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A cool head and a calm voice



As this is my first message of the New Year, I thought it might be useful to give you some feedback from your own colleagues. Having spoken to many of you, some consistent themes have emerged. There is a sense of bewilderment at the pace and scale of the recession – there is no point in avoiding the ‘R’ word now. This has naturally given rise to much anxiety about the coming year.

It has been very tough for many practices, particularly those dependent on conveyancing, although there has been some unhelpful and ill-informed comment about how this has impacted on individual firms. Certainly, many firms have had to shorten working hours or reduce pay (and this applies from the top down). Notwithstanding such measures, it seems inevitable that there will be a substantial level of unemployment within the profession in the coming year.

Most firms recognise the importance of retaining well-trained and motivated staff and, in fairness, most employees have understood that these are unprecedented times and have taken pay cuts and shorter hours on the chin.

As we ponder about how this all happened, it is important to acknowledge that we have come a long way and we must avoid the temptation to write off, as negative, all that we have just gone through. Most of us can make

do with a simpler existence and a chance to redress the work/life balance. As one legal owl put it: “You can only sleep in one bed at a time, wear one suit at a time, eat one meal at a time.”

It is not all doom and gloom, and there are certain areas of work that continue to remain buoyant. We in the Law Society continue to encourage you to take the opportunity to broaden your skills and to make the necessary adjustments in your practice.

It is comforting that over 1,000 of you availed of the free CPD online seminar on practice management in December.

Your skills and expertise can be of vital assistance to your clients, who are looking for a cool head and a calm voice. There is a golden opportunity to spend some quality time with your clients and listen to their problems. Go out of your way to ratchet up your level of service. Look for ways to improve your communications, responsiveness and knowledge of their business. This will

repay you quicker than anything else.

People are looking for leadership and, within your community, you must lead by example and project a realistic yet positive outlook. Together, we will beat this recession.

John D Shaw
President

“Your skills and expertise can be of vital assistance to your clients who are looking for a cool head and a calm voice”



On the cover

When it rains, it pours – but they say it's darkest just before the dawn. And when the ill winds of economic change blow nobody any good, all practitioners should welcome advice on honing the cut of their jib

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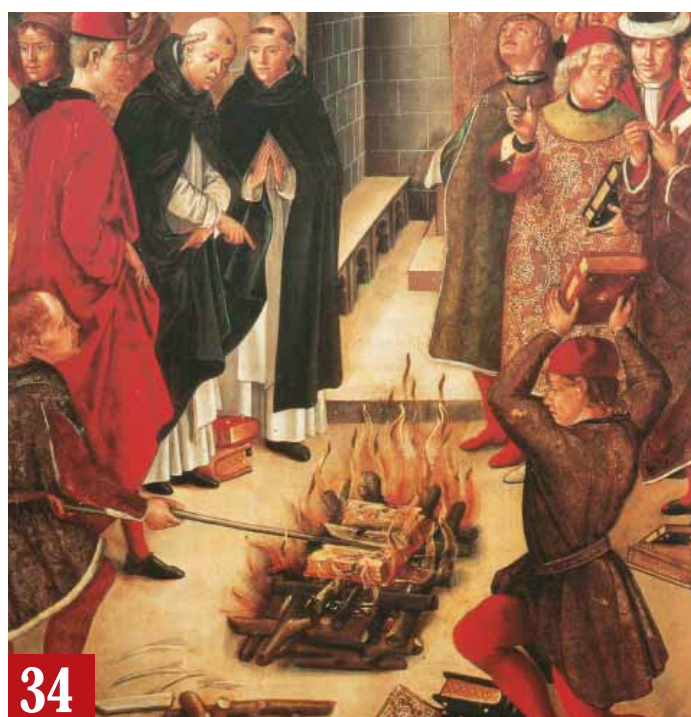
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■ WATERFORD

At Waterford Law Society's well-attended AGM before Christmas, Bernadette Cahill succeeded Morette Kinsella as president. Other officers appointed: Elizabeth Dowling (secretary); Deirdre McSweeney (treasurer); committee members: Helen Bowe O'Brien, Kieran Curran, Rosa Eivers, Fiona Fitzgerald, John Goff Jnr, Jim Hally, Niall King, Morette Kinsella, Tom Murran, Derry O'Carroll, Paul Twohig and Jill Walsh.

Morette Kinsella presented a new constitution to the members, which was adopted. Referring to the effect of the recession on members, Bernadette Cahill commented: "One of my priorities will be to focus on, and enhance, the sense of collegiality and maintain a strong sense of community within the legal profession."

■ MIDLANDS

President of the Midland Bar Association Charlie Kelly congratulates Michael Byrne (partner in the firm of Hoey and Denning), Tullamore, on the launch of his book *Legal Offaly*. Says Charlie: "It's a work of great scholarship and research and will prove to be a great resource book for research students and those interested in the development of the legal system in a rural county from 1850 onwards. It's not a book full of dry facts but is rich in anecdotes and many colourful reports of court cases extracted from the local papers at the time."

The book was launched at a special function in Tullamore, attended by a large turnout, including Judge Anthony Kennedy. The retiring CEO



At the recent Southside Solicitors' Dinner, held in the Royal St George Yacht Club, Dun Laoghaire, on 16 January 2009 were (l to r): Dominic Dowling, Kevin O'Higgins (president of the DSBA), Ruth Dowling and President of the Law Society John D Shaw

of the Courts Service, PJ Fitzpatrick, performed the launch as the last task of his tenure.

■ MAYO

Poor Dermot Hewson – hardly a wet week in his new position as president of the bar association, when already he has the headache of the Courts Service moving all business out of Ballinrobe to Castlebar, on a temporary basis. The reason for doing so was attributed to poor facilities and a pending review of security arrangements. For practitioners from Ballinrobe, and not least their clients, this is a round trip of 44 miles. The decision must be a disappointment for the local bar association, who fought hard to retain sittings in Ballinrobe and Ballyhaunis, as a result of the realignment of District Court areas. An early challenge for Dermot, then, and I have no doubt he'll rise to it.

Following the recent tax CPD seminar, more courses will take place on a monthly basis throughout the year, generally occurring on the third

Wednesday of the month in Castlebar.

The bar association is to be lauded for its recent survey of practitioners throughout the county, in which colleagues' views on professional indemnity cover and other matters were sought. The effort was co-ordinated by James Cahill.

■ CORK

Busy times down south for the newly installed, cricket-loving president of the SLA, Mortimer Kelleher. He recently yo-yoed from Cork to Dublin for a black-tie event on a Thursday evening, attended the Law Society Council meeting the following day, belted back to Cork for an insurance institute dinner that evening, was back in Dublin for the DSBA dinner-dance on the Saturday night, and wended his way back to Cork on Sunday for another black-tie event. Do colleagues now realise and appreciate the efforts we go to in representing them?!

The annual dinner takes place on 20 February, as usual in the Maryborough. Tickets

are still available from Jerry Cronin. Mortimer is happy also to promote the SLA annual conference, which will take place in Lisbon in September. Two, three and five-day options are available at very competitive prices.

Forthcoming CPD courses in Cork will be provided soon on accounts regulations (Seamus McGrath of the Law Society) and Patricia Harney on client care.

■ DUBLIN

Almost 300 colleagues attended the DSBA's annual ball in the third week in January. Geraldine Kelly organised the sterling event and negotiated ticket prices at a 25% mark down compared with last year – with no impact on quality! Guests of honour included Attorney General Paul Gallagher, President of the Law Society John D Shaw, director general Ken Murphy, and leader of Fine Gael Enda Kenny TD.

The recent DSBA seminar on 'Insolvency and specific performance' proved very popular. Lisa Broderick (MOP) and Barry O'Neill delivered papers in this burgeoning area. Further seminars in the coming month will include a review of PIAB in the light of the *O'Brien* decision. (See page 18 of this *Gazette*.) Consult www.dsba.ie.

The irrepressible Justin McKenna pulled together 100 colleagues practising on the south side of the county for the annual Southside Solicitors' bash. Judge Paul Gilligan was the special guest. Despite the gloom, life goes on. **G**

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

Regulation relocation 'of much significance' says Justice Minister

"Very impressive" is how Justice Minister Dermot Ahern described the Society's new Regulation premises when he spoke as guest of honour at their formal opening on 2 December.

The Regulation Department's move to a leased floor of a new, modern office block in George's Court, near Smithfield and some four minutes' walk from Blackhall Place, had been achieved on time and on budget the previous day.

All of the Society's regulatory activities, including regulatory committee meetings, are now based in George's Court – not in Blackhall Place – following a move that the Law Society Council decided last year would have major benefits both for the profession and the public it serves (see November 2008 *Gazette*, p9).

The minister described the relocation as "of much significance". He continued: "Not only does the move entail a geographical departure from the venerable premises which the Law Society has occupied for 30 years, but it also reflects, in a very transparent way, the strategic and necessary separation of the regulatory and representative functions of the Society."

He noted that this move coincided with the government decision that there be a non-solicitor majority on the Society's Complaints and Client Relations Committee with effect from 1 January. In addition, the bill to create a Legal Services Ombudsman has completed committee stage in the Dáil and is due to be enacted early in 2009.

The minister continued: "I am gratified that the Law Society has made a very positive



(Left to right): Director General Ken Murphy, Director of Regulation John Elliot, Minister for Justice, Equality and Law Reform Dermot Ahern TD and President John D Shaw

contribution to the development of this bill and has been a strong supporter of the government's approach. The profession as a whole will benefit from these significant reforms. When the rights of individual clients are protected and the high standards applied by solicitors who approach their work with integrity and professionalism are safeguarded, the general



Tour of inspection

standing of the profession is upheld."

Also speaking at the opening ceremony, President John D Shaw said: "For some time now, it has been evident to us that we were running out of space in Blackhall Place, and we also lacked some of the efficiencies which come with a modern office environment. It was therefore decided to relocate the entire Regulation Department to these new offices, and the move represents a significant investment by the Law Society in the continuing improvement of its regulation process."

Director general Ken Murphy said that the move reflected the Society's modernising approach and desire for ever-increasing efficiency in all of its activities. He paid tribute to the Society's director of regulation, John Elliot; the director of finance and administration, Cillian MacDomhnaill; and all others involved in ensuring that this complex project had been delivered on time and on budget in just six months.



Regulation Department staff in the new George's Court premises

Council approves careers advisor to assist job-seeking solicitors

The Law Society Council has unanimously approved a proposal that the Society create a new position of 'careers advisor' to assist job-seeking solicitors.

The proposal was made by the director general, Ken Murphy, and was accepted at the 23 January Council meeting.

The Council recognised that the world in general, and Ireland in particular, has witnessed an economic deterioration of very shocking speed and severity. One of the deeply distressing consequences of this has been the emergence of a situation in recent months in which many hundreds of solicitors are now unemployed. Some of these are many years' qualified and others are solicitors newly arrived on the roll. The number is more likely to increase than reduce in the foreseeable future.

Very understandably, a great many of these solicitors are shocked, bewildered and deeply distressed to find themselves in this predicament. As Murphy put it to the Council, "The pain in the profession is very real, substantial and growing."

Council fully accepted the proposition that the Society

has a duty to do whatever it can to be of support and practical assistance to these colleagues. "These solicitors remain every bit as much part of the profession as those who are in practice. The Society must rise to the challenge of being relevant to these colleagues who need assistance from it as never before. Obviously, the Society cannot manufacture or find jobs for anyone," Murphy said. "What we can do, however, is help to equip colleagues with the information and skills to find employment for themselves."

It is intended that the new careers advisor will assist unemployed solicitors with career assessment and direction; career and life-coaching, providing the skills for realistic self-assessment; CV preparation; interview advice and ongoing support; financial planning; psychological support to help with morale issues; information about requirements for legal qualification in other jurisdictions; hard information (by contrast with rumour) about the state of the legal services marketplace; and advice on how to capitalise on the transferable skills of a solicitor in order to



Ken Murphy: "We can help to equip colleagues with the information and skills to find employment for themselves"

find employment in other walks of life.

It would seem, very regrettably, that – in the short term at least – a great many of the solicitors who might avail of this

service will not find employment in the solicitors' profession, either in private practice or in-house, and must prepare themselves to change careers.

In addition to offering such a service to the existing members of the profession, there is likely to be a demand from those who are currently trainees and due to qualify in the near future.

The skill-set of the new careers advisor, who in all likelihood will not be a solicitor, will include the skills typically found in an experienced provider of 'out-placement' or 'talent-management' type services. One of the first tasks will be to create a database of those to whom the service might be relevant.

The position has now been advertised nationally and the recruitment process will be completed as soon as possible.

Late stamping without tears

Any deed or other instrument that has not been stamped on time, regardless of how out-of-time that now may be, can be stamped without penalty until 17 February 2009 under a special provision in the recent *Finance Act*.

This is a significant concession. Late stamping normally requires payment of a very substantial level of penalty. The penalty can involve a surcharge of as much as 30% of the duty payable.

The Society urges every practitioner to check whether they have any deeds or instruments that would benefit from this opportunity for penalty-free late stamping and, if so, to arrange for that stamping to take place before the deadline.

The Society sought clarification on how this regime will operate and this has resulted in Revenue eBrief 5/2009 (available at www.revenue.ie/en/practitioner/ebrief/2009/no-052009.html).

SUPREME COURT SUCCESS

"A very successful outcome," is how director general Ken Murphy described the Supreme Court decision of 19 December 2008, in *O'Brien v PIAB*. The Law Society had acted as *amicus curiae*, making detailed submissions and arguments both in the High Court and the Supreme Court.

The Supreme Court unanimously upheld the judgment delivered by Mr Justice MacMenamin in the High Court in January 2005 (see p18 of this *Gazette*).

"The right to legal representation was at the core of this case," said Murphy. "It was vitally important that the Society helped ensure its protection."

777 new solicitors in 2008

A record 777 new solicitors were admitted to the roll in the calendar year 2008. This compares with 642 in 2007, 536 in 2006 and 420 in 2005.

