, 32 and

33 of the act. These sections relate to amendments to the *Firearms Acts*.

#### **Criminal Justice (Miscellaneous Provisions) Act 2009 (Commencement) Order 2009**

**Number:** SI 293/2009

**Contents note:** Appoints 27/7/2009 as the commencement date for section 28 of the act. Section 28 amends s3 of the *Firearms Act 1925* to make transitional provisions in relation to the expiry of certain firearms certificates.

#### **Criminal Justice (Miscellaneous Provisions) Act 2009 (Commencement) (No 2) Order 2009**

**Number:** SI 310/2009

**Contents note:** Appoints 1/8/2009 as the commencement date for the following provisions: (a) part 1; (b) ss25 to 27; (c) ss29 to 33; (d) ss35, 37 and 39; (e) s40 (insofar as it inserts ss9A and 9B of the *Firearms and Offensive Weapons Act 1990*); and (f) ss41 to 44. Appoints 1/1/2010 as the commencement date for s34 of the act. All of these sections relate to amendments to the *Firearms Acts*.

#### **Employment Regulation Order (Law Clerks Joint Labour Committee) 2009**

**Number:** SI 215/2009

**Contents note:** Made by the Labour Court on the recommendation of the Law Clerks Joint Labour Committee. Fixes statutory minimum rates of pay and regulates statutory conditions of employment for certain employees in solicitors' offices.

**Commencement date:** 22/6/2009

#### **Energy (Miscellaneous Provisions) Act 2006 (Section 13) (Commencement of Remaining Provisions) Order 2009**

**Number:** SI 238/2009

**Contents note:** Appoints 29/6/2009 as the commencement date for section 13, insofar as it relates to subsections (3) and (4) of section 9G (inserted by the

said section 13) of the *Electricity Regulation Act 1999*.

#### **Enforcement of Court Orders (Legal Aid) Regulations 2009**

**Number:** SI 301/2009

**Contents note:** Set out the forms of debtor's legal aid certificates, the procedure for the granting of the certificates and the rate of fees payable in proceedings on a summons under section 6 (inserted by section 2 of the *Enforcement of Court Orders (Amendment) Act 2009*) and section 8 (as amended by section 2 of the *Enforcement of Court Orders (Amendment) Act 2009*) of the *Enforcement of Court Orders Act 1940*.

**Commencement date:** 23/7/2009

#### **European Communities (Deposit Guarantee Schemes) (Amendment) Regulations 2009**

**Number:** SI 228/2009

**Contents note:** Amend the *European Communities (Deposit Guarantee Schemes) Regulations 1995* (SI 168/1995) in line with the government's announcement of 20/9/2008, which involved increasing the statutory limit for the deposit guarantee scheme for banks and building societies. Amendments include increasing the statutory limit for the scheme from €20,000 to €100,000 per eligible depositor per institution, discontinuing the 10% co-insurance requirement, extending the cover of the scheme to credit union savers, reducing the minimum payout period under the scheme, increasing the minimum contribution requirement by credit institutions to €50,000 (but this does not apply to credit unions) and ending the set-off requirement when making payouts under the scheme.

**Leg-implemented:** Dir 94/19

**Commencement date:** 30/6/2009

#### **European Communities (Transitional Period Measures in**

#### **respect of Third Country Auditors) Regulations 2009**

**Number:** SI 229/2009

**Contents note:** Provide for the registration requirements in Ireland, for the period 29/6/2008 to 1/7/2010, of non-EU auditors and audit entities who audit companies incorporated outside the European Community that have transferable securities listed to trading on a market regulated within the community.

**Leg-implemented:** (1) Article 45 of dir 2006/43, subject to, and insofar only as is required by, dec 2008/627; (2) dec 2008/627; (3) partial implementation of articles 35(1) and 36(2) of dir 2006/43 insofar as is required by reason of the implementation of (1) and (2)

**Commencement date:** 26/6/2009

#### **Health Act 2007 (Commencement) (No 2) Order 2009**

**Number:** SI 237/2009

**Contents note:** Appoints 25/6/2009 as the commencement day for part 13 (ss98-102, 'Regulations') of the act. Appoints 1/7/2009 for the following provisions of the act: (a) part 1 (insofar as it is not already in operation); (b) s41(1)(b) and (c) (insofar only as the functions under those paragraphs are performable in relation to a designated centre to which para (a)(iii) or para (b) of the definition of 'designated centre' in s2 of the *Health Act 2007* applies); (c) s41(2); (d) s42; (e) s45 (other than paragraph (a) of s45(1)); (f) part 8 (ss46-69, 'Regulation of designated centres') and part 9 (ss70-78, 'Inspections and investigations') (other than insofar as they relate to a designated centre to which subparagraph (i) or (ii) of paragraph (a) of the definition of 'designated centre' in s2 applies); (g) part 10 (ss79-80, 'Offences') (insofar as it is not already in operation); (h) s104(1) and part 1 of schedule 1 (insofar only as they relate to the repeal of ss3, 4, 5, 6 and 9 of the *Health (Nursing Homes) Act 1990*).



**Health Act 2007 (Commencement) (No 3) Order 2009****Number:** SI 268/2009**Contents note:** Appoints 1/8/2009 as the commencement date for s103 (insofar as it has not already been brought in to operation by SI 27/2009) of the *Health Act 2007*. Section 103 inserts a new part 9A, 'Protected disclosures of information by employees', in the *Health Act 2004*.**Health (Miscellaneous Provisions) Act 2009 (Commencement) Order 2009****Number:** SI 288/2009**Contents note:** Appoints 1/8/2009 as the commencement date for part 1 and section 65 of the act. Appoints 1/9/2009 as the commencement date for part 2 of the act. Part 1 is procedural; section 65 amends the *National Cancer Registry Board (Establishment) Order 1991* (SI 19/1991); part 2 (ss4-14) provides for the dissolution of the National Council on Ageing and Older People and for the transfer of the council's employees, liabilities, property, and so on to the Minister for Health and Children.**Investment Funds, Companies and Miscellaneous Provisions Act 2005 (Commencement) Order 2009****Number:** SI 303/2009**Contents note:** Appoints 1/9/2009 as the commencement date for sections 59 and 60 of the act. These sections deal with an application to the registrar of companies for the reservation of a company name.**Local Government (Charges) Act 2009 (Commencement) Order 2009****Number:** SI 279/2009**Contents note:** Appoints 24/7/2009 as the commencement date for all sections of the act.**Local Government (Charges) Regulations 2009****Number:** SI 278/2009**Contents note:** Set out procedures relating to the payment of the charges under the act.**Commencement date:** 24/7/2009**Nursing Homes Support Scheme Act 2009 (Commencement) (Certain Provisions) Order 2009****Number:** SI 256/2009**Contents note:** Appoints 3/7/2009 for the following provisions of the *Nursing Homes Support Scheme Act 2009* (the 2009 act): (a) the definitions of 'approved nursing home' and 'long-term residential care services' in section 3 of the 2009 act, insofar as these definitions relate to section 40 of the 2009 act, and the *National Treatment Purchase Fund Board (Establishment) Order 2004* (SI 179/2004) (as amended by section 41 of the 2009 act); and (b) sections 40 and 41 of the 2009 act. The commencement of sections 40 and 41 enable the National Treatment Purchase Fund to negotiate and agree prices with private nursing home owners for the purposes of the Nursing Homes Support Scheme, a scheme of financial support for people in need of long-term residential care.**Pharmacy Act 2007 (Commencement) Order 2009****Number:** SI 281/2009**Contents note:** Appoints 1/8/2009 as the commencement date for the remaining sections of the *Pharmacy Act 2007*, insofar as they are not already in operation.**Pharmacy Act 2007 (Section 64(9)) Order 2009****Number:** SI 282/2009**Contents note:** Appoints 1/8/2009 as the date on which section 64(9) of the act shall take effect. Section 64 prohibits the carrying on of a retail pharmacy business and a medical practice on the same premises with effect from the date appointed by this order, 1/8/2009.**Public Health (Tobacco) Act 2002 (Commencement) Order 2009****Number:** SI 242/2009**Contents note:** Appoints 1/7/2009 as the commencement date for s33A (inserted by the *Public Health (Tobacco) (Amendment) Act 2004*). Section 33A deals with the prohibition on the advertising of tobacco products in premises in which the business of selling tobacco products by retail is carried on in whole or in part.**Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks) (Amendment) Regulations 2009****Number:** SI 254/2009**Contents note:** Amend the *Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks) Regulations 2008* (SI 136/2008), made under section 891B (inserted by section 125 of the *Finance Act 2006*) of the *Taxes Consolidation Act 1997*, which provide for the reporting by banks, building societies, credit unions and savings banks of interest and similar payments. The amendments provide for the inclusion of financial institutions authorised in another EU member state operating in Ireland under a passport arrangement and for the inclusion of excluded payments in certain circumstances. Make provision in relation to the year of first relevant payment and to the tax reference number and verification documentation.**Commencement date:** 3/7/2009**Rules of the Superior Courts (Courts-Martial Appeal Court) 2009****Number:** SI 270/2009**Contents note:** Substitute a new order 86A, 'The Courts-Martial Appeal Court', in the *Rules of the Superior Courts*. Prescribe the procedures and forms to be used in an appeal to the Courts-Martial Appeal Courtestablished by the *Courts-Martial Appeals Act 1983* and facilitate the operation of that act and the *Defence Act 1954* as amended by the *Defence (Amendment) Act 2007*.**Commencement date:** 20/7/2009**Rules of the Superior Courts (Service of Proceedings (Regulation (EC) No 1393/2007)) 2009****Number:** SI 280/2009**Contents note:** Substitute new orders 11D, 'Service of documents outside the jurisdiction but within the EU (regulation no 1393/2007)', and 121A, 'Service of foreign process (EU save the Kingdom of Denmark – regulation no 1393/2007)', in the *Rules of the Superior Courts* and amend order 11E, rule 1, and order 121B, rule 1, to provide for the operation of regulation (EC) no 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters and repealing regulation (EC) no 1348/2000.**Commencement date:** 20/8/2009**Rules of the Superior Courts (Slip Rule) 2009****Number:** SI 271/2009**Contents note:** Amend order 28 of the *Rules of the Superior Courts* by the substitution of a new rule 11, which introduces a procedure for the correction of clerical mistakes in judgments or orders, or errors in judgments or orders arising from accidental slips or omissions. Enables such corrections to be effected in certain circumstances without the need for a formal hearing before the court.**Commencement date:** 17/8/2009**Social Welfare (Miscellaneous Provisions) Act 2008 (Part 4) (Commencement) Order 2009****Number:** SI 244/2009**Contents note:** Appoints 13/7/

2009 as the commencement date for part 4 (ss30-38) of the *Social Welfare (Miscellaneous Provisions) Act 2008*. Part 4 amends the *Citizens Information Acts 2000 and 2007* to extend the functions of the Citizens Information Board to include the provision of the Money, Advice and Budgeting Service (MABS).