The 777 figure was probably inflated somewhat by an apparent rush of newly-qualified solicitors to complete the paperwork required to go on

the roll in late 2008, rather than wait, as would have been the normal pattern in the past, until the early months of 2009.

Partly as a consequence of this, it is expected that the number of new solicitors in 2009 will be lower, although not much lower, than the record figure for 2008.

Sharpen your survival skills!

As the president has pointed out in this month's 'President's Message', the number-one concern for legal practices is how best to manage the challenges presented by the global financial crisis, *writes James MacGuill*. The Society aims to provide assistance in meeting these challenges in a collegiate fashion through the activities of the Practice Management Task Force (PMTF).

While we do not underestimate the challenges facing individual practices, equally we can draw from domestic and international experience, both past and recent, to identify constructive steps that can be of assistance at this difficult time. The challenges facing each practice are different, and there is no 'one size fits all' solution. There are of course available, both through the *Gazette* and elsewhere, first-rate source materials on practice management. Equally, there are skilled professionals available to assist practices either in crisis or seeking to avert crisis. The PMTF intends to act as a conduit to communicate developing trends and exciting initiatives and, critically, to listen to colleagues about their concerns so that we may identify assistance that is timely and appropriate.

It is a truism that 'a problem shared is a problem halved' but, in the context of our current difficulties, it is extremely apposite. Too often, colleagues with practice difficulties feel lonely and isolated and overwhelmed by a feeling that their difficulties are unique. The reality of the present situation is that we are all feeling pain, but that if we act in a collegiate fashion by pooling resources and ideas, our profession will emerge more strongly from this period than we entered it. This is the



Sniper training: not usually a survival skill that your average solicitor needs

time for the Society and the bar associations to provide support and, through an exchange of experience and ideas, to identify solutions.

'Survival Skills' seminar

To this end, the PMTF is hosting a 'Survival Skills' seminar on Friday 27 February. The half-day (afternoon) seminar will address a range of disciplines relevant to practice in 2009, including business management, financial management, practice development, and employment law – but most importantly will give an opportunity to colleagues who attend to raise their own questions and to identify further areas of activity for the task force. Work is already in hand in developing further seminars to explore some of these areas in greater detail.

In recognition of the current difficulties facing practices, the Society has underwritten, to a substantial degree, the cost of providing the seminar, which is now heavily subsidised. Booking details are available on the website at www.lawsociety.ie (see 'Forthcoming events' listed on the home page).

We hope, through this

seminar, and through engagement throughout the country, and particularly with the bar associations, to underline the key messages of the Society at this time. Defeatism has simply nothing to offer and, equally, nothing will be turned around by platitudes. We need to take concrete steps to strengthen and

grow our practices at this time. A review of the international literature on this subject emphasises two key messages:

- First and foremost, our clients are also experiencing great difficulty and, by continuing to deliver first-rate services to them at this time, we will strengthen and develop the client relationship, which is at the centre of successful legal practice,
- Secondly, where circumstances permit, this is the time to continue to invest in training and, in particular, trainees. The universal experience in the past is that firms that continue to develop their skill sets are those that survive and prosper.

All of us on the PMTF hope to see or hear from you in the near future. For those who attend on 27 February, we hope it will kick-start a weekend where England maintains its 100% record in Croke Park!

Drafting wills for elderly clients – the pitfalls

Following the publication of the practice note on joint bank accounts in the December *Gazette*, the Guidance and Ethics Committee, which is currently reviewing guidance for solicitors when dealing with elderly clients, is now publishing the second practice note in this series (see p48.)

The task of drafting a will for an elderly client might involve more pitfalls than practitioners realise. The issue of capacity is of crucial importance. The client must have *testamentary capacity*, not only at the time of taking instructions, but also at the time of the execution of the will. In addition, a solicitor must often assist the elderly

client to understand the many issues involved so that they can communicate their wishes and give full and competent instructions.

Margaret Walsh, a member of the committee, points out: "There can be little doubt, on a reading of the relevant case law, that the duty of care which solicitors have towards their clients when making wills is more onerous when acting for a vulnerable and elderly client. If the testator client is vulnerable, whether through frailty or other circumstance, not only must the solicitor advise the client as usual, they must also endeavour to protect the client from possible undue influence or abuse."

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Launch of *Guide for Solicitors Employed in the Corporate and Public Sectors*

The Law Society's Corporate and Public Sector Committee has launched the *Guide for Solicitors Employed in the Corporate and Public Sectors*. The guide provides key information for existing and prospective in-house solicitors. Such solicitors represent approximately 9% of total Law Society membership.

The guide centres on practical issues facing in-house solicitors, for example, instructing external legal advisers, professional practice issues, professional regulation issues, practising certificates and professional indemnity insurance, and support services available to the solicitors' profession.



Corporate and Public Sector Committee members (back, l to r): Edward Hughes, Donall King and Andrew O'Flanagan. (Front, l to r): Sylvia Keane, Colin Babe (vice-chairman), Mary O'Connor (chairman), Louise Campbell (secretary), Geraldine McAlinden and Vivienne Kane

The guide is available on the committees' section of the Society's website, www.lawsociety.ie.

All in-house solicitor members will receive a copy later in the year.

A 'Value and values' management seminar provided in-house solicitors with guidance on the application of ethical principles in their day-to-day practice and addressed the key aspects of financial management – particularly relevant to the running of an in-house legal department.

The seminar was chaired by Michael Carroll (CIE Group). Speakers included Edward Hughes (Dun Laoghaire Rathdown County Council), immediate past committee chairman Colin Babe, current committee vice-chairman David P Boyle, Paul Behan and Chief State Solicitor David J O'Hagan. The seminar was attended by 124 delegates and was very well received.

Lay majority for Complaints and Client Relations Committee

The Law Society's Complaints and Client Relations Committee sat for the first time with a non-solicitor majority on 16 January 2009. This is a requirement for all future meetings following the enactment of the *Civil Law (Miscellaneous Provisions) Act 2008*. The act's commencement order came into effect on 1 January 2009.

The act provides that the chairman of the committee will continue to be a solicitor. This was the recommendation of the outgoing non-solicitor members.

The great majority of client complaints, about the service or conduct of their solicitor, all of which are investigated by the Society, are resolved by agreement. Where agreement cannot be reached, however, the committee must deal with the complaint, and it has extensive statutory powers to do so.



Members of the chairman's division of the Complaints and Client Relations Committee (l to r): Frank Cunneen (substituting for lay member Dan Murphy), Maura Derivan (solicitor), Frank Brennan (lay member), Simon Murphy (chairman, solicitor), Brendan Hayes (lay member) and Sheila Nunan (lay member). (Absent: Liam Kennedy, solicitor, and Dan Murphy)

The Society has had the benefit of non-solicitor members on this committee for the last 15 years. They have been nominated by IBEC, ICTU and the Director of Consumer Affairs. These independent bodies have now nominated the majority of the committee's members.

When the government's decision to legislate for this was announced in 2006, the Society warmly welcomed it as a measure that, together with the proposed Legal Services Ombudsman, will further increase the independence, transparency and accountability of the complaints system.

ESSAY COMPETITION

The Association of Pension Lawyers in Ireland has launched an essay competition, with a first prize of €3,000 and a second prize of €1,000.

Essays are invited on the topic: 'Given the fiduciary duties of pension scheme trustees to act in the best interests of pension scheme members, to what extent should trustees offer socially-responsible investment options to members?'

Full rules of the competition, details of how to enter, and guidance on the issues the essay might cover are available online at www.apli.ie.

RETIREMENT TRUST SCHEME

Unit prices: 1 December 2008
Managed fund: €3.993774
All-equity fund: €0.866245
Long-bond fund: €1.483171
Cash fund: €2.935451

Human Rights Festival celebrates

The Law Society celebrated the 60th anniversary of the *Universal Declaration of Human Rights* by hosting a 'poster action project' and a series of human rights-based events and workshops in December. Elaine Dewhurst reports

An exhibition of art posters titled 'Human Rights – Framed by Young People' was officially launched on 16 December 2008 by President of the Law Society John D Shaw and President of the Irish Human Rights Commission Dr Maurice Manning. The posters were produced by civil, social and political education (CSPE) students to celebrate the 60th anniversary of the *Universal Declaration of Human Rights* (UDHR).

The exhibition showcased the artwork of over 160 young people from all over Ireland, ranging in ages from 12 to 16 years. The essence of the project was to encourage young people to think about human rights and to represent, in a visual manner, their impressions of the most significant issues.

In the true spirit of cooperation, the Irish Human Rights Commission (IHRC) and the Human Rights Committee of the Law Society designed the 'poster action project' to complement the new classroom resource on the UDHR, developed jointly by Amnesty International and the Curriculum Development Unit of the City of Dublin VEC.

'It could be you'

Each of the posters addressed serious issues about human rights in Ireland and internationally. While many focused on the denial of human rights globally – raising issues of poverty, exclusion, the control of arms and child labour – others were more focused on specific topics of interest to Ireland, such as the right to vote, the right not to be tortured, the right not to be discriminated against, the rights

of women, the right to be free and equal, the right to life, the right to freedom of speech and the right to shelter.

Others concentrated on political issues and the impact of politics on human rights, education, same-sex couples, the impact of financial restraints on human rights and the dangers of bullying and cyber-bullying. Other posters tackled abstract themes such as 'it could be you', which dealt with the ease with which human rights violations can occur and the importance of respect for rights.

Highlighting injustice

An exhibition of this art was showcased in the Law Society's Presidents' Hall from 16-20 December 2008. Over 250 students and teachers, as well as members of the legal profession, attended the launch. Opening the exhibition, John Shaw congratulated the students on



A student from St Finian's College, Mullingar, receives a certificate of participation from Law Society President John D Shaw

their hard work and on "bringing these issues to the attention of your school, your parents, your community and society at large. You have created awareness of these issues and you have highlighted injustices at home, in other countries and most importantly, you will bring about change".

Dr Maurice Manning commended the students on the cooperative efforts in producing the artwork and assured students that they were "playing [their] part in creating a society that recognises that human rights are everyone's rights – in our communities, in Ireland as a whole, and in the wider world".

Representatives of many of the youth organisations in Ireland attended. Leanne Caulfield (President of the Irish Secondary Students' Union), Eibhlín Browne (a Dáil na nÓg councillor representing Roscommon) and Nadine McCabe (Youth Forum of the Office of the Minister for Children and Youth Affairs) delivered presentations on the importance of engaging young people in a discussion on human rights.

Each participating school received a certificate in recognition of their achievement. Musical entertainment was



Enya Higgins and Aoife Fleming (first-year pupils at St Finian's College, Mullingar), with fellow students at the 'Human Rights – Framed by Young People' exhibition, held at Blackhall Place

UDHR's 60th anniversary

provided by students from St Peter's College, Dunboyne, participants in the Amnesty International 'Voice Your Concern' campaign, and members of the National Youth Orchestra. Closing the event, a group of hip-hop dancers from *Ballet Chancers*, an RTÉ reality television show, wowed the audience with their dynamic dance routines.

The exhibition space also provided a setting for a series of human rights-based events and workshops throughout the week of 16 December. Dublin Inner City Partnership exhibited images entitled 'Children and Human Rights' from three communities in the city of Dublin – St Michael's Estate (Inchicore), O'Devaney Gardens (Dublin 7) and Dominic Street – depicting the need for regeneration in these areas and the community response to this need.

The week also facilitated a youth workshop on Travellers' rights and discrimination, delivered by Pavee Point, with the objective of raising awareness of Travellers as a minority group in Ireland. This workshop was mainly discussion-based and interactive, with young people being encouraged to participate in the debate through brainstorming, debates, games and Q&A sessions.

BeLonGTo, an organisation for lesbian, gay, bisexual and transgendered young people aged between 14 and 23, also delivered a workshop in the Presidents' Hall during the week of the exhibition, concentrating on issues around prejudice and bullying.

Law School Human Rights Day

Students of the law schools in both Dublin and Cork also celebrated the 60th anniversary of the UDHR. Dublin's law school organised a debate on corporal



Students from Ballymun Youthreach, Dublin, show off their posters 'It could be you' and 'Shred it'

punishment entitled 'That this house would criminalise parents who smack', chaired by a representative from the Irish Society for the Prevention of Cruelty to Children.

An NGOs market contained information and crafts from Amnesty International, the Irish Council for Civil Liberties, Oxfam, Village Africa, and Habitat for Humanity. This was all framed by an interesting photo-

graphic exhibition on human rights. The Dublin students finished the day with a 'world cultures party' with food and music from around the world.

The law school in Cork also hosted a series of lectures on human rights issues. Niamh Gunn presented a lecture entitled 'Miscarriage of justice' on the topic of the Innocence Project and the recent case of Walter Swift.

Other lectures were delivered by Noeline Blackwell (FLAC) and Síle McGovern (Refugee Legal Service). A fair-trade stand from Oxfam also exhibited at Cork.

From artwork, to dancing, to serious discussions on human rights-related issues, the Human Rights Festival 2008 had a huge variety to offer every audience. The week raised awareness of human rights issues, and the importance of the work of the legal profession. It promoted human rights-based approaches to education and law-making and highlighted the significant work of the IHRC and the Law Society in these areas.

It also demonstrated young people's perspectives on human rights issues, and it was encouraging to witness the desire of these young people to seek and bring about change in the world. The future looks bright! **G**

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



Hip-hop dancers at the opening ceremony of the Human Rights Festival at Blackhall Place

The Solicitors Disciplinary Tribunal:

The Solicitors Disciplinary Tribunal's role is structurally separate and wholly independent of the Law Society of Ireland. But what is its role and how does it work?

The Solicitors Disciplinary Tribunal's authority is derived from the *Solicitors Acts 1954-2008* and the *Solicitors Disciplinary Tribunal Rules 2003*. The tribunal, which is structurally separate and wholly independent of the Law Society of Ireland, is located at The Friary, Bow Street, Smithfield, Dublin 7.

Members

Members of the tribunal are appointed by the President of the High Court. The tribunal consists of 20 solicitor members and ten lay members. Lay members are nominated by the Minister for Justice, Equality and Law Reform to represent the interests of the general public. The tribunal sits in divisions of three, comprising two solicitor members and one lay member.

Right to make an application to the tribunal

The function of the tribunal, in brief, is to receive and adjudicate on allegations/complaints of misconduct against solicitors. The Society or a member of the public may make an application to the tribunal for an inquiry into the conduct of a solicitor on the ground of alleged misconduct. Where an application has been made to the tribunal by a member of the public, the Society, as the regulatory body for the solicitors' profession, must be notified of such an application and of its outcome.

Meaning of 'misconduct'

Misconduct is defined in the acts and includes the following (in respect of which most applications coming before the tribunal relate):



- The contravention of the provisions of the acts or any order or regulation made thereunder, and
- Conduct tending to bring the solicitors' profession into disrepute.

In addition, the Society may make an application to the tribunal to hold an inquiry into the alleged misconduct of a trainee solicitor.

Application procedure

An application to the tribunal pursuant to the rules is grounded on a completed application form and affidavit and should be accompanied by all documentation (if any) that may support the allegation(s).

The tribunal, on receipt of

the grounding documentation, sends a copy to the respondent solicitor, who may file an affidavit in reply to the

allegation(s).

A copy of the respondent solicitor's affidavit is then furnished to the applicant, who in turn may file a further affidavit, which should be confined to dealing with matters raised by the respondent solicitor in his/her replying affidavit.

There are time limits involved in this procedure, but the tribunal, on application, has the discretion to

grant extensions of time. While the second affidavit (replying) furnished by the applicant will normally be regarded as the

final affidavit allowed for the purpose of determining whether or not a *prima facie* case of misconduct has been made out against the respondent solicitor, the tribunal, in exceptional cases, may permit a further exchange of affidavits. Such exceptional cases are confined to circumstances where the overriding interests of justice require that such a further exchange of affidavits should occur.

Prima facie decision

A division of the tribunal then examines the documentation furnished and decides whether or not the application discloses a *prima facie* case of misconduct to be adjudicated upon in a formal inquiry by another division of the tribunal.

Where the tribunal is of the opinion that there is no *prima facie* case of misconduct on the part of the respondent solicitor, the tribunal registrar will inform the applicant, the respondent solicitor and (where the Society is not itself the applicant) the Society in writing of that decision and the reasons. The applicant may, within 21 days from the receipt of such written notification, appeal that decision to the High Court.

Where the tribunal is of the opinion that there is a *prima facie* case for inquiry, it will proceed to hold a substantive inquiry.

The inquiry

Both the applicant and the respondent solicitor should be in attendance at the inquiry and both may conduct their own case or be represented by a solicitor and/or counsel. Should the respondent solicitor not attend or be represented at

"The function of the tribunal, in brief, is to receive and adjudicate on allegations/complaints of misconduct against solicitors"

its role and functions



The tribunal room of the Solicitors Disciplinary Tribunal

the inquiry, the tribunal may, upon proof of service of the appropriate notice on him/her, proceed with the inquiry in his/her absence. Unless otherwise ordered by the tribunal in exceptional circumstances, the proceedings at an inquiry are held in public.

The tribunal, pursuant to the rules, regulates its procedures at an inquiry in relation to the receipt of oral or documentary evidence. Oral evidence at an inquiry is given on oath/affirmation.

The tribunal has, pursuant to the acts, the same powers, rights and privileges vested in the High Court, or a judge, on the hearing of an action in respect of:

- The enforcement of attendance of witnesses and their examination on oath or otherwise,
- The compelling of the

production of documents, and

- The compelling of discovery under oath of documents.

At the end of an inquiry, the tribunal considers each complaint of misconduct against the solicitor and makes a separate finding in respect of each. While it may find some of the complaints proven and others not, the tribunal must in the case of each complaint give reason(s) for its finding.

Where the tribunal finds that there has been no misconduct on the part of the solicitor, the applicant, the respondent solicitor and the Society will be informed of its finding(s) and the reason(s).

What penalty can the tribunal impose?

The tribunal, pursuant to the acts, may by order do one or more of the following:

- Advise and admonish or censure the respondent solicitor,
- Direct payment of a sum, not exceeding €15,000, to be paid by the respondent solicitor to the compensation fund or as restitution or part restitution to any aggrieved party, without prejudice to any legal right of such party,
- Direct that the whole or part of the costs of the Society or of any person appearing before it, as taxed by a taxing master of the High Court in default of agreement, be paid by the respondent solicitor.

The tribunal may, however, decide not to make such an order, but instead send a report to the President of the High Court, which report shall, pursuant to the acts, include its findings, its opinion as to the fitness or

otherwise of the respondent solicitor to be a member of the solicitors' profession, and its recommendation as to the appropriate sanction, whether financial (in excess of €15,000) or suspension or strike off from the Roll of Solicitors.

Appeal to the High Court

A respondent solicitor, in respect of whom a finding of misconduct has been made by the tribunal, may appeal to the High Court against such a finding or may appeal to rescind or vary the order of the tribunal. Also, an applicant may appeal to the High Court against a finding of no misconduct or against an order made by the tribunal if he/she is of the view that the sanction imposed by the tribunal is inadequate or that the tribunal itself ought to have referred the matter to the High Court. **G**

Procedural safeguards and pro

The summary eviction process for housing authority tenants may infringe certain articles of the ECHR, writes Betsy Keys Farrell

For many years, the tenure rights of public housing authority tenants have been considerably inferior to those enjoyed by private tenants facing eviction. If a local authority decides to evict a tenant, it may proceed under section 62 of the *Housing Act 1966* (as amended) by serving a notice to quit. Where a tenant does not give up possession to the dwelling, a local authority may make application to the District Court for possession of the dwelling. The court is empowered to issue a warrant of possession against the tenant upon formal proofs by the local authority that the required notice to quit has

been served. Unlike a private tenant, the local authority tenant has no right to have any other evidence considered as to the reasonableness of the eviction, nor does the court have discretion to consider the merits or to assess the proportionality of the issuance of the warrant once the necessary proofs are made.

Until recently, the courts have declined to extend to housing authority tenants procedural rights whereby the merits of an eviction can be determined by an impartial tribunal established by law. In 2005, the Supreme Court revisited the issue within the context of the rights guaranteed by the *European*

Convention on Human Rights in *Dublin City Council v Fennell* ([2005] 1 IR 604), a consultative case stated. The case turned on the retrospective application of the *ECHR Act 2003* and, in the circumstances, the act did not apply. Nevertheless, the court went on to suggest that the summary eviction process “may arguably infringe certain articles of the *European Convention on Human Rights*, and in particular, articles 6, 8 and 13 thereof, and also article 1 of protocol 1”.

Article 6 and 8 rights

The suggestion was taken up and, in 2008, the High Court, unfettered by retrospectivity concerns, rendered judgment in

four separate cases challenging the s62 summary eviction procedure – *Leonard v Dublin City Council* (unreported, High Court, Dunne J, 31 March 2008), *Donegan v Dublin City Council* ([2008] IEHC 288), *Dublin City Council v Gallagher* ([2008] IEHC 354), and *Pullen v Dublin City Council* (unreported, High Court, Irvine J, 13 December 2008).

Leonard, *Donegan* and *Pullen* concerned s62 summary evictions originating from alleged antisocial behaviour that was in breach of the tenancy agreements. *Gallagher* was a consultative case stated by the District Court, in which the occupier claimed tenancy

■ ONE TO WATCH: NEW LEGISLATION

EC regulation no 1896/2006 creating a European order for payment; *European Communities (European Order for Payment) Regulations 2008* (SI no 525 of 2008); *Rules of the Superior Courts (European Orders for Payment) 2008* (SI no 551 of 2008)

The European order for payment (EOP) was introduced to ensure the “swift and efficient recovery of outstanding debts over which no legal controversy exists” (preamble to the regulation). The premise of the regulation is that the procedures for enforcing payment in cross-border disputes would be simplified and identical in all member states, and it introduced standard forms to be used by all member states. The regulation complements the *Brussels Convention* and the

European Enforcement Order as an alternative option in uncontested claims. This regulation has now been fully implemented in Ireland by virtue of the *European Communities (European Order for Payment) Regulations 2008* and corresponding amendments to the *Rules of the Superior Courts* (RSC). The regulation and the statutory instruments came into operation in December 2008.

Application of the regulations

The regulations apply to all civil and commercial matters in cross-border cases. A ‘cross-border case’ is defined as one in which at least one of the parties is domiciled or habitually resident in a member state other than the member state of the court hearing the action. There are a number of exceptions to the regulation, such as:

- Revenue, customs or administrative matters,
- The liability of the state for acts and omissions in the exercise of state authority,
- Rights in property arising out of matrimonial relationships, wills and succession,
- Bankruptcy,
- Proceedings relating to the winding up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings,
- Social security, or
- Claims arising from noncontractual obligations (in certain circumstances).

Applying for an EOP (article 7)

In order to apply for an EOP, the claimant shall deliver or send a completed form A (annex I to the

regulation) to the relevant court in the member state of origin. In Ireland, this will involve a lodgement in the Central Office of the High Court (RSC order 42C, rule 3).

Form A should include details of:

- The names and addresses of the parties and their representatives,
- The name and address of the court to which the application is made,
- The amount of the claim, including the principal and, where applicable, interest, contractual penalties and other costs,
- The cause of the action, including a description of the circumstances invoked as the basis of the claim and of the interest demanded,

human rights watch

Protection of human rights



rights by virtue of succession. In *Gallagher*, a question of fact arose as to whether the defendant had satisfied the criteria under the Scheme of Letting Priorities. Each of the cases focused primarily on alleged infringement of article 6 (right to fair trial) and article 8 (right to respect for private and family life). The tenants in all of the cases save *Leonard* were successful.

The distinguishing factor in *Leonard* was the absence of disputed facts underlying the decision to terminate the tenancy, where the tenant accepted that she was in breach of the tenancy agreement, which was subject to an additional undertaking. The court concluded that, in those circumstances, the plaintiff was



not entitled to a full hearing on the merits and, moreover, the availability of judicial review was sufficient to meet the rights of

the plaintiff to an independent hearing, as required by articles 6 and 8.

On finding in favour of the tenants in *Donegan* and *Gallagher*, the courts granted declarations under s5 of the *ECHR Act* that s62 was incompatible with article 8 of the ECHR. In their consideration of article 8, the courts referred to recent ECtHR decisions that considered the procedural fairness of summary evictions.

In *Donegan*, the court referred to the general principle enunciated by the European court that, when determining whether an interference under article 8 is necessary in a democratic society, a court should consider whether adequate “procedural safeguards” are in place and

must satisfy itself that the decision-making process leading to the measure of interference is fair and such as to afford due respect to the interests safeguarded by article 8. The court also concluded that, where a determination was made in the face of disputed facts by a party who was not impartial, a right to challenge that decision in judicial review proceedings was not a sufficient procedural safeguard.

Further, the court in *Gallagher* noted the ECtHR’s recognition of the implicit requirement for such procedural safeguards under article 8 and found them to be comparable to the Constitutional guarantee of fair procedures in decision making by public bodies that flows from the unenumerated rights provision of article 40.3.1.

- The cross-border nature of the case.

Examination of the EOP

The court shall examine whether the requirements as set out in article 7 are met and whether the claim appears to be well founded. The Master of the High Court shall perform the functions of examination, modification and rectification in Ireland.

If form A is not complete, the court shall give the claimant the opportunity to complete or rectify the application (article 9) within a certain time, unless the claim is clearly unfounded or the application is inadmissible. The court shall notify the claimant by sending a form B (annex II) specifying the time limit for completing and rectifying the application. This time limit may be extended at the

discretion of the court.

If the court determines that the requirements have only been met for part of the claim (article 10), the court may propose that the application be amended. Form C (annex III) is designed specifically for this purpose and is sent to the claimant to inform them of the proposed amendments, to invite the claimant to accept or refuse the amendment within a certain time frame, and the consequences of their decision. The claimant shall reply by returning form C. If the claimant accepts the proposed amendment, the court can issue an EOP for that part of the claim. If the claimant refuses the proposal or fails to reply within the time allotted, the court shall reject the application for the EOP in its entirety.

The court shall reject the

application (article 11) if:

- The requirements for making the application are not met,
- The claim is clearly unfounded,
- The claimant fails to send his response within the time limit, or
- The claimant refuses the court’s proposals.

The court shall inform the claimant of the grounds for the rejection by means of form D (annex VI). There is no right of appeal against a rejection of the application. However, this does not prevent the claimant from pursuing a claim by means of a new application for an EOP or by using another procedure available under the law of a member state.

Issuing and serving an EOP

Once satisfied that all the requirements have been met,

the court shall issue and cause to be served on the defendant (article 12), as soon as possible and normally within 30 days of the lodging of the application, an EOP using a form E (annex V). The EOP informs the defendant of the options available to him/her. These include:

- To pay the amount indicated in the order to the claimant, or
- To oppose the order by lodging a statement of opposition with the court that issued the EOP. The statement of opposition must be sent within 30 days of the service of the order on the defendant.

Opposing an EOP

An EOP is issued solely on the basis of the information provided by the claimant, and is not verified by the court. As such, the order

Both *Donegan* and *Gallagher* also considered s62 summary evictions in respect of article 6 of the ECHR, which explicitly requires fair procedures in the determination of civil rights and obligations. Whereas the court in *Donegan* declined to make a declaration on the basis of article 6, the *Gallagher* court concluded that the tenant's rights under articles 6 and 8 of the convention and his right to fair procedures under article 40 of the Constitution were not adequately protected throughout the eviction process.