***Social Welfare (Miscellaneous Provisions) Act 2008 (Part 5) (Commencement) Order 2009***

**Number:** SI 241/2009

**Contents note:** Appoints 1/7/2009 as the commencement

date for part 5 (ss30-38) of the *Social Welfare (Miscellaneous Provisions) Act 2008*. Part 5 of the act repeals the *Combat Poverty Agency Act 1986* and provides for the dissolution of the Combat Poverty Agency and the transfer of the agency's employees, liabilities, property, and so on to the Minister for Social and Family Affairs.

***Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (Amendment) Regulations 2009***

**Number:** SI 243/2009

**Contents note:** Amends regulation 8 of the *Tobacco Products*

*(Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991* (SI 326/1991) by the deletion of subparagraph (b) of paragraph (2). The effect of this amendment is to prohibit the advertising of tobacco products internally in premises that are points of retail sale of tobacco products.

**Commencement date:** 1/7/2009

***Value-Added Tax (Amendment) Regulations 2009***

**Number:** SI 289/2009

**Contents note:** Insert a new regulation 33A into the *Value-Added Tax Regulations 2006* (SI

548/2006) to provide for the taxation of margin scheme services supplied by travel agents.

**Commencement date:** 1/1/2010

***Waste Management (Prohibition of Waste Disposal by Burning) Regulations 2009***

**Number:** SI 286/2009

**Contents note:** Make it an offence to burn waste, other than certain agricultural waste in certain circumstances.

**Commencement date:** 27/7/2009 **G**

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# Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

**In the matter of George Wright, a solicitor practising as Wright Solicitors, Mill Street, Monaghan, Co Monaghan, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts 1954-2008* [2642/DT24/08]**

**Law Society of Ireland  
(applicant)**

**George Wright  
(respondent solicitor)**

On 25 November 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant in a letter of 6 August 2002 to furnish sealed discharge as soon as possible after closing,
- b) Failed to honour an undertaking given to the complainant in a letter of 18 October 2002 to furnish sealed discharge of judgment mortgage,
- c) Failed to respond to the Society's letters of 5 October 2006, 19 October 2006, 6 November 2006, 4 December 2006, 8 January 2007, 18 January 2007, 7 March 2007, 30 March 2007 and 6 June 2007.

The tribunal ordered that the respondent solicitor:

- a) Do stand admonished and advised,
- b) Pay to the compensation fund the sum of €1,000 in respect of charge (a) above, €500 in respect of charge (b) above and €2,000 in respect of charge (c) above,

- c) Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court, in default of agreement.

**In the matter of Sean Allen, a solicitor formerly practising as Sean Allen & Company, Solicitors at 67 Pembroke Road, Dublin 4, and in the matter of the *Solicitors Acts 1954-2008* [4212/DT73/08]**

**Law Society of Ireland  
(applicant)**

**Sean Allen  
(respondent solicitor)**

On 26 February 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Delayed in the administration of an estate following the death of a named person on 22 November 2000,
- b) Failed to respond to the Society's correspondence in the investigation of the complaint and, in particular, the Society's letters dated 1 November 2002, 28 November 2002, 16 December 2002, 13 January 2003, 30 January 2003, 12 February 2003, 10 March 2003, 4 March 2004, 24 March 2004, 22 June 2004, 2 July 2004, 8 September 2004, 7 October 2004, 18 October 2004, 15 November 2004, 15 July 2005, 27 July 2005, 24 August 2005, 6 September 2005, 23 September 2005, 17 October 2005 and 28 October 2005.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay the whole of the costs of the Law Society of Ireland as

taxed by a taxing master of the High Court in default of agreement.

**In the matter of Jacqueline M Durcan, a solicitor practising as Durcans Solicitors at 1 Hazel Grove, Spencer Park, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954-2008* [7083/DT84/08]**

**Law Society of Ireland  
(applicant)**

**Jacqueline M Durcan  
(respondent solicitor)**

On 26 February 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Failed to finalise the administration of the estate of a named deceased, who died on 22 March 2002, in a timely manner or at all,
- b) Deducted fees in relation to the administration of the estate in the sum of €6,000 plus VAT without the issue of a bill of costs at the time of the deduction and without advising the executrix that this deduction had been made,
- c) Deducted fees in relation to a named sale in or around May 2003 without the issue of a bill of costs and without advising the executrix that this deduction had been made,
- d) Deducted fees in relation to another named sale in or around 2002 without providing a bill of costs and without informing the executrix that this deduction had been made,
- e) Failed to comply with her undertaking at the meeting of the Complaints and Client

Relations Committee on 1 February 2006 to furnish an up-to-date account where fees had been drawn and a full statement of account and a bill of costs in respect of each account in relation to the matters and copies of such correspondence, to be furnished to the Society within 14 days,

- f) Failed to comply with the direction made at the Complaints and Client Relations Committee's meeting on 20 September 2006 in a timely manner or at all,
- g) Failed to deal with correspondence from the Society in a timely manner or at all and, in particular, failed to reply to the following letters from the Society: 27 June 2005, 25 July 2005, 26 August 2005, 26 September 2005, 12 October 2005, 26 October 2005, 2 February 2006, 3 April 2006, 10 April 2006, 28 April 2006, 16 May 2006, 19 May 2006, 17 July 2006, 22 August 2006, 7 September 2006, 16 January 2007, 16 February 2007, 1 March 2007, 9 March 2007, 21 March 2007 and 3 April 2007.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €5,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court, in default of agreement.

**In the matter of Patrick Gillespie, a solicitor formerly practising as P Gillespie & Company, Solicitors, at Bury**



**Street, Ballina, Co Mayo, and in the matter of the Solicitors Acts 1954-2008 [6919/DT108/08]**

**Law Society of Ireland (applicant)**

**Patrick Gillespie (respondent solicitor)**

On 26 February 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to issue proceedings on behalf of his client, notwithstanding having instructions to do so in 1997, and thereby allowed his client's case to become statute barred,
- b) Failed to inform his client of the correct position regarding her case and led her to believe that the matter was progressing when no proceedings had been issued at all,
- c) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 31 March 2008, 16 April 2008, 29 April 2008, 15 May 2008 and 17 June 2008,
- d) Failed to comply with a notice served pursuant to section 10 of the *Solicitors (Amendment) Act 1994* and dated 31 March 2008 in a timely manner, having only complied with same on 23 July 2008.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €2,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

**In the matter of Niall O'Kelly, a solicitor previously practising as Niall O'Kelly, Solicitor, 52 Fortfield Park, Terenure, Dublin 6W, and in the matter of the Solicitors Acts 1954-2008**

**Law Society of Ireland (applicant)**

**Niall O'Kelly (respondent solicitor)**

**5202/DT82/08**

On 5 March 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking furnished on 3 April 1995 in a timely manner and, in particular, failed to register the deed of transfer and conveyance of the common areas to the management company in a timely manner and failed to furnish proof in relation to the acquisition of a freehold interest in a named property in Werburgh Street in a timely manner,
- b) Failed to reply to the Society's correspondence and, in particular, to the Society's letters of 20 September 2007, 4 October 2007, 16 October 2007, 31 October 2007, 7 December 2007, 28 January 2008, 7 February 2008, 23 April 2008 and 19 May 2008,
- c) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting on 14 May 2008 that the solicitor furnish an updated progress report on or before 11 June 2008.

**5202/DT83/08**

On 5 March 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 1 June 2001 given on behalf of his former clients to a named financial institution in a timely manner,
- b) Failed to respond to the Society's letter of 8 April 2008,
- c) Failed to furnish a progress report to the Society, as re-

quested, by 14 April 2008 in advance of the committee meeting on 14 May 2008.

**5202/DT81/08**

On 5 March 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 10 January 1995 to furnish a certified copy deed of assurance of the common areas to the management company duly stamped and registered in a timely manner,
- b) Failed to respond to correspondence from the Society in relation to the investigation of the complaint and, in particular, to the following letters: 13 November 2006, 14 December 2006, 21 December 2006, 1 June 2007, 25 June 2007, 13 July 2007, 30 July 2007, 17 August 2007, 4 September 2007, 27 September 2007, 5 October 2007, 29 November 2007, 12 December 2007, 21 December 2007, 28 January 2008, 25 February 2008, 6 March 2008, 7 April 2008, 26 May 2008 and 5 June 2008,
- c) Furnished a stamped deed dated 28 October 1999 to the Society on 14 May 2008, which was different from the deed of the same date furnished to the Society on 11 January 2007, and failed to explain to the Society why the two documents were different.

Having made the findings of misconduct against the solicitor in the three matters on 5 March 2009, the disciplinary tribunal ordered the Society to bring the findings to the High Court.

On 25 May 2009, in proceedings entitled '2009 no 58SA', the President of the High Court followed the recommendations of the tribunal and ordered that:

- a) The respondent solicitor should not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as a solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- b) The respondent solicitor pay the whole of the costs of the Law Society of Ireland in respect of the proceedings herein, to be taxed by a taxing master of the High Court in default of agreement,
- c) The respondent solicitor pay the outstanding costs due to the Law Society of Ireland on foot of the order of the tribunal made on 7 December 2006,
- d) The respondent solicitor pay the sum of €750 plus VAT in respect of legal fees due and owing to a named solicitor.