Pullen v Dublin City Council

Most recently, in the *Pullen* case, the court found that the local authority failed to have regard for the plaintiff's rights under articles 6 and 8. In so doing, the authority failed to comply with its obligations under s3 of the *ECHR Act* and did not perform its functions in a manner compatible with the state's obligations under the convention provisions. It is significant that the court opted to grant relief

pursuant to s3 instead of a declaration of incompatibility under s5 of the act. A violation of s3 entitles the claimant to seek damages, whereas a declaration of incompatibility does not affect the continuing validity of a statutory provision nor does it entitle an individual who claims injury as a result to claim damages in judicial proceedings. Instead, they may make application to the Attorney General for an *ex gratia* payment.

In its analysis of the article 8 interference, the court pointed out that it was the defendant's obligation to satisfy the court that the interference was in pursuit of a legitimate aim and was "necessary in a democratic society". Of note, the court in *Pullen* considered that the interference with the plaintiff's article 8 rights was disproportionate, particularly in circumstances where the council had an alternative procedure open to it, as proceedings under s14 of the *Conveyancing Act 1881* would have met the defendant's

legitimate aims, while preserving the requisite procedural safeguards for the plaintiff's article 8 rights.

Further, the *Pullen* court considered the concept of 'civil right' and was guided by what it characterised as a "greater willingness" on the part of the European Court of Human Rights to classify a wide spectrum of issues as falling within the ambit of article 6(1).

Thus, a statutory entitlement to accommodation constitutes a 'civil right', and decisions taken that impact those rights bring article 6 into play. However, a full independent merits-hearing is not required in all cases. It is required when a decision is made in the face of disputed facts and the nature of the determination does not require some degree of particular professional expertise that may justify a lack of independence. In those circumstances, judicial review in this jurisdiction is insufficient to meet article 6(1) requirements.

The prominent feature of these cases is the role of due

process when fundamental rights are at stake. Strasbourg jurisprudence has clearly established housing rights within the ambit of the procedural protections required by articles 6 and 8 and, presumably, the same holds true in relation to personal rights under article 40 of the Constitution.

Although procedural safeguards must attend when fundamental rights are affected, there is no set formula beyond the requirements of an independent and impartial tribunal established by law and empowered to adjudicate on the merits and proportionality of the decision taken.

What remains to be seen is what approach will be adopted by local authorities to ensure convention compliance when tenants are subject to eviction. As the cases are being appealed, it may be some time before this becomes clear. **G**

Betsy Keys Farrell is a solicitor and member of the Law Society's Human Rights Committee.

becomes enforceable unless the defendant lodges a statement of opposition with the court of origin within 30 days of the service of the order (article 16). This can be achieved by lodging a form F (annex VI) with the court of origin. The form should indicate that the defendant contests the claim. There is no need to specify reasons in the form. If the statement is lodged in time, the proceedings shall continue in accordance with the ordinary civil procedure (article 17).

Enforcement

Where no statement of opposition is lodged within the time limit, the court shall declare the EOP enforceable without delay (article 18) in form G (annex VII) and shall send the enforceable EOP and the declaration of enforceability to the claimant. The Master of the High Court has jurisdiction to declare

the EOP enforceable in Ireland.

The High Court has exclusive jurisdiction in Ireland in relation to the refusal, stay or limitation of enforcement of EOPs (RSC order 42C, rule 5).

An order may be refused where:

- The order for payment is irreconcilable with an earlier decision or order previously given in any member state or in a third country – the order can be refused in circumstances where the earlier decision or order involved the same cause of action between the same parties and was recognised in the member state of enforcement, or
- The defendant has paid the claimant the amount awarded in the EOP.

Review

After the expiry of the time limit for submitting a statement of

opposition, the defendant shall be entitled to apply for a review of the EOP in certain cases (article 20). These include where:

- The order for payment was served without acknowledgement of receipt by the defendant and where it was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part, or
- The defendant was prevented from objecting to the claim by reason of *force majeure* or due to extraordinary circumstance without any fault on his part, provided that in either case that he acts promptly, or
- The order for payment was wrongly issued or due to other exceptional circumstances.

Where the defendant has applied for a review, the court may limit the enforcement proceedings

to protective measures or make enforcement conditional on the provision of such security as it shall determine or, under exceptional circumstances, stay the proceedings upon application by the defendant (article 23).

Appeals

There is no appeal from the order of the court in relation to the:

- Issuing of a European enforcement order certificate,
- Refusal of an application for a European order for payment,
- Issuing of a European order for payment,
- Declaring an EOP enforceable.

For more information on the regulation, see <http://europa.eu/scadplus/leg/en/lvb/l33212.htm>.

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

Appalled at the contents of AIB letter

From: Bernadette Glynn, Oranmore, Co Galway

I write to alert all colleagues to the contents of a letter I recently received from Allied Irish Banks in respect of their allegation that I had not replied to a previous letter from them, and setting out the consequences that would ensue should I not reply within a certain timeframe.

The letter commenced by asking me to reply urgently to a letter (even though I had already replied a month earlier), and setting out the consequences should I fail to do so. I am setting out hereunder the exact wording of the letter in respect of these consequences, which one will see, after perusal thereof, really amounts to threats:

"Accordingly, we should be obliged if you would respond within ten days of the date of this letter. Failure to do so will result in an escalation process, which may involve any or all of the following:

- A formal complaint to the Law Society of Ireland,
- Advice that, in the absence of a satisfactory response from your firm within six months of the complaint to the Law Society of Ireland, the bank may refer your firm to the Solicitors Disciplinary Tribunal, and/or Independent Adjudicator (or the Solicitors' Ombudsman, as appropriate) and/or the High Court,
- Advice that the absence of a response in the above may trigger a review of **all** cases where undertakings are held from your firm,



AIB: "no entitlement to issue such threats"

- Advice that the bank will not accept further undertakings from your firm until further notice, and not before a complete and satisfactory response is received in respect of this case, and that the Law Society of Ireland will be so notified,
- Advice that the bank will notify the customer, to the effect that your firm has failed to honour your undertaking and that the customer may

wish to take this matter up immediately with your firm."

Needless to say, I was absolutely appalled at the contents of the letter as, leaving aside that I had indeed replied to their letter, a solicitor's undertaking to a financial institution does not include progress reports. Our undertaking is merely to investigate title, register the mortgage, and, in due course, forward all title documentation

to them! In the circumstances, the bank has no entitlement to issue such 'threats' and they should be taken to task immediately on receipt of such a letter. One can only imagine the damage that would be occasioned to a solicitor's reputation in the event that the bank should carry out the threats set out in their letter, which would include the defaming of a solicitor to their professional body, and their client, in addition to the interference with other transactions ... not to mention the many, many defamation actions that would thereafter be served on them! Such a proposed course of action is not alone high-handed and arrogant, but threatening in the extreme.

I have brought the matter to the attention of the Law Society, asking that they take up the matter directly with Allied Irish Banks but, in the interim, I want to bring same to the attention of all colleagues to alert them to the approach being adopted by Allied Irish Banks, and to urge them to reply, in kind.

Bending over backwards, again

From: Colm O'Connor, JA Shaw & Co, Mullingar, Co Westmeath

In my article 'Bending over Backwards' (*Gazette*, November 2008, p42), I noted, in the context of the ECJ decision concerning Coleman and Attridge Law, that "an important precedent has been established, and the principle of associative discrimination

has been firmly set down at a European level, with significant implications for the national laws of member states in this area".

It has been kindly brought to my attention by the Law Society's Employment and Equality Law Committee that this sentence might lead a reader to conclude that there was no existing provision for

the concept of associative discrimination in Irish law. Although I was making a general point applying to all EU member states, it should be noted that section 6(1) of the *Equality Acts 1998-2004* makes provision for this concept in Ireland. Some other European Union states may now have to act on the matter, however. **G**

A beacon of light in the

With the Supreme Court affirming in December the High Court's decision in the *O'Brien* case, Stuart Gilhooly predicts a bright future for personal injury claimants

In these dark days of recession, the last day of last term shone like a beacon of light through the gloom. On 19 December, the Supreme Court provided the news that all personal injury practitioners and 97% of claimants had been waiting to hear. The right to legal representation before PIAB was unanimously confirmed by the three-judge court, subject to the right of PIAB to copy any documentation sent to the claimant's solicitor.

This long-running dispute began way back in 2004, when Declan O'Brien made an application to PIAB through his solicitor, Denis Boland, following an accident in November 2001. He signed an authorisation that made it clear, among other things, that he wished his solicitor to handle the application exclusively on his behalf and that he did not wish to receive correspondence from PIAB. As was their *modus operandi* at the time, PIAB ignored this authority and continued to contact the claimant directly, merely copying correspondence to the solicitor. In addition, PIAB refused to register the claim due to the non-availability of a medical report.

Injunctions sought

With time running against him and not wishing to receive any further correspondence, this prompted O'Brien to instruct his solicitor to seek an injunction preventing PIAB from further interfering with the solicitor/client relationship and to abide by the written authority to deal exclusively with the solicitor.

In addition to this, an order of *mandamus* to register the claim without the medical report was also sought.

The issue of registration was resolved, but the issue then crystallised into purely whether Declan O'Brien was entitled to be represented by his solicitor. It is hard to imagine a more important issue for the solicitors' profession than that of legal representation in such circumstances, so an application was made by the Law Society to join the proceedings as *amicus curiae*.

The matter came on for hearing in front of Mr Justice John MacMenamin in December 2004 and a decision was handed down on 25 January 2005. Although a number of arguments were made by PIAB, the thrust of their case can be summarised as claiming that the PIAB process was administrative in nature, not contentious, and therefore not requiring legal representation.

Mr Justice MacMenamin made an order in favour of the applicant, reasoning: "Thus, even if I accept that the procedures before [PIAB] are administrative in nature, I am satisfied that by reason of the complexity, importance and potential consequences, they are such as to justify, not only access

to legal advice, but also such rights to legal representation as have been identified by the applicant in this case. Nor are such rights rendered irrelevant by the fact that PIAB does not conduct hearings."

He ordered a declaration as follows: "[PIAB] in declining to accept or act upon the authorisation dated 16 August 2004 by corresponding directly with the applicant (and

copying such correspondence to his solicitors) is acting in breach of section 7 of the *PIAB Act 2003* or without authority under any other provision of the act."

Equal opportunity

This decision was appealed by PIAB to the Supreme Court, where it was eventually heard on 7 April 2008.

The Law Society

was represented in both courts by a legal team that befitted the importance of the issue. Roddy Bourke of McCann FitzGerald instructed leading junior counsel Declan McGrath and constitutional guru Gerard Hogan SC, led by the illustrious Dermot Gleeson SC. Those of us who had the privilege to witness the performance of Dermot Gleeson on both occasions will probably wait a long time before we see legal argument as compelling,

entertaining and ultimately decisive as that delivered by a senior counsel at the height of his powers.

The most memorable example was when he asked the Supreme Court to imagine an accident on a bus that involved a lawyer, a schoolteacher, a factory worker and a foreign national. He asked the court to determine whether each of these potential personal injury claimants had an equal opportunity to put their best foot forward in an application to PIAB. For those seated on our side of the Supreme Court at least, that was the moment the case was won.

In the Supreme Court judgment, Mrs Justice Macken reached the inevitable conclusion that there are both pitfalls and complexities arising in and from an application that simply could not be foreseen or solved by a personal claimant. Although it was clearly open to a claimant to make the application himself, the option to use a solicitor must be available to ensure fair procedures. She felt that allowing a claims manager or solicitor to represent a respondent (as had been conceded by PIAB's counsel in the Supreme Court), while not allowing a solicitor to represent a claimant, did constitute an "inequality of arms" and, as such, could not be regarded as fair procedures.

Mrs Justice Denham adopted a similar approach. She, too, found that, as claimants would not have the "skill or expertise" of respondent's agents or insurers, anything other an equal approach would be unfair.

"The lawyer places the person on an equal footing. It creates a situation which is even handed"



PIAB gloom

"The lawyer places the person on an equal footing. It creates a situation which is even handed." She, too, noted the potentially negative consequences for a claimant who did not have advice.

She also noted, as did Mrs Justice Macken, the dearth of any legislative intention on the part of the Oireachtas to deny a right to legal representation. "If the Oireachtas had intended PIAB to be a lawyer-free zone, it would have said so." She found that the right to legal representation was fundamental and "a court would be slow to draw such an inference of such a breach of fundamental right".

There was, however, a final matter to be dealt with. She felt that the claimant was entitled to be kept informed of the process and that as PIAB is not a court and does not have the formality and rules of a court, it may send a copy of a letter sent to a solicitor to the claimant at the same time, throughout the process.

Mrs Justice Macken was silent on this issue, but Chief Justice Murray, who did not deliver a judgment, expressly agreed with the approach of Mrs Justice Denham in this regard.

Finally, both judges agreed that PIAB was entitled to dictate the terms of any authorisation on which a claimant wished to rely for the purposes of ensuring representation.

It is worth noting that, while the Supreme Court could not deal with the issue of constitutionality of the practice (as it was not the subject of the appeal), Mrs Justice Denham did make an interesting *obiter dictum* observation. She commented that the PIAB policy of



Mrs Justice Denham (left) and Mrs Justice Macken delivered written judgments: Chief Justice Murray concurred

refusing to correspond directly with the complainant's legal representative was "a direct interference with the applicant's right to legal representation and indirect interference with the applicant's right of property in his personal injuries action". She further noted that she assumed "that the Oireachtas did not intend to breach a constitutionally protected right".

It is clear, therefore, that any attempt to amend the legislation in this regard in the future would have to jump that hurdle.

Thorny issue

So what happens next in this particular soap opera? No doubt the thorny issue of costs will raise its head. There will be a body of opinion that this judgment opens the door for costs to be awarded in every case before PIAB. This would, on the reading of the judgments handed down, most likely be wrong.

While clearly any views expressed by the judges on the question of costs would be *obiter*, Mrs Justice Macken dealt with the issue on a number of occasions. She made it clear that the public policy behind PIAB has been to reduce costs

and the very clear implication is that, while legal representation does not affect such a policy, the provision of costs would. She accepts that PIAB awards costs in certain cases (that is, to vulnerable claimants), but she says this fact "does not grant a right of costs to a claimant".