**In the matter of Michael Kieran Griffin, a solicitor of Kieran Griffin & Company, Exchange House, Ballincollig, Co Cork, and in the matter of the Solicitors Acts 1954-2002 [10174/DT60/08]**  
**Law Society of Ireland (applicant)**  
**Michael Kieran Griffin (respondent solicitor)**

On 30 April 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Allowed a deficit of €134,500 of client funds as of 31 March 2008,
- b) Misapplied stamp duty of €134,500, which was given to the solicitor for the purposes of stamping the purchase of a named property in Ballincollig, Co Cork.

The tribunal ordered that the respondent solicitor do stand admonished.

**In the matter of Gabriel A Toolan, a solicitor carrying on practice as Walter P Toolan & Sons, Solicitors, at Ballinamore, Co Leitrim, and in the matter of the Solicitors Acts 1954-2008 [5821/DT08/09]**

**Law Society of Ireland**  
(applicant)  
**Gabriel A Toolan**  
(respondent solicitor)

On 19 May 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

- a) Delayed in paying stamp duty in respect of a number of purchases set out in the investigation report dated 18 April 2008 and only paid same and interest and penalties when the matter was brought to the solicitor's attention,
- b) Updated the transfer documentation in respect of a number of purchases where there had been a delay in

paying stamp duty and to pay the correct stamp duty until such time as the matter was brought to the solicitor's attention following the investigation,

- c) Acted for a developer and a purchaser in a number of transactions in breach of section 4(a) of SI no 85/1997, *Solicitors (Professional Practice Conduct and Discipline) Regulations 1997*,
- d) Transferred fees to the office account from monies held in trust and in one instance transferred fees in a probate file, where there was no authority to transfer fees,
- e) Backdated two letters, one in April 2004 and one in April 2005, the letters having been created in March 2008,
- f) Altered the date in an auctioneer's letter from 14 November 2005 to 27 April 2007.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €15,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court, in default of agreement.

**In the matter of James O'Mahony, a solicitor practising under the style and title of James O'Mahony, Solicitor, at 16 Stoneybatter, Dublin 7, and in the matter of the Solicitors Acts 1954-2008 [4831/DT15/09]**

**Law Society of Ireland**  
(applicant)  
**James O'Mahony**  
(respondent solicitor)

On 30 June 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with a letter of undertaking, given to IIB Homeloans on behalf of

his named client on 8 April 1999, to return registered title deeds in a timely manner or at all,

- b) Acted on behalf of his client and his client's parents without advising either party to get independent legal advice,
- c) Acted in the inter-family transfer without ever meeting or taking instructions from his client's parents, who were transferring their interest to their son,
- d) Failed to respond to the Society's letter of 12 June 2008 in a timely manner.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €2,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland or any person appearing before them as taxed by a taxing master of the High Court in default of agreement. **G**

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# firstlaw update

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

## CRIMINAL

### Evidence

*Forensic evidence – admissibility – statutory interpretation – principles to be applied – extent to which common law powers affected by introduction of statutory powers in same field – whether legislative scheme established for taking of bodily samples mandatory – whether effect of legislative scheme is to deprive gardaí of facility at common law of taking forensic samples on consent – whether bodily samples lawfully entered into evidence – Criminal Justice (Forensic Evidence) Act 1990, section 2.*

Section 2 of the *Criminal Justice (Forensic Evidence) Act 1990* gives power to the gardaí to take bodily samples from a person in custody for the purposes of forensic analysis. Section 2(11) provides that “the powers conferred by this section are without prejudice to any other powers exercisable by a member of the Garda Síochána”. While the defendant was in lawful custody pursuant to section 4 of the *Criminal Justice Act 1984*, blood samples were taken by gardaí from him on a voluntary basis, which laid the foundation for incriminating DNA evidence used in his conviction for rape. The gardaí did not follow the procedures set out in the 1990 act, but rather obtained the sample on a voluntary basis from the defendant, as they had been entitled to do pursuant to common law. The Court of Criminal Appeal dismissed the defendant's application for leave to appeal, but granted a certificate pursuant to section 29 of the *Courts of Justice Act 1924* on the question of whether it was lawful for a garda, when taking a sample of blood from a per-

son in custody who voluntarily agreed to provide that sample for the purpose of forensic analysis, to do so without having invoked the provisions of section 2 of the *Criminal Justice (Forensic Evidence) Act 1990*.

The Supreme Court dismissed the appeal, holding that the Garda Síochána had the power at common law to take samples for forensic testing where that was done on the basis of a free and voluntary consent of the person detained. Denham J held that the powers conferred by section 2 of the *Criminal Justice (Forensic Evidence) Act 1990* referred to the power to take or cause to be taken samples within a statutory scheme and were without prejudice to any other powers exercisable by a member of the Garda Síochána. Finnegan J held that, in construing the 1990 act, regard should be had to existing state of the law and the object and intent of the act. Accepting that the act was penal, section 2(11) did not admit of two reasonable constructions so that the more lenient should be preferred. There was nothing in section 2 to suggest a construction that would exclude the preservation of common law powers, and it was in accordance with the ordinary usage of the English language to treat section 2(1) of the 1990 act as conferring a power on the Garda Síochána to take bodily samples on consent. Fennelly J dissented, holding that the gardaí were not entitled to take the blood sample without following the procedures laid down by the 1990 act and that the DNA was, accordingly, taken unlawfully.

**DPP (respondent) v Boyce (appellant), Supreme Court, 18/11/2008 [FL15973]**

## EMPLOYMENT

### Unfair dismissal

*Interlocutory injunction – employment contract – redundancy – plea that no genuine redundancy – plea of unfair selection for redundancy – whether remedies of wrongful dismissal and unfair dismissal mutually exclusive – whether injunctive relief available in support of claim of unfair dismissal.*

The plaintiff sought an interlocutory injunction restraining the defendant from giving effect to his purported dismissal by reason of redundancy and requiring the defendant to continue to pay his salary pending the trial of his claim for wrongful dismissal. He contended that a genuine redundancy did not exist and, in the alternative, that he had been unfairly selected for redundancy by the defendant. The defendant contended that the claim could not be litigated in a common law action for wrongful dismissal, as the appropriate procedure was to bring a claim for unfair dismissal before the Employment Appeals Tribunal.

Ms Justice Laffoy refused the relief sought, holding that, in order to obtain an interlocutory injunction, the plaintiff had to show a strong case that he was likely to succeed at the hearing of the action. A common law claim for wrongful dismissal and a statutory claim for unfair dismissal were mutually exclusive. The Oireachtas, in enacting the *Unfair Dismissals Acts* and in introducing the concept of unfair dismissal, provided for specific remedies for unfair dismissal and specific procedures for obtaining such remedies in alternative forums. For the common law courts to expand their

common law jurisdiction in parallel to the statutory code in relation to unfair dismissal and redundancy would end up supplanting the code. Accordingly, as the plaintiff could not succeed in his common law action, where the allegation was that he had been unfairly selected for redundancy and/or that no genuine redundancy had existed in the first place, he was unable to show a strong case that he was likely to succeed at the hearing of the action.

**Nolan (plaintiff) v Emo Oil Services Ltd (defendant), High Court, 21/1/2009 [FL16170]**

## IMMIGRATION AND ASYLUM

### Judicial review

*Leave – deportation – subsidiary protection – Nigeria – Uner v Netherlands – Illegal Immigrants Trafficking Act 2000 – article 8 ECHR.*

The applicants sought leave to judicially review the decision of the minister to deport them and to refuse to grant them subsidiary protection. The applicants alleged that the decision of the minister to deport the applicant mother and her children was in breach of article 8 of the ECHR and failed to take into account the interests of the minors by failing to guarantee that the applicant mother and children would not be separated.

Hedigan J held that the minister did take the best interests of the children into account before making the deportation order. Although there may have been a genuine and subjective basis to the fear, it was not well founded and was based upon speculation. While deportation orders had been made as



to each of the applicants, it was appropriate to proceed on the assumption that the state would not seek to split up the family union. The applicants had not established substantial grounds and leave would be refused.

**B(P)(applicant) v F(P) (respondent), High Court, 4/12/2008** [FL16159]

## LANDLORD AND TENANT

### Arbitration

*Contract law – Master of the High Court – rent review – upwards only – interpretation – contractual terms – fair deal – public policy – appointment of arbitrator – Arbitration Acts 1954-1998.*

The plaintiffs sought to apply for the appointment of an arbitrator to conduct a rent review with regard to commercial premises that the defendants held from the plaintiffs on foot of a lease. The 35-year lease contained rent review provisions every five years on the basis of an upwards-only clause. The defendant lessees refused, in 2008, to concur with the appointment of an arbitrator to conduct a rent review. The defendants argued that the appointment of an arbitrator was premature and that the court had to clarify the parameters of the task to be engaged in before the appointment of any arbitrator.

The Master of the High Court held that, in times of recession, an upwards-only review clause entailed that the usual comparators employed had to be disregarded. Rent review clauses had to be read

closely and carefully considered. The most reasonable interpretation contended for had to be employed. There was a judicial willingness to infer terms to preserve the contractual essence. It was not necessary to rule on the assertion that the clause was ambiguous. The defendants had to make their case to the court assigned. Fair rents were a public policy objective, and the goal of economic recovery was an important one.

**Kidney and Mcnaivie (plaintiffs) v Charlton and Charlton (defendants), Master's Court, 22/1/2009** [FL16097]

## PLANNING AND DEVELOPMENT

### Quarry

*Section 160 – use – unauthorised – works – intensification – complaints – mala fides.*

The respondent was the owner and operator of a quarry, and the applicant contended that there had been unauthorised development on the respondent's lands. An order was sought pursuant to section 160 of the *Planning and Development Act 2000* to, *inter alia*, restrain the respondent from carrying on further unauthorised development or from carrying out any intensification. Numerous complaints had been received from local residents about the operation of the quarry and the intensity of the quarrying operations, hours, dust, noise and explosions. The issue arose as to whether the activities carried out amounted to intensification and required planning permission or whether

they were merely a continuation of the works at the operation since 1964.

Hedigan J held that the court had a wide discretion under section 160 and, in light of the *mala fides* of the respondent, the court was satisfied that it was justified in exercising its discretion under section 160. Unauthorised development had taken place.