Mrs Justice Denham reached a similar conclusion: "the right to legal representation is a right which a claimant may exercise, in the knowledge that costs of legal representation will not be paid by PIAB".

It certainly seems that the judges came to their decision on the basis that costs are not automatically payable and, in my opinion, it would be very difficult to shift this view in light of the rationale behind the judgments.

This is, of course, an entirely different matter to the issue of costs for vulnerable claimants, which have been allowed as a result of PIAB policy but which are, in many cases, pitifully inadequate and, at other times, totally inconsistently awarded, based on criteria that are unclear to claimants and their legal advisors.

The future overall, however,

remains bright. This judgment is good news for personal injuries claimants who, if denied representation by their solicitors, would have had to fend for themselves in dealings with PIAB.

The possibility remains that PIAB may seek to have the Oireachtas amend the legislation to restrict the right to legal representation. This is unlikely for three reasons.

First, PIAB will be relatively happy with the outcome, in that they can copy all correspondence to the claimant and therefore achieve what was always their stated aim, that is, to keep the claimant informed of progress.

Secondly, the *obiter* comments of Mrs Justice Denham suggesting that such an interference would be a breach of constitutional rights will surely cause alarm with legislators.

Finally, PIAB is seen to be a success and working well within government, and it's hard to see that amending legislation that would probably be unconstitutional would be a priority at this time.

As for us, we need to continue to look after the best interests of our clients. If this involves taking PIAB to task over delay, inadequate awards or unreasonable/unlawful use of its powers, then that's what we must do. And if the award is right, advise the client to take it – if not, refuse and move on to court.

However, be under no illusion: PIAB is here to stay. Nothing we say or do is going to change that. The war is over, now let's give peace a chance. **G**

Stuart Gilbooly is chairman of the Law Society's Litigation Committee.

BATTEN DOWN HATC

The economy has hit rough seas – bad news for clients and potentially worse news for law firms. Many practitioners are extremely concerned about steering their firms through the choppy waters of 2009 and are facing the challenge to survive and prosper. David Rowe takes the helm

MAIN POINTS

- Recession-proofing your firm
- Assess and act
- Effects of greater competition
- Reviewing staff and salary levels

THE HES

The impact of the deterioration in the economic climate on Irish law firms has been dramatic, with surprisingly differing reactions in various sectors of the market.

This may be partially explained by the fact that the slowdown hit private-client firms first, through residential conveyancing, with the slowdown accelerating into the commercial practice areas in the last six months. In spite of this, and somewhat surprisingly, many of the larger firms seem to be reacting slowly.

The effect on any particular firm depends on its profile of turnover. The areas that are more open

to the economy, such as conveyancing, commercial, banking and other related activities, have been hardest hit. Some areas of activity are largely immune to a slowdown, such as probate and crime. Other areas, like litigation, increase in a challenging economy. The effect on any particular practice is largely dictated by the spread of its work over different work areas, although there are implications for cash flow across all practice areas.

Peaks and troughs

Most Irish law firms have a mix of practice areas. Ten years ago, this might have been 45% litigation, 30% conveyancing, and 25% other areas. With the introduction of the Personal Injuries Assessment Board and the boom in conveyancing, the profile changed to an average of 50% conveyancing, 30% litigation and 20% other.

For most firms, 2006 and 2007 were the peak years, with 2008 showing a significant slowdown in the number of new transactions. This trend accelerated towards the latter end of the year, but the impact on fee income was, on average, not dramatic, as fees from transactions in late 2007 and in early 2008 were realised in 2008. Where residential conveyancing made up a substantial part of the practice's fee income, the effects were seen earlier. Most practices will see their income falling by 20% to 30% in 2009 compared with 2008 levels.

Man the decks

It is clear, therefore, that we are heading towards lower fees for the next couple of years. It is a simple supply/demand equation. There will be many more suppliers of legal services at all levels, from residential conveyancing to complex commercial transactions, than there are clients looking to procure these

KEEPING IT ON AN EVEN KEEL:

TOP TIPS FOR RECESSION- PROOFING YOUR FIRM

- **Strong leadership.** Law firms can be extremely difficult to manage, thanks to the independence of lawyers. Managing partners must encourage lawyers to step out of their comfort zones. They will need to make difficult decisions and display strong leadership if decisions are to be taken and actually executed.
- **Monitor your financials.** Review and increase the frequency of your financial reporting. Except in the most disciplined firms, many lawyers don't pay close attention to the numbers. Change happens fast during a recession, and clients come under financial pressures themselves, which will have a knock-on effect on the firm. By ramping up your reporting, and coaching your partners on warning signals and what to look out for, you will reduce the risk of running into a financial crisis. Remember that 'cash is king'.
- **Make the hard decisions quickly and humanely.** Layoffs, if required, must be done quickly and humanely – not only to preserve capital, but also to get the firm past this trauma and focused again on moving forward.

Redundancies will be inevitable in order to get some firms through the recession. This should be the last resort, and other steps can be taken before it gets to this point. Carefully assess the continued employment of underperformers. Where the market is no longer buying specific services, consideration must be taken to upskill staff or make alternative working arrangements. Look at long-term solutions rather than knee-jerk reactions that could negatively impact on the firm further down the road.

Remember that pay cuts can achieve the required savings while leaving a firm's competitive capability intact. Redundancies alone are unlikely to be the correct solution – a combination of redundancies and pay cuts is probably required. Be fair: while it is definitely an employer's market now, this will change.

- **Keep marketing.** One of the biggest myths is to cut marketing when times are bad. In actual fact, firms must continue to market through

these times. If one is not already in place, install a short-term marketing plan. This should consist of a range of activities, such as business development tactics, article generation, informative seminars, networking events and advertising. Look at spending money more efficiently on 'face time' with clients and improve the marketing efforts of your lawyers to maximise their exposure in the slow market. Most of the effective marketing tools do not involve a significant monetary spend – they involve spending time.

- **Mind your clients.** Minding your clients will be one of the biggest challenges firms will face. Other firms will try to fish in the same pool of clients and become more competitive on price and aggressively try to poach outside their own client bank. Stay close to your clients and strengthen and build client relationships.
- **Manage staff expectations.** Explain and communicate with staff about the future plans of the firm and the plans you have put in place to weather the recession. Knowledge is power, and when staff feel involved in the process, they become motivated and will do what is expected of them, rather than default to 'business as usual'.
- **Think strategically.** Don't panic. Think strategically about whether and where to cut short-term resources. Look at the overall goals of the firm and, if necessary, take this opportunity to re-engineer or sever areas that have become less profitable. While strategy may be more challenging during recessions, opportunities will arise to enhance both your client mix and your talent base.
- **Think positively.** For most firms, new business has come easily over the past decade. New work and new transactions came in unsolicited. In some cases, law firms did not even know where a new client had come from. Many firms became blasé and complacent.

The new economy challenges us all to re-engage. Those that are tired and lack the appetite for the new environment will fail. The new economic climate requires a renewal of energy and of positive thinking.

services. In that environment, prices will fall. We are all going to get paid less for our services over the next couple of years, so our cost base in delivering these will need to be lower. Charge-out rates will fall. Clients will be able to buy services from the large firms for the same as their traditional local supplier –

undercutting and marketing to other people's clients will become the order of the day.

The reaction to date across the different sizes of firms has been surprisingly varied. Many of the smaller firms have reacted quickly, with others not having reacted at all. It is clear that all firms need to reassess their position – for small firms, in some cases without the necessary internal or external advice, this can be difficult. In general, medium-sized firms appear to have reacted quickly. Staffing levels have been cut. This has been achieved by a combination of redundancies, shorter working weeks, sabbaticals, natural attrition and not taking on qualifying trainees. The larger practices have to date, by and large, left their staffing levels intact. This is surprising, given that they are the most affected by the economic downturn.

As well as reviewing staffing levels, firms have been actively looking at salary levels. In the context of falling prices received from clients, salary cuts are inevitable. Bonuses have been scaled

WEATHERING THE STORM

- Keep service levels to existing clients high,
- Look for scope to develop other practice areas in the short term, for example, litigation,
- Keep structures in place for a pick-up in approximately two years,
- Maintain space for partners to market the firm – don't allow them to get clogged up with small transactions,
- Keep succession planning intact,
- Match staffing mix to the work available (cost, seniority and complexity), and
- Look at salary reductions in preference to redundancies.



back significantly, and are now only available for exceptional performance. During the years of shortage of both qualified and support staff, bonuses became a retention mechanism rather than a performance tool. All this has now changed utterly. Salaries for solicitors, legal executives and other support staff look as if they are going to fall, depending on the location and area of the practice. For most firms, the consequence of not doing this will be that the partners will earn less than the staff they employ.

Firms who have faced up to the harsh realities of 2009 and made the necessary decisions have found the process very difficult. Making tough decisions is always hard. However, these are decisions that have to be made.

All aboard

In the midst of the challenging economic environment, there is a need to remain positive. Well-managed firms are already planning ahead. Our recommendation is that firms must act immediately to

reassess their position in order to minimise the effect of the slowdown and to capitalise on the undoubted opportunities that are out there. Strong firms become stronger during a recession.

Irish law firms are facing challenges not faced for a decade. These new challenges have come quickly and are forcing most firms to remodel. They will also force changes in the ownership structure in the profession, with mergers, dissolutions, retirements and redundancies being seen more frequently. Keeping your head and remembering that we are in a phase that will pass is important. It is all too easy to get consumed with worry, self-pity and the general gloom fed by the media and other sources.

A decisive and balanced reaction is required: think and act positively and you will recession-proof your firm. **G**

David Rowe is managing director of Outsource, business advisors to Irish law firms. Contact David at dr@outsource-finance.com.

Performance ANXIETY

There has been an increase in claims before the courts to compel reluctant purchasers to close on sales agreed in better times. Two recent decisions offer an insight into how the courts are treating such claims, writes Niamh Herron

In December 2008, in *Kelly v Simpson*, the High Court refused to order a potential purchaser to complete a sale. The dispute centred on a 2.5 acre elevated site in Schull, Co Cork, with views over the town and sea. There was an existing bungalow on the site, an old stone ruin and a wooded area. Mr Kelly bought the property in December 2006 with a view to selling it on. He engaged a local auctioneer for this purpose. The property was marketed as being capable of development. That development would involve the building of two more houses, together with the demolition of the existing bungalow and the building of a much larger ‘executive residence’ in its place.

The auctioneer, who knew Mr Simpson, approached him to see if he was interested in the property. Mr Simpson viewed it in May 2007 and was told by the auctioneer that the price was €1.5 million. The following day, Mr Simpson agreed to buy the property at the asking price. Mr Simpson was reluctant to pay either a 5% booking deposit to the auctioneer or a 10% deposit on the signing of the contract, as would be the norm. However, this never became an issue, as Mr Kelly never sought a deposit. He was satisfied to rely on Mr Simpson’s business reputation.

In June, at Mr Simpson’s request and expense, some trees on the site were cut down. This was to facilitate a digital survey of the site before making an application for planning permission to Cork County Council for two additional houses on the site. Mr Simpson’s architect reported negatively in terms of the site’s development potential and concluded that “one additional dwelling may be permitted on the site”. This was a much less attractive proposition than

Mr Simpson had been led to believe. Nonetheless, he appeared willing to proceed with the purchase. Contracts were exchanged and signed, although the closing date was put back to October 2007, later than was initially envisaged. However, the sale did not close and Mr Kelly served a completion notice on Mr Simpson in January 2008, and a further one in February 2008 for the sake of certainty.

Specific performance

The judge noted on the evidence that he would have been prepared to find that an enforceable contract for sale was entered into between Mr Kelly and Mr Simpson. The essential ingredients for a valid contract for sale of land existed – namely, the identity of the purchaser and the seller, a description of the land, and the agreed price. However, the remedy of specific performance is an equitable remedy, and the judge felt he was obliged to look beyond “the legal form of transactions to the elements of conscience that may impact on whether it is fair to grant the remedy”. On the evidence, the judge found that the seller and the auctioneer were aware of planning restrictions in the area. Further, the high price of €1.5 million for the property was achieved “by specific representations designed to undermine the planning code and the entitlement of the local planning authority to properly control planning” in the area.

Interestingly, although the parties did not specifically plead on this point, the court felt it had a duty to intervene. It did not confine itself to the rights of the parties to the proceedings. The court held that it would not grant an order requiring Mr Simpson to take “property at a price that was only achieved due to an agreed scheme to undermine

MAIN POINTS

- Recent decisions of the Irish courts on specific performance
- Cannot profit from wrongdoing
- Court protects rights of non-parties
- Relief denied if substantial delay



the planning code". That agreed scheme involved carrying out some works to the roof of the ruin, such that it would appear of sufficient upstanding for renovation, and applying for planning permission for a residence on the wooded area of the site in the name of a suitably qualified local person. The court exercised its equitable jurisdiction to ensure the planning code was respected. In his judgment, Mr Justice Charleton said: "If approaches to the planning process are not honest, then it is fundamentally undermined. Such attitudes are destructive of the rule of law." It would appear that Mr Simpson had a lucky escape due to the court's consideration of the wider Schull community and the court's duty to protect it from a less than honest planning application.

Substantial delay

Another application for specific performance of a contract for the sale of land occurred in *McGrath v Stewart & Anor*. In contrast to the *Kelly* case, in this action, the purchaser sought to enforce the transaction. Contract documentation was signed in June 1998, but proceedings were not issued in the High Court until July 2004, with judgment being delivered in November 2008.

By way of background, the purchaser agreed to purchase three properties: 9 and 13 Summerhill Place and 14 Rutland Street, in Dublin's inner city. The

process of finding a buyer was convoluted. Two of the properties were to be sold with tenants in place, but this may not have been communicated to the eventual purchaser.

The sale of 13 Summerhill Place, which was derelict and unoccupied, closed in October 1998. The price paid was IR£22,500. The agreed price of each of the other two properties, which were habitable and tenanted, was IR£25,000 each. The purchaser was insisting on vacant possession of the remaining two properties, as per the contract, but the seller was not prepared to close the sale on that basis. The purchaser's solicitor sent letters to the seller's solicitor in November 1998, March 1999 and May 2000 enquiring as to the current position regarding vacant possession and noting that the purchaser was eager to proceed. No response was received to any of these letters. Time passed and, in June 2004, the purchaser became aware that the properties were vacant. His solicitor issued a completion notice requiring the seller to close the sale and, when this did not happen, the current proceedings were issued on 11 July 2004. This was over six years after the signing of the contract.

The court found that, while the parties may have had different understandings of what they were buying and selling, the contract documents signed by or on behalf of both parties were clear. The

"If approaches to the planning process are not honest, then it is fundamentally undermined. Such attitudes are destructive of the rule of law"

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court was satisfied on the evidence that the parties had entered into a valid contract for the sale of the three properties with vacant possession. Unlike the *Kelly* case, here the court did not find any evidence of moral turpitude on the part of the parties such as would prevent it granting the equitable remedy of specific performance.

However, one of the grounds pleaded on behalf of the seller in his defence of the proceedings was the doctrine of laches. In order to succeed on the basis of laches, the seller would have to show that, not only had a substantial period of time elapsed before proceedings were issued, but that there were circumstances that would render it unjust to enforce the claim against him after such delay. In this case, the contract was entered into in 1998 with an agreed closing date of 23 July 1998. The sale of 13 Summerhill Place closed on 9 October 1998. It became clear at this time, and was subsequently reinforced, that the seller did not intend to close the other two properties other than subject to the existing tenancies. As the contract signed by the parties provided for vacant possession, the seller was acting in breach of contract in refusing to complete with vacant possession. Instead of pursuing his claim at that time, the purchaser delayed, and the court found it to be "a substantial delay".

Defence of laches

The court then had to consider whether the circumstances in the case were such as to render an order requiring the seller to sell at the contract price agreed in 1998 inequitable. Evidence was given that the value of the properties had increased more than tenfold by the time of the court hearing. The court found that the purchaser, "an experienced property dealer in the local area, must have been well aware of the steadily increasing value of the properties" and would have known that the seller would be prejudiced by his delay in bringing proceedings. Consequently, the seller "would suffer greater financial hardship if the claim were enforced now than he would have in

the event of enforcement at the time of breach or soon after".

Mr Justice Murphy further stated that even "in the uncertain climate currently prevailing in the property market, the [purchaser] could not hope to acquire equivalent properties for a sum equivalent to the contract price agreed in 1998". Accordingly, the court allowed the defence of laches and refused to order the seller to complete the sale.

However, all was not lost for the purchaser as, in the event of the court not awarding specific performance of the contract, he had sought damages. The court agreed, and awarded damages. I will not go into the method for calculating damages prescribed by the court in detail, other than to say that the purchaser was not allowed to profit from his delay.

Systemic delay

The delay in the court system is another matter entirely though, and is highlighted by the above two cases.

The *Kelly* case, where proceedings were issued in 2008, was heard by the commercial division of the High Court in the same year. Generally, claims with a value in excess of €1 million can be dealt with by the commercial division of the High Court. By contrast, proceedings were issued in the *McGrath* case in 2004, with the decision of the High Court being delivered in November 2008. Ironically, while McGrath was not allowed to profit by his own delay in issuing proceedings, he did profit as a result of delay in his case coming on for hearing.

To conclude, the courts will not entertain purchasers who delay substantially in issuing proceedings with the expectation of benefiting from a rising market, or indeed a seller who delays in a falling market such as is upon us at the moment. Also, the courts will not grant equitable relief where the result would enable a party to profit by his bad faith. **G**

Niamh Herron is a senior associate in the Dispute Resolution and Litigation Department of Eversheds O'Donnell Sweeney, Dublin.

LOOK IT UP

Cases:

- *Kelly v Simpson* [2008] IEHC 374
- *McGrath v Stewart & Anor* [2008] IEHC 348

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It was a tough year for many firms, and 2009 is unlikely to be much easier. For many, survival will be an issue – but survival will be much easier for those with effective leadership and management, writes Andrew Otterburn

MAIN POINTS

- Effective leadership and management necessary
- Effective financial management
- Ten basic areas to address

The survival of many firms in a tough economic climate may depend on an ability to plan and restructure and on good financial management. Many firms are not strong in these areas, but there are at least ten basic areas that partners should consider addressing.

For the last five years, we have undertaken an annual financial benchmarking survey for firms in Ireland. Our latest survey, published over the summer of 2008, was for financial years ending in 2007.

Of firms that took part, the average fee income in both 2007 and 2006 was approximately 1% lower in 2007 than in 2006. However, their average profits were down by 14%. The firms with year-ends prior to the end of August 2007 saw fees and profit rise by 7% and 5% respectively. Those with year-ends after August, by contrast, saw a fall in fees and profit of 9% and 33% respectively. The survey is based on a relatively small sample, and the results are not necessarily representative. However, many will relate to this dramatic fall in profits. And this of course was 2007. In 2008, the position for most firms worsened.

Ten basic areas

The need for effective management – in particular, effective financial management – is lessened when things are going well, but becomes crucial when an economy slows down. Most firms in Ireland have enjoyed a run of good years with high profits and will hopefully have reserves to get them over the next couple of years. Some will not have such reserves, however, and many will not have made adequate provision.

By the time we come out of the slowdown, some firms will have closed, but others will have taken the opportunity to restructure, refocus and strengthen their practices. They will be ready for the upturn when it comes. All firms should ensure they do this. Ironically, one of the few good things about an economic slowdown is that it presents an opportunity to improve how your firm is managed. When times are good, it is invariably

difficult to find the time to make the changes that you probably know are needed – a tightening in the economy can do wonders to focus minds on the need to improve.

Here are some minimum requirements:

- 1) **Develop a strategic plan for your firm** – what are your firm's strengths and weaknesses? What are you good at and should try to develop? What are you weak at and should drop? What might the markets you operate in look like as the recession comes to an end? How can you position your firm to take advantage of the upturn when it comes? Why should your clients use you rather than other firms? What makes you different?
- 2) **Create an appropriate management structure** that enables those with leadership skills to deliver the strategic plan. Identify people with energy and drive and give them the opportunity and authority to develop the firm. Tap into the strengths of your firm – your people – and that is not just at partner level.
- 3) **Develop effective procedures and systems** for actually processing work. This might include looking at your computer systems, but should start with the way your fee earners manage their cases. How is work allocated? Who monitors caseloads? Are realistic section 68 letters provided? Do you give clients cost updates as a matter unfolds?
- 4) **Ensure all of your fee earners time record** – both their chargeable time, but also non-chargeable time. The main purpose of time recording is not billing – although for fee earners who bill on a time basis it is clearly essential – but for assessing the cost of doing the work and for knowing what people are doing. Areas to monitor would include:
 - The percentage of the day that has been accounted for – the goal should be 100%,
 - The percentage of this time that is chargeable – goals will vary according to fee earner,
 - The percentage of the chargeable time that is billed to clients and that the client pays for – a target of 90% would not be unreasonable.

MANAGING TO PULL



- 5) **Prepare a budget at the start of each year.** Set time targets for fee earners, not just in terms of fees, but also looking at marketing, training and management. Consider team targets rather than individual targets and avoid complex bonus schemes. Beware paying a bonus that is related to an individual's fees, as it will often result in work hogging. It also undermines any attempt at team working.
- 6) **Produce management accounts at least each quarter.** These should be as simple as possible and, if the firm is departmentalised, should show departmental or team profitability.
- 7) **Focus on cash.** Most successful businesses both in the law and outside place a high focus on cash management. This means having a sensible level of partner capital and then setting certain performance targets that are related to cash management. Areas to consider would be unbilled disbursements per fee earner, debtors per fee earner and debtor days.
- 8) **Understand your firm's average hourly cost,** and the minimum hourly charge-out rates you should be using, for example, if tendering for work.
- 9) **Appreciate the importance of gearing** – the number of other fee earners in addition to each equity partner. Long term, as the economy slowly

improves, the more successful firms will be those with higher levels of gearing.

- 10) **Develop a marketing plan.** As traditional sources of work have slowed, firms are, often for the first time, having to think about marketing their practices and actively trying to generate work – something that is not easy if you have never had to do it before. There is work out there but, increasingly, you will have to be imaginative in spotting opportunities and will have to work harder pitching for it. This will often require knowing what prices you can tender for work at while still making a profit, which comes back to the need for financial information

A good New Year's resolution for many firms will be to be prepared for the upturn – and to have the systems in place to ensure they survive the intervening period. Some will not survive, but those that do are likely to have effective leadership and management, an ability to plan and restructure, and good financial management. You should use a period of slower activity to ensure you have these in place. **G**

Andrew Otterburn, Otterburn Legal Consulting, is a chartered accountant and management consultant and is a member of the national executive of the Law Management Section of the Law Society of England and Wales.

THROUGH



dumb wit

The role of experts in the investigation and prosecution of criminal offences is an important one, and the Law Reform Commission has recently turned its attentions in this direction. Yvonne Daly hunts for trace

MAIN POINTS

- Role of experts in investigation and prosecution
- LRC *Consultation Paper on Expert Evidence*
- Recent controversy and the situation in Ireland

We are all more aware than ever of the work of experts in the field of criminal investigation and prosecution, given the prevalence of television programmes dealing with such issues in recent times. From *CSI: Miami* to *Law and Order: SVU*, from *Bones* to *Dexter* (serial killer by night, blood-spatter analyst by day), our TVs seem to be almost overrun with the phenomenon of expert evidence. While the role of experts in the investigation and prosecution of criminal offences,

and indeed in the civil courts, in Ireland may not be as glamorous or exciting as TV would have one believe, it is nonetheless an important one and the Law Reform Commission has recently turned its attentions in this direction.

The LRC has published a *Consultation Paper on Expert Evidence*, which seeks to stimulate debate and dialogue in relation to the use of expert witnesses in both civil and criminal trials. To date, the law on expert evidence has been largely constructed by the courts, with little interference from the legislature.



ness

CSI Miami's Horatio Caine: the work of a real expert witness doesn't actually require sunglasses

As with many areas of the law, however, this now appears to be changing. As a first step towards such change, the consultation paper sets out 39 provisional recommendations for reform of the law in this area.

Why didn't they ask Evans?

The consultation paper traces the origins of expert evidence right back to the 17th and 18th centuries, and looks at the early use of specialist juries in cases of a technical or specific nature. One particularly interesting issue noted by the commission is the use of all-female juries in situations where it was necessary to determine whether or not a woman was pregnant – a woman who had been convicted of a capital offence in the 17th or 18th centuries could have her death sentence postponed if she could prove that she was pregnant. The death penalty would not be enforced

until after the child was born, and indeed, quite often, the woman would be pardoned at that point. Therefore, the need to prove that one was pregnant could be a life-or-death matter. Without the medical or scientific expertise of the modern era, the proof of pregnancy would be based on the verdict of the all-female jury, who were empanelled under a writ *de ventre inspiciendo* (a writ to 'inspect the belly') and invited to examine the woman in question in order to declare whether or not she was pregnant.

Since then, the use of special juries has been abandoned and, in cases requiring specialised knowledge, an expert in the relevant field instead provides information to the court. While the level of technology and expertise available to courts is nowadays plainly more accurate and verifiable than in past times, expert evidence and expert witnesses are not without their challenges, risks and controversies for the legal system.

Witness for the prosecution

The issue of expert evidence has received considerable attention in England and Wales in recent times due to three acknowledged miscarriages of justice in three very similar cases where convictions were based on the expert testimony of an eminent paediatrician, Prof Sir Roy Meadow. These cases involved the convictions of Sally Clark, Donna Anthony and Angela Cannings for the homicides of their own children. In each case, Prof Meadow had given evidence of the statistical unlikelihood of the children in question having died from sudden infant death syndrome (or cot death). The convicted women served substantial periods of time in prison (18 months for Angela Cannings,



The Law Reform Commission's *Consultation Paper on Expert Evidence* was launched by Ms Justice Fidelma Macken, judge of the Supreme Court. Attending the launch at the commission's office on 13 January 2009 were (left) Ms Justice Macken and President of the Law Reform Commission Mrs Justice Catherine McGuinness

three years for Sally Clark and six years for Donna Anthony) before being eventually acquitted and freed on appeal.

In the case of Sally Clark, whose two sons had died, Prof Meadow had told the court that the chance of two children dying in an affluent family was "one in 73 million". This was later disputed by the Royal Statistical Society, who wrote to the Lord Chancellor in England to say that there was no statistical basis for such a claim. Other reports and evidence in fact suggested that the likelihood of two cot deaths in the same family were one in 77. On appeal in Sally Clark's case, it was found that Prof Meadow's evidence was "grossly misleading" and "manifestly wrong".

Following this successful appeal, the General Medical Council (GMC) in Britain initiated disciplinary proceedings against Prof Meadow and he was struck off the register. The Fitness to Practice Panel of the GMC found that Prof Meadow had "abused his position as a doctor" by giving misleading evidence in the Clark trial and that the consequences of his errors could not be underestimated.

Hickory dickory dock

Prof Meadow appealed the decision to the courts and contended that the GMC was not entitled to initiate disciplinary proceedings against him on the basis of his expert testimony. He grounded this argument on the common law immunity from suit, which attaches to all witnesses – including experts – in relation to their testimony in court. The rationale for this immunity appears to be the need to protect witnesses from civil or criminal proceedings so as to encourage them to give their evidence fully and freely to the court. This is seen, in the context of expert evidence, as ensuring that experts are available to the courts and

not unwilling to take the stand for fear of resultant litigation.