**Meath County Council (applicant) v Shiels (respondent), High Court, 13/11/2008** [FL15972]

## TORT

### Practice and procedure

*Professional negligence – legal professional privilege – fraud and illegality – settlement – procurement of false evidence – whether privilege could be used to cover up crime or fraud.*

An appeal lay from a judgment of the High Court refusing an application by the appellant for inspection of documents discovered in the second part of the first schedule of discovery, over which legal professional privilege was claimed. The litigation related to a long-running saga between the plaintiff and various legal representatives. The appellant failed in an action against his former solicitor and his former counsel. The appellant had alleged that an agreement had been reached to procure the giving of false evidence against him and that the defendant had improperly sought to influence the outcome of a negligence action in respect of evidence as to an er-

ror in a settlement document. The High Court held that no basis for fraud or illegality had been established.

The Supreme Court (per Macken J, Kearns J concurring, Fennelly J dissenting) held that the allegation made, on its face, was a very serious one. It would be injurious to the interests of justice to permit legal professional privilege to be applied in such circumstances so as to prevent proper disclosure. It was not appropriate that the entire schedule of the documents should be disclosed. It would be premature to consider the position until the court had reviewed the documents. No estoppel arose having regard to the circumstances of the proceedings. The court would be furnished with documents to decide which ones would be appropriate to be disclosed, considering: (a) documents generated at a date approximating the making of a particular document (no 174), (b) documents generated immediately before or during the High Court hearing, and (c) documents reviewed by the High Court judge. Fennelly J (dissenting): the appellant had not been able to invoke relevant evidence to support the assertions made. The appeal would be dismissed.

**McMullen (plaintiff/appellant) v Kennedy (defendant/respondent), Supreme Court, 17/12/2008** [FL15989] **G**

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## CONSULTATION ROOM SUMMER CLOSURE



The Courts are closed from 31 July 2009 to 5 October 2009 and the Four Courts consultation rooms will be closed from 31 July 2009 until 15 September 2009. As an alternative, there are consultation rooms available at the Law Society, Blackhall Place or the Disciplinary Tribunal, Bow Street Friary.

- Blackhall Place: Rooms are €50 per hour, Council Chamber €75 per hour.
- Bow Street: Rooms are €35 per hour. €170 per day.

For further information please call the Law Society on 01 672 4800 or Bow Street on 01 672 4866.



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

## Lisbon II – what's changed?

On 2 October, Ireland will vote again on the *Lisbon Treaty*. While the text of the treaty itself remains the same, the debate will take place in a different framework to last year, as a result of the highly significant judgment of the German Constitutional Court on the treaty and the guarantees negotiated by Ireland.

It is worth recalling the background to the *Lisbon Treaty*. In 2001, EU member states agreed that significant treaty reform was required to adapt the EU as a result of its increase in size (from six to, currently, 27 member states) and to allow it be a more effective actor internationally. Following several years of negotiation, the reforms were agreed under Ireland's presidency of the EU in 2004 and were included in the *Treaty on the Constitution of Europe*. The rejection of the 'constitution' by French and Dutch voters prompted leaders to abandon it. In 2007, leaders agreed the *Lisbon Treaty*, which introduced the agreed reforms, but not the constitutional provisions that had proven unpopular.

### Decision of the German Constitutional Court

In June 2009, the German Federal Constitutional Court (the Bundesverfassungsgericht) handed down its judgment on the *Lisbon Treaty*. A number of plaintiffs had challenged the compatibility of the treaty with the German constitution, alleging that the treaty would change the constitutional order of Europe.



Clarifications say that *Lisbon* will not lead to the creation of an EU army

In a detailed judgment, the German court decided that this is not the case. It held that, if the *Lisbon Treaty* comes into force, the EU will remain an association of states and that the member states will remain the "masters of the treaties". In doing so, the court stated that the *Lisbon Treaty* has "decided against the concept of a European federal constitution" and that the conferral of legal personality on the EU by *Lisbon* does not change this analysis.

The court also addressed a number of other points raised in relation to the future status of the EU. It held that declaration 17 to the *Lisbon Treaty* on the primacy of EU law merely restates the existing position on the primacy of EC law as set out by the European Court of Justice in the *Costa v ENEL* case in 1964 and does not extend this principle. It also held that the additions to the concept of EU citizenship contained in *Lisbon* do not create an alternative to citizenship of member states. Finally, the court

concluded that *Lisbon* is not a "self-amending treaty" and that the EU cannot expand its own competences, as this remains a matter for member states.

The judgment therefore clarifies that *Lisbon* will not change the constitutional order of the EU and that, post-*Lisbon*, the EU would retain its existing status as an association of member states with supranational characteristics.

### Guarantees

Following the 2008 referendum, the government commissioned a survey on peoples' concerns about the treaty. The results demonstrated that these focused on the reduction in size of the EU Commission and a number of concerns arising from the text of *Lisbon* itself.

Arising from this, in June 2009, the EU member states agreed a number of texts, which include a decision by member states clarifying that *Lisbon* and the *Charter of Fundamental Rights* will not affect the provisions in *Bunreacht na hÉireann*

on the rights to life, family and education and that *Lisbon* will not affect EU competence in relation to taxation, Ireland's neutrality or lead to the creation of an EU army.

The decision is a legally binding agreement that will be registered with the United Nations as a treaty, in accordance with article 102 of the *UN Charter*. This procedure was used for the *Maastricht* guarantees given to Denmark in 1992. The decision will be appended to the EU treaties on the next occasion that they are amended – likely to be when either Croatia or Iceland joins the EU. In the meantime, the member states and the European institutions are obliged by international law to respect the decision.

In addition, it was agreed that the European Commission will continue to include one national of each member state if *Lisbon* enters into force.

### Changes envisaged by *Lisbon*

*Lisbon* amends the existing EU and EC treaties in order to im-



prove the workings of the EU and to enhance cooperation in some areas. From a solicitor's perspective, one change of interest will be that the current *EC Treaty* will be renamed the *Treaty on the Functioning of the EU* (or the TFEU), as the distinction between the 'EC' and the 'EU' will be dropped and, after *Lisbon*, only one entity – the EU – will exist.

Perhaps the change of most significance is the reform of the legislative process, which will mean changes to the voting system in the Council of Ministers and to the role of the European Parliament.

The use of qualified majority voting in the Council of Ministers will be extended, and it will also change to a new system where a dual majority of 65% of the EU population and 55% of EU member states will be required to pass votes. Under the new system, Ireland's population weight will be smaller than is currently the case; nevertheless, the requirement for a majority of member states is designed to protect the position of small countries. Member states also

retain vetoes on key issues such as taxation, external policy and defence.

The changes to the council's procedures are balanced by the extension of the co-decision procedure. This becomes the ordinary legislative procedure, giving the European Parliament equal power to the member states when deciding on legislation. This marks a sea change for the parliament, which originally had few powers. A further democratic balance is also introduced by extending the supervisory role of national parliaments and providing them with an opportunity to object to legislative proposals.

*Lisbon* also formalises the European Council (which currently operates on an informal basis) as an EU institution. The rotation of the post of president of the European Council will cease and the position will be held for terms of two-and-a-half years. The post of High Representative for Foreign Affairs and Security Policy is also new and is a development on the role currently undertaken by Javier Solana in order to bet-

ter coordinate the work of the council and the commission on foreign-policy issues.

### Policy changes

*Lisbon* makes a relatively small number of changes to the policy areas of the EU. The question as to whether these involve an increase in the existing competences of the EU was considered in Denmark last year, as the Danish constitution is similar to Ireland's in that it requires a referendum if the competences of the EU are to be increased. The report by the Danish ministry for justice concluded that *Lisbon* does not increase the EU's competences. The Czech Constitutional Court reached the same conclusion in its judgment on the treaty in November 2008.

The changes envisaged by *Lisbon* include bringing the provisions on freedom, security and justice regarding transborder crime under the normal EU legislative procedure. However, Ireland is initially opting out of these provisions.

*Lisbon* also enhances the EU's ability to act internationally, in particular by creating the new

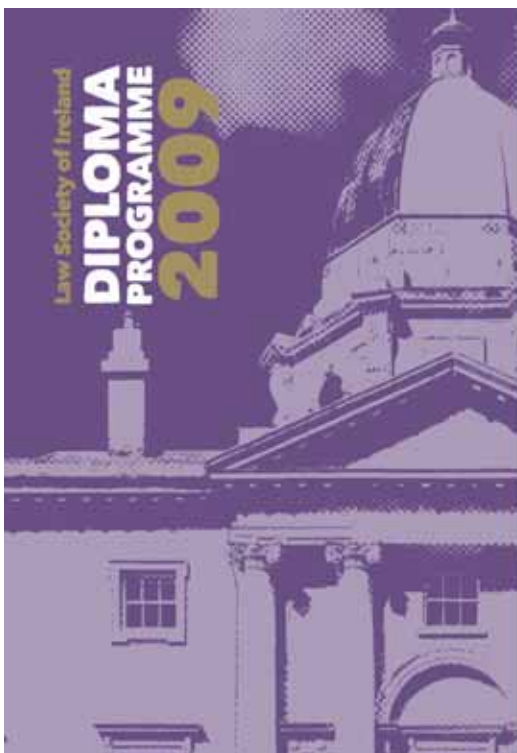
role of High Representative referred to above. New provisions on energy and climate change clarify the EU's mandate to tackle these important issues. The *EU Charter of Fundamental Rights* is also incorporated into EU law.

The existing provisions in the *EU Treaty* on defence are expanded upon, but they remain subject to intergovernmental cooperation and outside the normal EU system.

In addition to the guarantees discussed above, *Lisbon* specifically states that national security remains the sole responsibility of member states and recognises that the neutrality of member states will not be compromised.

As the *Lisbon Treaty* looks certain to be ratified by the other 26 member states of the EU, all eyes will be on Ireland's forthcoming referendum. It is incumbent on all of us to ensure that we are fully informed before we vote on 2 October 2009. **G**

*David Geary is chairman of the EU and International Affairs Committee of the Law Society.*



### Diploma Programme Autumn 2009

The Diploma Team is delighted to announce an expanded and diverse portfolio of courses for our Autumn 2009 Programme. In total there are fourteen courses on offer, which includes the launch of three new diplomas, namely our Diploma in Insolvency & Corporate Restructuring, our Diploma in Civil Litigation and our Diploma in Intellectual Property & Information Technology Law. In addition, we will also run three new certificates as part of our Autumn 2009 Programme, a Human Rights course and two certificates in Cork, a Taxation course and a Litigation course.

#### Our full Autumn 2009 Programme is as follows:

• Diploma in Trust & Estate Planning	23 September
• Cert. in Criminal Litigation and Procedure	26 September
• Diploma in Finance Law	29 September
• Diploma in Family Law	03 October
• Dip. Insolvency & Corporate Restructuring	08 October
• Diploma in Civil Litigation	10 October
• Dip. Intellectual Property & Information Technology Law	20 October
• Certificate in Human Rights	10 October
• Critical Legal Issues in Recessionary Times	13 October
• Certificate in Judicial Review	17 October
• Certificate in Litigation (Cork)	16 September
• Certificate in Taxation (Cork)	22 September
• Diploma in Legal French	14 October
• Certificate in Legal German	22 September

Full details of the above courses are available on the web [www.lawsociety.ie/diplomaprogramme](http://www.lawsociety.ie/diplomaprogramme) or by contacting a member of the Diploma Team at [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie) or Tel. 01 672 4802.



## Recent developments in European law

### DATA PROTECTION

Case C-73/07, *Tietosujvaltuutetu v Satakunnan Markkinopörssi Oy and Others*, 16 December 2008. Markkinopörssi is a company that, for several years, collected public data from the Finnish tax authorities for the purpose of publishing extracts from that data in the regional editions of a Finnish newspaper each year. The information published was the surname and given name of approximately 1.2 million persons whose income exceeds certain thresholds, as well as the amount, to the nearest €100, of their income and details of the wealth tax levied on them. This information is set out in the form of an alphabetical list and organised according to municipality and income bracket. The respondents signed an agreement with a mobile telephone company that put in place a text messaging service allow-

ing mobile telephone users to receive information published in the newspaper on their telephone for a charge. On request, personal data is removed from that service. Individuals complained, alleging infringement of their right to privacy. The Data Protection Ombudsman applied for an order prohibiting the respondents from carrying on the personal data processing activities at issue. The Finnish Supreme Administrative Court asked the ECJ to rule on the correct interpretation of the *Data Protection Directive*. The referring court wished to know in which circumstances the activity in question can be considered as data processing undertaken solely for journalistic purposes and thus the subject of derogations and limitations. The ECJ held that the activities of the respondents constitute data processing within the meaning of the directive, even though the files that are used comprise only information that

has already been published in the media. The court noted that, if it was to hold otherwise, the directive would be largely deprived of its effect. It would be sufficient for the member states to publish data in order for that data to cease to enjoy the protection afforded by the directive. Member states should permit the free flow of personal data, but also respect the fundamental rights and freedoms of natural persons and, in particular, their right to privacy with respect to the processing of data. To reconcile the protection of privacy and the right to freedom of expression, member states are required to provide for a number of derogations or limitations in respect of the protection of data. These derogations must be made solely for journalistic purposes or for the purpose of artistic or literary expression. In order to take account of the importance of the right to freedom of expression, it is necessary to interpret notions

relating to that freedom, such as journalism, broadly. The protection of the fundamental right to privacy requires that the derogations and limitations in relation to the protection of data must apply only insofar as is strictly necessary. The court considered that activities such as those carried on by the respondents, and which concern data from documents that are in the public domain under national legislation, can be classified as "journalistic activities" if their objective is the disclosure to the public of information, opinions or ideas, irrespective of the medium that is used to transmit them. They are not limited to media undertakings and may be undertaken for profit-making purposes. It is for the Finnish Supreme Administrative Court to decide whether the activities at issue have as their sole object the disclosure to the public of information, opinions or ideas. **G**



## THE LAW SOCIETY'S *Law Society of Ireland* TRIBUNAL AND ARBITRATION CENTRE

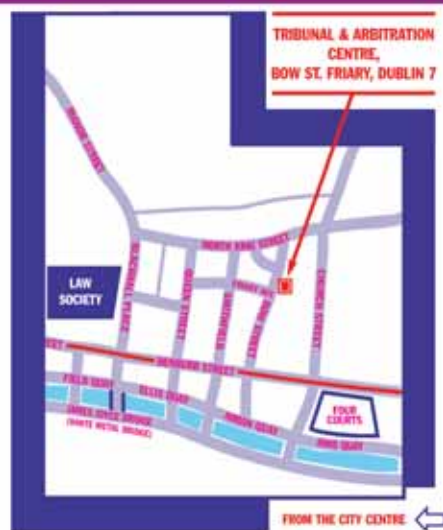
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## LOST LAND CERTIFICATES

### 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 28 August 2009)

Regd owner: Carlow Town Council; folio: 9442F (part 8810); lands: townland of Carlow and barony of Carlow; **Co Carlow**

Regd owner: Francis Aidan Cassidy, Cullighan, Belturbet, Co Cavan; folio: 792; lands: Cuillaghan; **Co Cavan**

Regd owner: Michael J Smith, Drumhirk, Cootehill, Co Cavan; folio: 6421; lands: Drummury; **Co Cavan**

Regd owner: Jackie Crowe; folio: 41261F; lands: Ennistimon and barony of Corcomroe; **Co Clare**

Regd owner: Robert Johnston; folio: 3952F; lands: townland of Quilty East and barony of Ibrickan; **Co Clare**

Regd owner: Gerard Leydon and Maura Leydon, 11 Steeles Terrace, Ennis, Co Clare; folio: 14133F; lands: townland of Lifford and barony of Islands; **Co Clare**

Regd owner: Michael O'Dea (deceased), Clarefield, Kilkee, Co Clare; folio: 10879; lands: townland of Clarefield and Lisheenfurrow and barony of Moyarta; **Co Clare**

Regd owner: Dermot Kelly and Breda Kelly; folio: 6560F; lands: townland of Attycristora and barony of Corcomroe; **Co Clare**

Regd owner: William and Mary Delaney; folio: 26889; lands: townland of Ballynacragga and barony of Bunratty Lower; **Co Clare**

Regd owner: Patrick J Connolly; folio: 27018; lands: townland of Ballybeg and barony of Islands; **Co Clare**

Regd owner: James Naughton; folio: 9462; lands: townland of Leaghorth Beg and barony of Tulla Upper; **Co Clare**

# LAW SOCIETY Gazette PROFESSIONAL NOTICE RATES

## RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- Lost land certificates – €144.50 (incl VAT at 21.5%)
- Wills – €144.50 (incl VAT at 21.5%)
- Title deeds – €144.50 per deed (incl VAT at 21.5%)
- Employment/miscellaneous – €144.50 (incl VAT at 21.5%)

These rates will apply from January 2009 until further notice

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for October *Gazette*: 16 September 2009. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

Regd owner: John Linehan; folio: 15484; lands: the property situate in the townland of Lackendarragh and barony of Duhallow and in the county of Cork; **Co Cork**

Regd owner: Seamus O'Connell; folio: 33121; lands: townland of Skanagh South and barony of Barrymore and in the county of Cork; **Co Cork**

Regd owner: Patrick Deasy; folio: 58672; lands: property situate in the townland of Knockaphonery and barony of Ibane and Barryroe and in the county of Cork; **Co Cork**

Regd owner: Michael Cotter; folio: 21469; lands: property situate in the townland of Deshure and barony of Muskerry West in the county of Cork; **Co Cork**

Regd owner: Kathleen Cashman; folio: 115790F; lands: property situate in the townland of Castletreasure and barony of Cork; **Co Cork**

Regd owner: John Brosnan; folio: 509F; lands: property situate in the townland of Rockspring and barony of Orrery and Kilmore in the county of Cork; **Co Cork**

Regd owner: Community Housing Cooperative Cork Society Ireland; folio: 23720; lands: property situate to the south side of Wellington Square and in the county borough of Cork; **Co Cork**

Regd owner: James Ward, Coastguard Station, Malin Head, Co Donegal; folio: 32634F; lands: Ardmalin; **Co Donegal**

Regd owner: Austin Cuffe and Catherine Cuffe; folio: 57166F; lands: townland of Clondalkin and barony of Uppercross; **Co Dublin**

Regd owner: Martin Duffy and Aine Duffy, 31 Beaverbrook, Donabate, Co Dublin; folio: 140156F; lands: townland of Beaverstown and barony of Nethercross; **Co Dublin**

Regd owner: Roderick Geraghty; folio: 81361F; lands: property situate to the south of St Pappin's Road in the parish of Glasnevin and district of Glasnevin North; **Co Dublin**

Regd owner: Christopher Hill, 30 Oak Green, Royal Oak, Santry, Dublin 9; folio: 63954F; lands: townland of Santry and barony of Coolock; **Co Dublin**

Regd owner: Iris Kennedy and Jamie Da Silva Portal Cardoso; folio: 127917F; lands: townland of Corduff and barony of Castleknock; **Co Dublin**

Regd owner: Martin Wall, St Ita's Hospital, Portrane, Donabate, Co Dublin; folio: 32676F; lands: a plot of ground situated to the west of Post Office Lane in the town of Rush and parish of Lusk; **Co Dublin**

Regd owner: Victor and Kathleen Grattan, 54 Broadford Close, Ballinteer, Dublin 16; folio: 58265F; lands: townland of Ballinteer and barony of Rathdown; **Co Dublin**

Regd owner: Noel and Elizabeth Cassidy; folio: 16502L; lands: townland of Yellow Walls and Coolock; **Co Dublin**

Regd owner: Turlough O'Sullivan (tenant-in-common of one undivided one-third share); folio: 58057F; lands: townland of Crooksling and barony of Newcastle; **Co Dublin**

Regd owner: Winifred Burke; folio: 5686; lands: a plot of ground situ-

ate in the parish of Crumlin and district of Crumlin; **Co Dublin**

Regd owner: Nora Kennedy (deceased); folio: 21F; lands: townland of Kilgobbin and barony of Rathdown; **Co Dublin**

Regd owner: Charles Francis McGovern (deceased), 46 Jamestown Road, Inchicore, Dublin; folio: 2845L; lands: townland of Jamestown and barony of Uppercross; **Co Dublin**