In the English High Court, it was held that, just as the courts could not generally apply a sanction to a witness based on his in-court testimony, the GMC could not initiate disciplinary proceedings against Prof Meadow due to his inaccurate evidence. In the Court of Appeal, however, it was held that inaccurate expert evidence can lead to the initiation of fitness-to-practice proceedings and, further, a court may refer an individual to the disciplinary committee of the relevant professional body where that individual has given misleading expert evidence. Nonetheless, the Court of Appeal found that Prof Meadow was not guilty of serious professional misconduct and the decision to strike him from the register was therefore overturned. The court held that, while Prof Meadow's opinion was incorrect and had significant consequences, he held it honestly. It seems, then, that it may require a dishonest portrayal of the evidence for a significant penalty to attach to the expert witness in England and Wales.

Man in the brown suit

In Ireland, controversy in relation to expert evidence has not been avoided. The issue of expert testimony came to the fore perhaps most prominently in recent times in relation to the so-called 'Annabel's case'. This case, which involved the killing of a young man, Brian Murphy, in a brawl outside a South Dublin nightclub in August 2000, led initially to the conviction of one person, Dermot Laide, for manslaughter and the conviction of him and two others, Desmond Ryan and Sean Mackey, for violent disorder (the conviction against Ryan was later successfully appealed). In the initial trial, Prof John Harbison, the then state pathologist, gave evidence in relation to the deceased and suggested that the level of alcohol in his blood on the night of his death was not overly significant or influential in his death. Following a successful appeal of his manslaughter conviction, Dermot Laide was to be retried and the case was thus opened up for review in 2006. At this juncture, Prof Harbison had retired from his post and been replaced by Prof Marie Cassidy. When she reviewed the file for the case, Prof Cassidy came to an opinion different to that of Prof Harbison and contended that the level of alcohol in Brian Murphy's blood on the night of his death had in fact been quite considerable, that the assault on him had been relatively minor, and that his death was significantly related to alcohol-induced apnoea. As a result of this conflict of evidence, the DPP decided not to proceed with the retrial. The controversy did not end there, however, as various experts from Ireland and abroad continued to discuss the scientific evidence in the case in the media, with little expert consensus on the matter.

Of course, experts can and will have different views of the evidence in any given case. This creates

difficulties for a court, and in particular a jury court, in arriving at a verifiable conclusion on the matters in question. The specifics of expert evidence, particularly evidence of an intricate medical, scientific or technical nature, can cause difficulties for lawyers too. The lawyer's own dearth of understanding of the expert issues in question can impede their ability to properly question their own witness and lay the evidence of that witness before the court, or properly challenge the evidence of the witness for the other side. There is a danger in expert evidence going unchallenged, as mistakes may be overlooked and inconsistencies left unnoticed. In the fast-changing world of science and technology, it can be difficult for lawyers to keep pace with the expert evidence likely to impact upon their cases, but it is imperative that they do so.

Cards on the table

In relation to expert witnesses and expert evidence generally, the LRC makes a number of provisional recommendations in its consultation paper and seeks submissions on the issue from interested parties (visit: www.lawreform.ie, email: info@lawreform.ie). Among the provisional recommendations are the following:

- The term 'expert' ought to be defined – the commission seeks submissions as to whether or not the term should be limited to those with specific

qualifications, or if it should extend to persons with experience-based knowledge also,

- There should be a formal guidance code for expert witnesses outlining their duties – especially the fact that the duty of the expert witness is owed to the court and not to the party by whom he/she is instructed,
- There should be a ban on any fee arrangements with expert witnesses that are conditional upon the outcome of a case,
- There should be a set form and structure for expert reports, and
- There should be some consideration of the need to retain, or otherwise, the expert witness's immunity from suit.

It will be interesting to watch the progress of this consultation process and the final recommendations of the Law Reform Commission on this matter in the coming months. Whatever they recommend, it seems certain that, as science and technology continue to develop, expert evidence and expert witnesses will continue to play an increasingly important role in the courts. **G**

Dr Yvonne Marie Daly is a lecturer in Law in the School of Law and Government at Dublin City University.

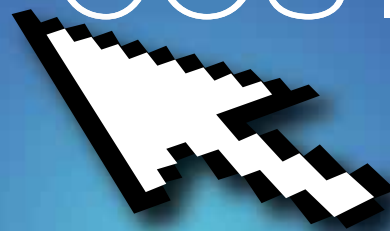


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NOBODY EXPECTS THE SPANISH

Last issue, we gave valuable tips on preparing your CV in order to get to a job interview. While the job specifications and skills required depend on the position, Neil Connolly and Aoife Coonagh say the mistakes people make at interviews are common to all

There are few things people dread more than job interviews. Every day we prepare people who have interviews coming up. Doctors, nurses, teachers, scientists, financiers – and obviously those in the legal profession. We see and prepare them all. And while the job specifications and the skills required vary from person to person, the mistakes made are common to all.

People feel pressured to come up with the ‘right’ answers. It shouldn’t be that way. An interview can be many things, but it’s not an oral exam. Clients constantly ask: “But what am I supposed to say?” Forget that attitude. Interviews should be treated as an opportunity to show your potential employer that you have the skills and attributes they are looking for.

Know the role

After you’ve been called to interview, this should be your first step. Make sure you know the format of the interview (for example, competency-based, structured, ‘come in for a chat’). If possible, find out who will be interviewing you. Do you need to bring or prepare a presentation? What subjects or competencies will be covered? How long will it be? If you’re unsure of any of these, then ask. It’s important that you are clear on what to expect.

It seems obvious – you should know the role. I had a client with me recently preparing to be interviewed for a senior academic post. The first question I asked him was: “What is your understanding of the role of dean?” His answer? “I have no idea.” He had overlooked the most fundamental question – what will I actually be doing in this job?

A few minutes spent scrutinising the job spec should give you a good insight into what is expected of you in the role. You need to be clear on where the role fits into this organisation, so further research in this area will be important.

What do they want?

So what are they really looking for? Broadly speaking, potential employers are looking for three things:

- Your capacity to do the job. In a word, competence.
- Your motivation, determination and willingness to work hard. Can you add value to the organisation and contribute to its success?
- The panel will want to be sure you fit into the team and the organisational culture.

We have found that successful candidates have the ability to show all of the above throughout the interview.

Think over your CV and your career. What have been the highlights that demonstrate you have the experience, skills and motivation required? What achievements have you had in your career? Remember, there may be things outside of your education and



MAIN POINTS

- Preparing for the interview
- What’s the role?
- What does the employer want?
- What can you bring to the role?

INQUISITION!



Gobnait's
interview
for the library
job did not
end well

professional experience that are relevant to this job.

Most clients ask us how to sell themselves. Once you are clear on exactly what it is the employer is looking for, and the skills and experience you have to match, you need to be confident in presenting this information in order to sell yourself at the interview.

First impressions

In many ways, the most difficult part of the interview is the opening: you're nervous (and the interviewing panel possibly is too!). The general nature of opening questions can cause its own problems. Often, an interview will start with questions about your career or CV. But what exactly do the interviewers want? Their purpose is twofold: they want to relax you and get you talking. In addition, they want to find out a bit about you, so they probe you about areas that interest them. So you need to take the opportunity to set the agenda for the interview.

What can you do or bring to the role?

Selling your skills in an interview can be a skill in itself. The natural tendency if asked "Are you a good communicator?" is to answer, "Yeah, sure, I communicate every day in work, with barristers, admin staff, gardaí, clients..." This is a starting point. Any questions related to skills are opportunities to talk about you. You might mention your experience of using that skill in various situations. You may choose to talk about the attributes that make you good at using that skill. Make this a short summary.

This does not prove that you are an effective communicator, however. In order to prove this (at least, as far as an interview allows), you have to give specific examples. You will find it difficult to think of such examples on the spot. Think of recent, relevant and memorable examples in advance of the interview. These should clearly demonstrate how you applied the skill. Be clear on the situation or task involved, what you actually did and the result you achieved. Did you achieve your objective? Take the interviewer through the story and show that you learnt from this experience.

Finally, link this experience to the job in question and how you will apply this skill in the organisation.

If you are applying for a senior or management position, think of what your priorities would be



“Clients constantly ask: ‘But what am I supposed to say?’ Forget that attitude. Interviews should be treated as an opportunity to show your potential employer that you have the skills and attributes they are looking for”

and be clear on how these relate to any particular objectives that may be laid out in the job specification.

You need to get very comfortable with the content of your examples. Write your examples down on a piece of paper as a series of bullet points. Now talk them through. Out loud. Talk through them again. Practice until you can comfortably talk through each of your examples or answers without having to refer to your notes. This is a crucial step in your preparation. Do not wait for the interview to hear yourself say any of this for the first time.

Prepare for key questions

Recently, I asked a client to take me through their CV, highlighting the skills they would bring to the role. Five minutes later (I left the DVD recording), he was only on his second job – and we were still only at 1992. After the interview, as we were reviewing the DVD, my client said, “Stop the disc. I’m boring myself!”

Talking through your CV should not be like this. The same applies if they ask you: “Tell me about yourself.” Your answer should be a concise, chronological guided tour through your career to date, outlining your academic achievements and describing

your professional work experience. Add value to the information that is on your CV and tell them why you did particular courses of study, and set the context of the job role you had, mentioning the skills you developed. Highlight any particular achievements you want them to know about you at this stage. Keep your answers positive.

Get comfortable talking through your CV and, most of all, make sure you finish by linking the overview of your career to the specific job you are going for – that is, why you?

Be prepared for questions on the organisation. There are many ways you can find information on the company: their website, for a start. This will give you a handle on their key activities and an insight into their client base. Speak to someone in the organisation if you can – this will give you a valuable insight into the company culture. Google News can provide you with information on any current issues, developments or challenges the organisation is facing or is involved in.

Almost every interview finishes with: “Do you have any questions for us, or is there anything you would like to add?” If you have genuine questions that you can only get an answer to by asking the panel, go ahead. In addition, and most importantly, prepare a closing statement that reiterates how you can add value to your new employer.

Dress and stress

Dress conservatively. Keep make-up, perfume, jewellery and aftershave to a minimum. Smile and engage with your interviewers so that you establish a rapport. You will be nervous, but this can be a good thing, as it can prevent you from getting too relaxed during the interview. Keep your nerves under control by sipping water throughout the interview and taking some deep breaths before you meet the panel.

Finally, if you ask any interviewer what separates the top candidate from the rest of the pack, they will tell you three things:

- They clearly understand the job role,
- They know the skills and experience they will bring to the role,
- Their enthusiasm and motivation for the job is evident throughout the interview.

You’ve been called to interview on the basis of your CV or application form. On paper, you have what it takes. So has everyone else who has been called. Your job on the day is to show the panel just what it is that puts you head and shoulders above the other candidates. Make every minute of your interview count. You get one shot to show your potential employer just what it is you can bring to the organisation. So prepare, rehearse, relax, and deliver. Best of luck! **G**

Neil Connolly is career consultant and Aoife Coonagh is head of career development in Carr Communications. Neil delivers one-to-one CV preparation and job-interview coaching.

PREPARING FOR THE INTERVIEW

- Know the role – what will I actually be doing in this job?
- What does the employer want? Principally, three things:
 - a) Your capacity to do the job. In a word, competence.
 - b) Your motivation, determination and willingness to work hard. Can you add value to the organisation and contribute to its success?
 - c) The panel will want to be sure you fit into the team and the organisational culture.
- First impressions – be prepared for opening questions.
- What can you do or bring to the role?
- Practice – get comfortable with the content of your examples.
- Prepare for key questions.
- Dress conservatively and use stress constructively.
- What separates the top candidate from the rest of the pack:
 - a) They clearly understand the job role,
 - b) They know the skills and experience they will bring to the role,
 - c) Their enthusiasm and motivation for the job is evident throughout the interview.



GARDA INSPECTORATE

PROMOTING EXCELLENCE & ACCOUNTABILITY



ON THE FRONT LINE

In part 2 of his interview, Colin Murphy talks with the Chief Inspector of the Garda Inspectorate, Kathleen O'Toole, about the dangers of 'less lethal' weapons, dealing with 'barricade incidents', and the importance of seeing uniformed gardaí 'out on the front line'

Kathleen O'Toole had been Boston police commissioner for just eight months when one of her officers shot and killed a 22-year-old college student at a baseball championship celebration. The Boston Red Sox had just beaten their arch-rivals, the New York Yankees, to win the 2004 baseball League Championship Series, their first victory in 87 years. More than 80,000 people took to the streets near the stadium, and rioting broke out.

"They were lighting the tails of the police horses on fire, some of the kids," she recalls, "and one of the police horses was stabbed."

The police went in, armed with 'less lethal' pepper-gun devices that had been recently supplied.

An officer took aim at a rioter who had thrown a projectile towards police. He fired, the rioter ducked, and the pellet hit a young woman, who was standing behind him, in the eye.

Kathleen O'Toole had already been up for 38 hours when she was told about the injury. "I called everybody in. We called in internal affairs. I said, let's start the questioning right now."

Twelve hours later, the young woman, Victoria Snelgrove, died. "When I got the call that she'd passed away, my natural instinct was to ask for the parents' number. I got the father on the phone. They were in the process of driving home from the hospital." She told the Snelgroves she would like to meet them in person, and they said she could call to

MAIN POINTS

- Using the least force necessary
- Enhancing police safety without resort to arms
- Visibility in the field and the use of technology

WHEN IRISH EYES ARE SMILING

Kathleen O'Toole follows in a long line of Irish and Irish-American police officers in Boston. Her husband, also a police officer, is a few years older and, she says, remembers when "most of the senior cops were all Irish immigrants".

Her grandmother, Brigid Gallagher, was from just outside Athlone, Co Roscommon; her husband had a grandmother from Drumsheel, near Cong, Co Mayo. They have more family in Ireland than in the US.

Their Irish roots were "a huge deal" in the family, she says. "I think our grandparents worked harder to preserve our culture because they wanted to keep the memories of home alive. When a letter from Ireland arrived, my grandmother would call her three daughters. They'd all have to go to her house immediately, she'd cook a big meal, and after the meal she'd stand up and read out the letter."