Regd owner: Catherine Molloy; folio: 17768F; lands: townland of Templeogue and barony of Uppercross; **Co Dublin**

Regd owner: Augustine Burke (deceased); Moyglass, Kylebrack, Loughrea, Co Galway; folio: 32532; lands: townland of Moyglass and barony of Leitrim; area: 0.0449; **Co Galway**

Regd owner: Patrick Curran (deceased), Barraghbaun South, Ballinahown, Co Galway; folio: 41666F; lands: townland of Barraghbaun South and barony of Moycullen; **Co Galway**

Regd owner: Kevin Gill (deceased) and Enda Gill; folio: 31955F; lands: townland of Killeany and barony of Aran; **Co Galway**

Regd owner: Martin Halloran (deceased); folio: 38653F; lands: townland of Corranellistram and barony of Moycullen; area: 0.061 hectares; **Co Galway**

Regd owner: Brendan Kelly and Michael Kelly, Poolboy, Ballinasloe, Co Galway; folio: 49451F; lands: townland of Pollboy and barony of Clonmacnawen; area: 0.043 hectares; **Co Galway**

Regd owner: Paul Lynch; folio:

42290F; lands: townland of Lisheenaguille and barony of Longford; **Co Galway**  
 Regd owner: Luke Murphy (deceased); Galway Road, Tuam, Co Galway; folio: 26598; lands: townland of Killaloonty and barony of Clare; **Co Galway**  
 Regd owner: Patrick Walsh and Patricia Walsh (both deceased) and Dolores Walsh, Bushypark, Galway; folio: 4055F; lands: townland of Ballagh and barony of Galway; **Co Galway**  
 Regd owner: Peter Ffrench; folio: 36524; lands: townland of Castle Ffrench, Cornananta Beg and barony of Kilconnell, Killian; **Co Galway**  
 Regd owner: Brigid Curran; folio: 25517; lands: townland of Pooleeny and barony of Furbo; **Co Galway**  
 Regd owner: Thomas Roche, Gurteen, Ballinasloe, Co Galway; folio: 8869; lands: townland of Garrymore and barony of Kilconnell; area: 10.1045 hectares; **Co Galway**  
 Regd owner: Thomas O'Donnell (deceased); folio: 40255; lands: property situate in the townland of Roundstone, Errisbeg East, Letterdiffe and barony of Ballynahinch; **Co Galway**  
 Regd owner: John Paul Connolly; folio: 23905; lands: townland of Ballyconry and barony of Iraghticonnor; **Co Kerry**  
 Regd owner: Michael Byrne; folio: 325F; lands: townland of Tullig and barony of Clanmaurice; **Co Kerry**  
 Regd owner: Josephine Griffin; folio: 6486F; lands: townland of Banoge South and barony of Corkaguiny; **Co Kerry**  
 Regd owner: Frank McGillicuddy; folio: 21927F; lands: townland of Ownagarry and barony of Dunkerron North; **Co Kerry**  
 Regd owner: Edmond Godley; folio: 12607; lands: townland of Cloghane and barony of Clanmaurice in the county of Cork; **Co Kerry**  
 Regd owner: Julia Mahon (deceased); folio: 1377L; lands: townland of Naas West and barony of Naas North; **Co Kildare**  
 Regd owner: Kilkenny County Council; folio: 14717; lands: townland of Graiguenamanagh and barony of Gowran; **Co Kilkenny**  
 Regd owner: Geoffrey Armstrong and Caroline Browne, Donaghmore, Manorhamilton, Co Leitrim; folio: 6798F; lands: Donagh More; **Co Leitrim**  
 Regd owner: Padraig Farrell and Carol Farrell, 26 Drowes Close, Tullaghan, Co Leitrim; folio: 10107F; lands: Tullaghan; **Co Leitrim**  
 Regd owner: Joseph Lowe; folio: 1026F; lands: townland of Leitrim and barony of Leitrim; **Co Leitrim**  
 Regd owner: Patrick Coleman; folio: 29463F (part 10458); lands: Drominacreen and barony of Connello Upper; **Co Limerick**  
 Regd owner: Mosc Developments Limited; folio: 22345F and 24715F; lands: townland of Abbeyfeale West and barony of Glenquin; **Co Limerick**  
 Regd owner: Chris Ryan and Bridget Ryan; folio: 37701F; lands: townland of Coolalough and barony of Smallcounty; **Co Limerick**  
 Regd owner: William Curtin; folio: 25017F; lands: townland of Ballyvareen and barony of Kenry; **Co Limerick**  
 Regd owner: Philippa Westropp; folio: 4821F and 4827F; lands: Courtbrown and Ballycanauna and barony of Connello Lower and Kenry; **Co Limerick**  
 Regd owner: Madeline F Daly; folio: 26008; lands: townland of Milltown and barony of Clanwilliam; **Co Limerick**  
 Regd owner: Peter Keane; folio: 33487F; lands: townland of Gardenhill and barony of Clanwilliam; **Co Limerick**  
 Regd owner: Michael Geraghty, Polladoey, Aughnaciffe, Co Longford; folio: 9615; lands: Polladoey; **Co Longford**  
 Regd owner: Mary McGrath, Ballyknock, Kenagh, Co Longford; folio: 10195F; lands: Mosstown; **Co Longford**  
 Regd owner: Seamus Murphy, Monascribe, Kilcurry, Dundalk, Co Louth; folio: 12867; **Co Louth**  
 Regd owner: William Davitt (deceased); folio: 37340; lands: townland of Tonamace, Maccrump, Annagh, Ardowen and barony of Erris; **Co Mayo**  
 Regd owner: Frank Kenny, Thomas McLoughlin and Matthew Beckett; folio: 29293; lands: townland of Deerpark East and barony of Murrisk; area: 1.3683 hectares; **Co Mayo**  
 Regd owner: Sadie Monaghan; folio: 41329; lands: townland of Muings and barony of Erris; area: 7.7160 hectares; **Co Mayo**  
 Regd owner: Thomas McNicholas; folio: 7315F; lands: townland of Cordarragh and barony of Gallen; **Co Mayo**  
 Regd owner: John Connolly, Lissaraw, Monaghan, Co Monaghan; folio: 2988, 2989; lands: Lissaraw; **Co Monaghan**  
 Regd owner: Walter Heaney and Mary Heaney; folio: 16278F; lands: townland of Cloontrask and barony of Castlereagh; **Co Roscommon**  
 Regd owner: Patrick Clancy; folio:

23615; lands: townland of Bunniff and barony of Carbury; area: 0.8473 hectares; **Co Sligo**  
 Regd owner: Michelle Verdon, 39 Carton Bay, Sligo; folio: 14190F; lands: townland of Kilboglashy and barony of Leyny; **Co Sligo**  
 Regd owner: Josephine Banks; folio: 36779; lands: townland of Gurteen and Rahinane and barony of Ormond Lower; **Co Tipperary**  
 Regd owner: Mervyn Tyndell; folio: 34431F; lands: townland of Aghsmear and barony of Ikerrin; **Co Tipperary**  
 Regd owner: John O'Sullivan and Anne O'Sullivan; folio: 25570F; lands: property situate in the townland of Ardocheasty and barony of Decies within Drum and in the county of Waterford; **Co Waterford**  
 Regd owner: Stephen Hickey; folio: 26576F; lands: property situate in the townland of Killowen and barony of Middlethird and in the county of Waterford; **Co Waterford**  
 Regd owner: Derek Peilow and Nicola Peilow; folio: 28525F; lands: townland of Ballyhust and barony of Shelmaliere West; **Co Wexford**  
 Regd owner: Alan Brophy and Teresa Brophy; 6 Marlton Springs, Marlton Road, Wicklow; folio: 25896F; lands: townland of Ballynerrin and barony of Newcastle; **Co Wicklow**  
 Regd owner: Frank Murphy & Sons Ltd, 61 Amiens Street, Dublin; folio: 60; lands: townland of Burgage More and barony of Talbotstown; area: 2.0032 hectares; **Co Wicklow**

## WILLS

**Browne, Elizabeth (deceased)**, late of 47 Grove Park Drive, Glasnevin, Dublin 11, who died on 12 March 2007. Would any person having knowledge of a will made by the above-named deceased please contact Miriam Murran, solicitor, of Frances Barron & Co, Solicitors, Killeglan House, Ashbourne, Co Meath; tel: 01 835 2550 or email: miriam.murran@francesbarron.com

**Dalton, Enda (deceased)**, late of 48 Cill Eanna, Raheny, Dublin 5. Would any person having knowledge of a will made by the above-named deceased, who died on 19 May 2008 at Beaumont Hospital, Dublin 9, please contact Richard McGuinness & Co, Solicitors, 24 Sundrive Road, Dublin 12; tel: 01 492 1544/492 1105, fax: 01 492 1820 or email enquiries to info@richardmcguinness.ie

**Ellis, Noreen (deceased)**, late of 34 Liam Lynch Park, Glasheen Road, Cork, who died on 8 February 1991. Would any person having knowledge of a will made by the above-named deceased please contact Messrs McNulty Boylan & Partners, Solicitors, 26/28 South Terrace, Cork; tel: 021 431 3333

**Flood, Kathleen (Kay) (deceased)**, late of Apartment 3, The Court, Bettyglen, Watermill Road, Raheny, Dublin 5, formerly 106 Park Avenue, Brackenstown, Swords, Co Dublin; 26 Bayside Crescent, Bayside, Dublin 13; 21 Carrickbrack Road, Dublin 15; and Shelmartin Lodge, Carrickbrack Road, Baily, Howth, Co Dublin. Any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 29 April 2009, please contact info@mcddolan.ie

**Foran, Andrew (deceased)**, late of 19 Grace O'Malley Drive, Howth, Co Dublin. Would any person having any knowledge of a will made by the above-named deceased, who died on 8 July 2009, please contact Killeen Solicitors, 14 Mountjoy Square, Dublin 1; tel: 01 855 5587, fax: 01 855 4091

**Grace, Thomas (deceased)**, late of Knocktomcoyle, Tinahely, Co Wicklow, who died on 31 October 2008. Would any person having knowledge of a will made by the above-named deceased please contact Morrissey & Co Solicitors of Lismard House, Bridge Street, Tullow, Co Carlow; tel: 059 915 2910, fax: 059 915 2163

**Harris, Charlotte (deceased)**, late of 53 Bargy Road, East Wall, Dublin 3. Would any person having knowledge of a will executed by the above-named deceased, who died on 5 January 2009, please contact Brian Kirwan of Plunkett Kirwan & Company, Solicitors, 175 Howth Road, Killester, Dublin 3; tel: 01 833 8254, fax: 01 833 5259

**Robinson, Henry (deceased)**, late of 24 Pinevalley Way, Rathfarnham, Dublin 16. Would any person having knowledge of a will made by the above-named deceased, who died on 11 March 2009, please contact the office of Thomas Quigley & Co, Solicitors, 302 Ballyfermot Road, Ballyfermot, Dublin 10; DX 215004; tel: 01 626 8080

**O'Sullivan, Concepta (deceased)**, late of 22 Culmore Park, Palmerstown, Dublin 20. Would any person having knowledge of a will made by the above-named deceased, who died on 7 June 2008, please contact Catherine McGonagle of Paul W Tracey, Solicitors, 24 Marlborough Street,



Dublin 1; tel: 01 874 5656, email: cmcg@traceysolicitors.ie

**Walsh, Thomas (otherwise Tom) (deceased)**, late of Kildangan House, Durrow, Tullamore, Co Offaly, who died on 17 June 2009 at Kildangan House, Durrow, Tullamore, Co Offaly. Would any person having knowledge of a will made by the above-named deceased please contact Brendan Irwin & Company, Solicitors, 6 Garden Vale, Athlone, Co Westmeath; tel: 09064 74243, fax: 09064 742516, email: brendanirwin@eircom.net

## MISCELLANEOUS

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**Cepta Stevens and Marian Stevens**, of or formerly of Sandringham, Sussex, England or of Sandringham, Wessex Avenue, Bognor Regis, West Sussex, England. The above-named or any person having knowledge of the whereabouts of either is requested to contact the under-named solicitors: HD Keane & Co, Solicitors, 22 O'Connell Street, Waterford, Ireland; tel: 051 874 856 or email: enquiries@hdkeane.com

**Seven-day liquor licence required.** Contact: Rory Deane & Co, Solicitors, Temple House, Templeshannon, Enniscorthy, Co Wexford; tel: 05391 36622

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## TITLE DEEDS

**In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of premises situate at 31 Cornmarket Street in the parish of St Paul and city of Cork and in the matter of an application by Rockfell Investments Limited**

Any person having any interest in the fee simple estate or any intermediate interest in the hereditaments and premises comprised in and demised by a lease made on 15 February 1974 between the trustees of Skiddy's Charity of the one part and Musgrave Limited of the other part and therein described as "the hereditaments and premises situate at and known as no 31 Cornmarket Street, in the parish of St Paul and city of Cork", subject to a yearly rent of £100.

Take notice that Rockfell Investments Limited, being the person entitled to the lessee's interest, intends to apply to the county registrar for the city of Cork, pursuant to the provisions of the above-mentioned legislation in respect of the premises above described, for an order that the applicant is entitled to acquire by purchase the fee simple and all intermediate interests in the hereditaments and premises comprised in and demised by a lease made on 15 February 1974 between the trustees of Skiddy's Charity of the one part and Musgrave Limited of the other part and therein described as "the hereditaments and premises situate at and known as no 31 Cornmarket Street, in the parish of St Paul and city of Cork", and any person having knowledge of the persons entitled to the freehold and all, if any, other superior interest in the said premises, or any party asserting that they hold a superior interest, are called upon to make representations or furnish evidence of the title to the aforementioned property to the under-mentioned solicitors on behalf of the applicants within 21 days from the date of this notice.

In default of any such notice being received within 21 days, the applicant intends to proceed with the said application for hearing before the county registrar of the county of Cork at such date as may be available for such hearing, on the basis that the person or persons beneficially entitled to all the superior interest up to and including the fee simple interest in the said property are unknown and unascertained.

Date: 28 August 2009

Signed: Messrs Kelliher Cogblan (solicitors for the applicant), Kealgorm House, Limerick Road, Castleisland, Co Kerry

**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 John Fitzpatrick**

Take notice that any person having any interest in the freehold estate of the property all that and those the property known as 18 Upper Clanbrassil Street, in the city of Dublin,

held together with other premises under an indenture of lease dated 19 November 1851 for a term of 900 years from 1 November 1851, subject to a yearly rent of £18, but indemnified against £12 portion thereof.

Take notice that John Fitzpatrick intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the 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: 28 August 2009

Signed: Cullen & Co (solicitors for the applicant), 86/88 Tyrconnell Road, Inchicore, Dublin 8

**In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1987 between Martin Morris, applicant, and representatives of Bailey Estate, respondents**

Take notice that Martin Morris, of Parnell Street, Mountmellick in the county of Laois, being the owner of two shops, two yards, outhouses and sheds situate on the south side of Market Street in the townland of Townpark and town of Mountmellick, barony of Tinnahinch and the county of Laois, hereby makes application to the county registrar for the county of Laois for an order pursuant to section 8 of the Landlord and Tenant (Ground Rents) Act 1967 appointing such person as the county registrar shall think fit to represent the unknown respondents in all proceedings in connection with acquisition of the fee simple interest in the said property.

Date: 28 August 2009

Signed: Vincent P Garty & Co (solicitors for the applicant), O'Connell Square, Mountmellick, Co Laois

**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 Davy Property Holding**

Take notice that any person having an interest in the fee simple estate or any intermediate interests in all that and

those the hereditaments and premises now known as 371 and 373 North Circular Road (formerly 3 and 5 Madras Place), Phibsborough, in the parish of St George and city of Dublin, and demised by an indenture of lease dated 15 May 1872 between (1) the Right Honourable Charles Stanley Viscount Monck and the Honourable Henry Power Charles Stanley Monck and (2) Thomas Dunphy, for a term of 150 years from 31 December 1894, and therein described as all that and those that piece or plot of ground situate, lying and being on the east side of Glasnevin Road in the city of Dublin, and which is more particularly described in the map thereof, hereon delineated, in the parish of St George and city of Dublin, together with the dwellinghouses, messuages, tenements and premises erected thereon known as nos 1, 2, 3, 4, 5, 6 and 7 Madras Place and 160 and 161 Phibsborough Road, held for a term of 150 years from 31 December 1894, subject to but indemnified against the yearly rent of £100 sterling.

Take notice that Davy Property Holdings, being the person entitled to the lessee's interest in the lease, intends to apply to the Dublin county registrar at Aras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interests in the said property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Davy Property Holdings intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in this said property are unknown and unascertained.

Date: 28 August 2009

Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2; ref: an/af

**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 Brendan Foley (hereinafter called the 'applicant') of 119 and 119a Emmet Road, Inchicore, Dublin 8**

Take notice that any person having any interest in the freehold or leasehold estate of the following property



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– all that and those the premises demised by an indenture of assignment dated 25 July 1976 and made between Ernest Joseph Foley of the one part and the applicant and the said Ernest Joseph Foley of the other part and therein described and known as 119 and 119a Emmet Road, Inchicore in the city of Dublin comprising of: “All that and those that plot or piece of ground situate on the north side of the road leading from Inchicore to Kilmainham, containing in front the said road 30 feet from front to rere, on the east side thereof 53 feet 6 inches and from front to rere on the west side the like number of feet be the said several admeasurements or any of them; more or less bounded on the north by premises of John Cuddihy Esq on the south by the said road leading from Inchicore to Kilmainham, on the east by a lane or passage and on the West by other premises in the possession of the said Thomas Murray which said plot of ground is situate, lying and being at Golden Bridge in the parish of Saint Jude barony of Upper Cross county of Dublin together with a right of passage at the eastern side of the premises hereby demised in common with the other tenants of the said premises from the rere of said demised premises to the public road in front which said lands were demised by indenture of lease dated 28 January 1885 from 25 March 1885 for 300 years at the yearly rent of 3 pounds, together with the buildings erected thereon.”

“All that plot or piece of ground situate on the north side of the road leading from Inchicore to Kilmainham containing in front to said road 5 feet in the rere the like number of feet and from front to rere 53 feet 6 inches the said several admeasurements or any of them; more or less bounded on the north by premises on John Cuddihy Esq, on the south by the said road leading from Inchicore to Kilmainham, on the east by other premises demised to the said John O'Neill and on the west by premises in possession of the said Thomas Murray which said plot of

ground is situate, lying and being at Golden Bridge in the parish of Saint Jude barony of upper cross county of Dublin; which said lands were demised by indenture of lease dated 4 March 1885 from 25 March 1885 for 300 years at the yearly rent of 10 shillings, together with the buildings erected thereon.”

“All that and those the plot or strip of ground lying at the rere of houses and premises numbers 119, 121 and 123 Emmet Road, Inchicore in the parish of Saint Jude county of city of Dublin measuring in length from east to west 77 feet and in breadth from north to south 16 feet six inches be the said admeasurement more or less bounded on the north by a field or building ground the property of the representatives of the late Michael O'Meara, on the south by the said houses and premises numbers 119, 121 and 123 Emmet Road on the east by a line or passage between 117 and 119 Emmet Road and on the west by 125 Emmet Road which said plot of ground is more particularly described on the map annexed to these presents and thereon edged red together with stables and buildings now standing thereon; which said lands were demised by Agnes Julia Kelly, Belinda Jane Muldoon, Anna Maria Craughwell, Elisabeth Woodley and Henry Clifton to Joseph Quinn by indenture of lease dated 25 November 1921 for the term of 264 years at the yearly rent of 2 pounds and 10 shillings, together with the buildings erected thereon”: the entirety of which lands, known as 119 and 119a Emmet Road, Inchicore, now in the city of Dublin, held by the applicant as surviving joint tenant under and by virtue of the hereinbefore three recited leases, dated 28 January 1885, 4 March 1885, and 25 November 1921.

Take notice that the applicant intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon

to give notice of such superior interest and furnish evidence of the title to the solicitor named below within 21 days of the date of this notice.

In default of any such notice being received, the applicant, Brendan Foley, 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 at the end of 21 days from the date of this notice to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 28 August 2009

Signed: Declan Foley (solicitor for the applicant), Glenroyal Centre, Maynooth, Co Kildare

**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 Conor O'Keeffe**

Any person having a freehold estate or any intermediate estate in all that and those the premises known as 2 Cheltenham Place, Portobello Bridge, Rathmines, Dublin 6, being part of the premises comprised in and held under an indenture of lease dated 3 December 1839 and made between Christopher Edward Wall of the one part and William Moorehouse of the other part, portion of which said premises was demised for a term of 1,000 years from 29 September 1839 at a rent of £10 per annum, and portion of which said premises was demised for a term of 170 years from 29 September 1839 at a rent of £6 per annum.

Take notice that Conor O'Keeffe, being the person currently entitled to the lessee's interests under the said lease, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of 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 Conor O'Keeffe intends to proceed with the application before the Dublin county registrar at the end of 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 interest including the freehold rever-

sion in the aforesaid premises are unknown and unascertained.

Date: 28 August 2009

Signed: Coughlan White O'Toole (solicitors for the applicant), Moorefield Road, Newbridge, Co Kildare

**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 the Minister for Justice, Equality and Law Reform**

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 51-51a Kilmainham Road and 736 Richmond Lodge, South Circular Road, Dublin 8, being part of the premises held under an indenture of lease dated 7 April 1865 between William Stewart of the one part and James Radcliffe of the other part for a term of 999 years from 25 March 1865 at a rent of £25 per annum, and all that and those the property known as 52 Kilmainham Road, South Circular Road, Dublin 8, being part of the premises the subject of the said lease of 7 April 1865 and also of an indenture of lease dated 14 February 1851, William Frederick Alment of the one part and James Radcliffe of the other part, for a term of 999 years from 25 March 1851 at a rent of £7 per annum.

Take notice that the Minister for Justice, Equality and Law Reform, being the person entitled to the lessee's interest in the said leases, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the



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free simple estate and all intermediate interests in the aforesaid properties, and any party or parties asserting that they hold the fee simple or any intermediate interest in the aforesaid property are called upon to furnish evidence of their title to the aforesaid property to the undermentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Minister for Justice, Equality and Law Reform intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the aforesaid property are unknown or unascertained.

*Date: 28 August 2009*

*Signed: David J O'Hagan, Chief State Solicitor, Chief State Solicitors Office (solicitors for the applicant), Osmond House, Little Ship Street, Dublin 8*

**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 Joseph O'Reilly**

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the premises known as 5 Moore Street in the parish of Saint Mary and city of Dublin, comprised in folio DN161397F and held with other property under a fee farm grant dated 25 April 1900, made between (1) Evan Lake, the Reverend Charles William Henry Reynolds, Emily Frances Daniel Reynolds, George Wood, Henry Exley Reynolds and William Russell and (2) the Everton and West Derby Permanent Benefit Building Society, subject to two perpetual yearly rents of £36.18.6 each, but primarily liable to £19.7.0 thereof.

Take notice that Joseph O'Reilly, being the person entitled to the grantee's interest in the said fee farm grant as respects the said premises, intends to apply to the Dublin county registrar for the acquisition of the fee simple estate and all intermediate interests in the said premises, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid premises is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said premises are unknown and unascertained.

*Date: 28 August 2009*

*Signed: William Fry (solicitors for the applicant), Fitzwillton House, Wilton Place, 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 Joseph O'Reilly**

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the premises known as 4 Moore Street in the parish of Saint Mary and city of Dublin, comprised in folio DN168493F and held with other property under a fee farm grant dated 25 April 1900, made between (1) Evan Lake, the Reverend Charles William Henry Reynolds, Emily Frances Daniel Reynolds, George Wood, Henry Exley Edwards and William Russell, and (2) the Everton and West Derby Permanent Benefit Building Society, subject to

two perpetual yearly rents of £36.18.6 each, but indemnified against payment of all but £19.50 thereof.

Take notice that Joseph O'Reilly, being the person entitled to the grantee's interest in the said fee farm grant as respects the said premises, intends to apply to the Dublin county registrar for the acquisition of the fee simple estate and all intermediate interests in the said premises, and any party asserting that they hold the fee simple or any intermediate interest in the said premises is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said premises are unknown and unascertained.

*Date: 28 August 2009*

*Signed: William Fry (solicitors for the applicant), Fitzwillton House, Wilton Place, 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 Peter Murphy**

To: the successors in title of William Wilde, formerly of Dublin, and the successors in title of the Right Honourable Richard Lord Viscount Molesworth – any person having a freehold estate or any intermediate interest in all that and those the premises, messuage or tenement known by no 30, with the yard behind same, situate on the east side of Frederick Street, in the parish of St Anne and city of Dublin, formerly all that lot or piece of ground situate on the east

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side of Frederick Street in the parish of St Anne and suburbs of the city of Dublin, bounded on the east by Stable Lane and on the west by Frederick Street, on the north by ground held in fee farm by the said William Wilde from the Right Honourable Richard Lord Viscount Molesworth, and on the south by a lot of ground granted in fee farm by the said Richard Lord Viscount Molesworth to James Morris, the subject of an indenture of lease (hereinafter 'the lease') dated 5 June 1751 between William Wilde of the one part and Benjamin Rudd of the other part (the said William Wilde having been granted the land in fee farm by the said Right Honourable Richard Lord Viscount Molesworth) for the term of 999 years from 25 March 1751 at the yearly rent of stg£5.2.6 (now presently adjusted to £24.25/€30.79).

Take notice that Peter Murphy,

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being the person currently entitled to the lessee's interest under the said lease, and thereby entitled under section 8 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, proposes to purchase the fee simple in the land described above by way of an application to the county registrar of the county of Dublin, and 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 same to the below named within 21 days from the date of this notice.

In default of any such notice being received, Peter Murphy intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the fee simple and any intermediate interest in the aforesaid premises are unknown and unascertained.

*Date: 28 August 2009*

*Signed: Conor McGowan (solicitor for the applicant), Suite 227, The Capel Building, Mary's Abbey, Dublin 7*

**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 Brigid Bourke and Ann Coyle in the matter of the property formerly known as St Joseph's Night Refuge for Girls, forming part of the convent grounds of the Sisters of Mercy, situate at Brickfield Lane and situate to the rear of 26/27 Cork Street in the parish of St Catherine and city of Dublin**

Take notice that any person having an interest in the freehold estate or any superior interest of the following property: all that and those the plot of

ground containing circa two roods in the parish of St Catherine and county of the city of Dublin, on which the buildings known as St Joseph's Night Refuge for Girls were erected and formerly referred to in the Valuation Office lists as no 2 Brickfield Lane in the parish of St Catherine and city of Dublin, held under lease dated 7 April 1814, Richard Verschoyle to Joshua Pasley and John Townsend Sinnett, being for a term of 50,000 years from 25 March 1814, subject to the yearly rent of one barleycorn, if demanded.

Take notice that the applicants, Brigid Bourke and Ann Coyle, intend to apply to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforesaid property to the below named within 21 days from the date of this notice.

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

*Date: 28 August 2009*

*Signed: Mason Hayes & Curran Solicitors (solicitors for the applicants), South Bank House, Barrow Street, Dublin 4; ref: SIST24.3/DR*

**In the matter of the *Registration of Title Act 1964* and applications for registration by Breda Leahy - reference nos D2006P-S017864A, D2006PS017977K, D2006PS018046X**

Take notice that Breda Leahy of Coolbawn, Doon, Co Limerick, has lodged applications under section 49 of the above act to be registered as owner in fee simple of part the following lands hereinafter described. Part of the townland of Cooga Lower, containing 0.340 hectares and registered on Folio 1880 Limerick. The present registered owner of such land is Michael McCarthy, Gortavulla, Doon, Co Limerick, registered 13 May 1926. Part of the townland of Cooga Lower containing 0.882 hectares and registered on folio 8201 Limerick. The present registered owner of such land is William Griffin of Doon, Co Limerick, registered 28 December 1912. Part of the townland of Cooga Lower, containing 0.425 hectares and registered on folio 9318 Limerick. The present registered owner of such land is William Griffin of Doon, Co Limerick, registered 13 November 1914.

Would any person with information concerning the next of kin of the said registered owners please contact this office within one calendar month of the date of publication of this notice.

Any person who wishes to object to such registration and who has valid and legal grounds upon which such an objection may be based are hereby required to file their objection on affidavit in this registry within one calendar month from the date of publication of this notice.

Any objection should be ad-

dressed to the Property Registration Authority, Cork Road, Waterford, and should quote the reference numbers D2006PS017864A, D2006PS017977K, D2006PS018046X and be marked for the attention of the undersigned.

In the absence of objection, or in the event of any objection not being sustained, registration will be effected.

*Date: 28 August 2009*

*Signed: Brian O'Loughlin, Assistant Principal Officer, Property Registration Authority, Cork Road, Waterford*

**MJ Horgan & Sons, Solicitors** - the partners of the firm of MJ Horgan & Sons, namely Michael O'Connell, James Riordan, Lucia Fielding, David Clayton, John McLaughlin and Darren O'Keeffe, wish to announce that they have ceased to practice in partnership as and from 1 July 2009.

From that date, Michael O'Connell will continue to practice from Timothy J Hegarty & Son, 58 South Mall, Cork; tel: 021 427 0351, fax: 021 427 6580, email: moconnell@tjhegarty.ie.

From that date, James Riordan, Lucia Fielding, David Clayton John McLaughlin and Darren O'Keeffe will continue to practice under the name James Riordan & Partners, 50 South Mall, Cork; tel: 021 427 7444, fax: 021 427 7449, email: jriordan@jrap.ie, lfielding@jrap.ie, dclayton@jrap.ie, jmclaughlin@jrap.ie, dokeeffe@jrap.ie.

## NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE LAW SOCIETY GAZETTE

Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO** recruitment advertisements will be published that include references to years of post-qualification experience (PQE).

The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

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**Ref: S2001**

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**Ref: S2020**

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**Ref: S2015**

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**Ref: S2021**

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**Ref: S2022**

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**Ref: S2018**

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**Ref: S2023**

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