"What's more important than policing in a democratic society? The abuse of police power is devastating"

the house. O'Toole drove straight there.

"I had to take a deep breath walking up to that door. I've had to do that before – inform people of horrible tragedies – and it's not easy. The mother came to the door, and within seconds I was embracing her and she was crying uncontrollably on my shoulder.

"I spent about an hour with them before anybody else arrived, before the media arrived. They brought me into [their daughter's] room – she was halfway through writing a paper for school."

O'Toole went back to police HQ and called a press conference. She hadn't slept in 40 hours. "I stood up in front of the cameras and I said, 'The Boston police department takes full responsibility for the death of Victoria Snelgrove.' The lawyers said, 'What are you doing?'"

O'Toole announced an independent investigation. Ultimately, the city paid a \$5 million wrongful-death settlement to the family. A number of officers were disciplined, though none charged. The pepper guns were withdrawn from use.

O'Toole is still in touch with the Snelgrove family. When she asked them if she could attend the funeral, she was asked to come to the wake and the family requested a police escort for the cortege. The father, Rick Snelgrove, later told reporters, "She was just a wonderful lady. She has a daughter, too, and she knew how we felt."

"I learned so much from that experience, about the

decency of people," O'Toole says.

Reflecting on the underlying issue, the use of 'less lethal' weapons by police, the general principle is simple: "On a continuum of force, we always use the least necessary." But there is "no panacea", she warns. Though the Snelgrove killing was "a horrible, freak accident", the term 'less lethal' nonetheless implies that such weapons will be lethal some of the time.

Barricade incidents

O'Toole was tasked with examining this issue in the context of Irish policing shortly after she arrived to take up her position as Chief Inspector of the Garda Síochána Inspectorate in 2006. The Barr Tribunal, which investigated the killing of John Carthy by members of the Emergency Response Unit after Carthy had barricaded himself into his house with a shotgun at Abbeylara in 2000, had recommended a review of 'non-lethal' options for the gardaí.

In the Garda Inspectorate's second report, *Review of Practices and Procedures for Barricade Incidents*, they recommended having 'second-tier armed units', endorsed the issue of tasers to the Emergency Response Unit, and advocated for incapacitant spray, she says. Abbeylara was "a case of not enough options", she surmises. "They didn't have decent less-lethal options and they didn't have the appropriate training in procedures."

While the inspectorate was studying this, there was another armed 'barricade' incident in Gort.

QUICK-FIRE ROUND

Inspiration/influence? My granny from Co Roscommon. Her sister Annie was the one heading for America. The night of the 'American wake', Annie backed out and my grandmother put on her clothes the next day, took her ticket and left for America. I can't imagine the courage that took. We used to listen to her stories for hours and hours.

Best advice for lawyers? Go where the truth takes you.

What are you reading? A lot of stuff on 'leadership'. Especially Joseph Raelin's *Creating Leaderful Organisations: How to Bring Out Leadership in Everyone*. I'm doing some academic research. Most of the academics I've worked with in the past have focused on sociology and criminology. I'm personally focused on business, because I think that's the greatest weakness we have in policing. The private sector

has leadership models. The military has a leadership model. We draw from those but, in policing, we have never created our own unique leadership model."

What do you like least about your job? That I can't go out on the front lines and be a police officer again. The thing that I like least about it is the thing that I like most about it. It's really nice to be in a position where I can sit back and reflect and be more strategic. In policing, a new crisis emerges every day, and it's often challenging to step away from that crisis management to focus on a more strategic approach to business. But at the same time, that's the part of the business – that adrenalin addiction – that keeps it so interesting.

Thing to do before you die? Oh, I plan to do it all before I die! I don't plan to have any unfulfilled ambitions.



O'Toole recalls: "The police officers who responded went to the station and went to a locker. They had one weapon, an old six-shot Smith & Wesson, and they had one vest. One vest, one gun, between three people. You can't go up against somebody with a high-powered rifle with a six-shot revolver. For their safety and for the safety of people at the scene, they need to be properly equipped and trained."

"I really appreciate the fact that the police here are routinely unarmed and I hope that will always be the case. I worry about their safety, but I hope that we can continue to make recommendations that enhance their safety without resorting to arming them."

Bostonian insights

Over the course of a two-hour interview, O'Toole ranges widely across current issues in international and Irish policing, but much of it is rooted in her early experiences in Boston, and the insights she gleaned there.

"When I was a young police officer, walking the beat in downtown Boston, I could just walk the beat

and ignore everybody, or I could walk the beat and get to know people, get to know the local businesses and maintain good relationships with people," she says. She chose the latter. "I always like to refer to it as a police 'service' as opposed to a police 'force', because force should only be a very small part of what we do – and used only as a last resort."

"People watch TV and they think policework, especially in America, is all about gunfights and car chases and felony work, when, in fact, most policework is about providing services to people, 24/7, and helping people to solve problems, and being there when nobody else is available to them."

The inspectorate is currently working on a study of resource allocation in the gardaí. This will have "a real focus on visibility in the field", says O'Toole. "We can't lose sight of the fact that that's the lifeblood of any police organisation – the uniformed guard out there on the front line."

Nonetheless, she has pertinent things to say about the administration of the force. "If you have an organisation with 15,000 people and a billion-and-a-

Garda Inspectorate on the beat! (Left to right): Deputy Chief Inspector Robert Olson (formerly chief of police for the city of Minneapolis, Minnesota), Chief Inspector Kathleen O'Toole and Deputy Inspector Gwen Boniface (formerly police commissioner of the Ontario Provincial Police)

***"The term
'less lethal'
nonetheless
implies that such
weapons will be
lethal some of
the time"***

half-euro annual operating budget, you need to run it like a business. The people who come up through the sworn ranks of police organisations are experts in policing. They are not trained to manage billion-and-a-half-euro budgets. You need to have people around who have that experience so that the police managers can focus on the police work. You do not need sworn police officers managing IT, finance, human resources and things like that."

Technology is another pressing issue. "I was working in an environment where we used to download gang databases on PDAs (handheld computers), so the people out in the field could compare the mugshots with the people they were talking to.

"With the click of a mouse, I was able to pull up a map showing where every crime had occurred in the last 24 hours and I could scroll down and click on the report or the mug shot of the person who was arrested.

"It's not rocket science. That's pretty much industry-standard in a lot of police forces."

'Accountability is crucial'

She reflects also on the issues of corruption and poor discipline in police forces. She recalls that, when

she started in the late 1970s, "there were still a lot of 'old-time' cops, who drank on the job". She once had a partner who had an alcohol-provoked seizure while on patrol with her. She administered first aid, then drove him home, and refused to work with him again.

"There wasn't as much scrutiny in policing, as much accountability. I saw people who probably used a little more force than was necessary. I witnessed situations where there was a fine line, and it could have been that the person didn't have appropriate training or made a poor judgement call."

She never saw anybody deliberately beaten up by police, she says, but would urge reporting such behaviour immediately. "You need to confront those situations right away – either as a supervisor, or tell a supervisor.

"People used to talk about that 'thin blue line', but you know what, those days are over."

It is crucial, she says, to have accountability and transparency in the force, and to have whistle-blowing protection regulations in place. "We have to be vigilant and look for other potential weaknesses.

"What's more important than policing in a democratic society? The abuse of police power is devastating." **G**

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Oliver was tied up and abandoned by his owner. His feet were dreadfully overgrown making walking painful. The Donkey Sanctuary rescued him from these cruel and pitiful circumstances.

In Ireland we have given over 2,500 donkeys a lifelong home in our care. We also have a country-wide network of Welfare Officers providing free support and advice to owners and helping us rescue neglected donkeys like Oliver.

Please help us with this work to prevent unnecessary suffering.



A charity registered with the Charity Commission for England and Wales No.264818

For more details please contact:

Paddy Barrett, Manager,
The Donkey Sanctuary, (Dept LSG),
Liscarroll, Mallow, Co. Cork.
Tel (022) 48398 Fax (022) 48489
Email info@thedonkeysanctuary.ie
Web www.thedonkeysanctuary.ie

Solicitors and firefighters conspire to break record

CPD courses don't have to be boring! The Limerick Bar Association proved that recently, with a novel twist that combined ongoing professional development with an attempt to break a Guinness World Record – while raising cash for charity.

Over 60 legal practitioners from the Munster region gathered in the Marriott Hotel, Limerick, on 11 December 2008, to take part in a CPD course titled 'Data protection law and good practice'. The speaker was none other than Data Protection Commissioner Billy Hawkes, who, as it happens, is a Limerick man.

As an interesting aside, the solicitors were encouraged to lend their financial support to Limerick firefighters who would attempt the following day to break the Guinness World Record for a 24-hour endurance ladder-climb on O'Connell Street. The current world record stands at 109.5km, travelled on one fire-service ladder by a team of ten firefighters in 24 hours. This was set by the New Zealand

fire service. Regrettably, our heroes were forced to abandon their attempt due to horrendous weather conditions, which made it just too dangerous for them to slide down the pole after each climb! In any event, the €2,500 raised will prove very useful to the ABA Bluebell School.

The CPD charity event was organised by Liam Moore of the association's CPD Board, with the blessing of new bar association president, Elizabeth Walsh.

"I was only too delighted to organise this seminar for such a worthy charity and to be associated with the great work of our fire service men and women," Liam said. "Special thanks are due to Mr Hawkes for kindly giving of his time to travel to Limerick to speak to our members. The huge attendance at this CPD event is testament to the importance of data protection to our practices. I think many eyes were opened by what Mr Hawkes had to say! Thanks, too, to all our colleagues who attended and donated, and to the Marriott Hotel for their excellent venue."



The Guinness World Record attempt might have failed this time – but the ABA Bluebell School was delighted with the €2,500 raised by Munster-based solicitors and Limerick firefighters. (Front, l to r): Claire Kennedy (Marriott Hotel), Elizabeth Walsh (president, LBA), Paul Knapp (Limerick Fire and Rescue), Liam Moore (CPD board), and (back row) the gallant members of Limerick's Fire and Rescue Service



PIC: GEORGE MAGUIRE

At the annual dinner of the West Cork Bar Association, held at Dunmore House Hotel, Clonakilty, on 6 December, a special presentation was made to Edward O'Driscoll, solicitor, of PJ O'Driscoll's, Bandon, by his West Cork colleagues to mark his 60th year in practice, Michaelmas 1948 to Michaelmas 2008; (l to r): Circuit Judge Con Murphy, District Judge Brendan Wallace (retired), President of the WCBA Edward O'Driscoll (solicitor at Richard Barrett), District Judge James McNulty and District Judge Con O'Leary

Brendan McCann Memorial Cup goes Laganside

On a cold and windy November afternoon in Corrigan Park, Belfast, the Belfast Solicitors' GAA Society met the Law Society of Ireland GFC – and won – in a historic and unique game. The occasion was the establishment of the Belfast Solicitors' GAA Society. Corrigan Park was chosen as the venue to host the first cross-border GAA match between both societies. The match had a special poignancy, as the winners were to be awarded the inaugural Brendan McCann Memorial Cup, in memory of the late Belfast-based solicitor and GAA stalwart.

The many supporters at the match included the Lord Chief Justice, Sir Brian Kerr QC; the



Lord Mayor of Belfast Tom Hartley; retired solicitor, three-time All-Ireland winner and right half-forward on the GAA

'Team of the Millennium' Sean O'Neill; James MacGuill (then president of the Law Society), Donald Eakin (president of

the Law Society of Northern Ireland), senior representatives of both societies, together with members of the McCann family.

Colleagues rally behind Stuart Mangan Appeal

From the very beginning at school in St Colman's College (Fermoy), Rockwell College, University College Cork and Ecole Supérieure de Commerce (Paris), Stuart Mangan has always shown a wonderful ability to look out for others and bring people together. Stuart completed five years of university studies, graduating with a law degree from UCC and a master's in European business from ESC Paris, before he was hired on a fixed-term contract on the trading floor of BNP Paribas in London.

On Saturday 5 April 2008, while playing rugby with his club Hammersmith and Fulham RFC in London, Stuart (24) suffered a sudden but devastating spinal injury. Sadly this sporting accident has left him totally paralysed from the neck down. He requires 24-hour care for the rest of his life.

Monumental challenge

Emotionally, he is showing incredible courage and determination to deal with this monumental challenge and face



Stuart in action while playing with UCC against Shannon. Irish international Tony Buckley can be seen (back, right), who played for Munster against New Zealand last November

into the circumstances ahead. The horrendous injury he sustained has left an indelible mark on his life and on the lives of his family and many friends.

As part of the ongoing fund-raising for the Stuart Mangan Appeal, a rugby tournament, 'The Stuart Mangan Cup', has been organised. This will take place on Friday 20 February at 6.30pm in Donnybrook. Tickets cost €10.

Participating teams include Blackhall 2008, Blackhall Old Boys, King's Inn, UCD Smurfit MBA, Royal College of Surgeons and a Stuart Mangan UCC Select team.

For further information, contact Eamonn on: 086 807 8976.

Contributions

For financial contributions, you can transfer any donation via

internet banking. (Please let us know if you use this method so that we can follow up with you.) See details in panel below.

CONTACT DETAILS

Euro (€) AIB bank details

A/C name: Stuart Mangan Trust

A/C no: 17569101

Sort code: 93-60-81

Address: AIB Bank, Pearse

Square, Fermoy, Co Cork

IBAN: IE63AIBK936081175

69101

Swift code: AIBKIE2D

Sterling (£) AIB bank details

A/C name: Stuart Mangan Trust

A/C no: 11847131

Sort code: 23-92-84

For cheques

Stuart Mangan Trust, 23 Avoca Park, Blackrock, Co Dublin.

Stuart Mangan Trust – trustees

Andrew Butler (chartered accountant)

John A O'Grady (dental surgeon)

Francis J Murphy (solicitor)

Prof Michael Molloy (consultant physician)



Pictured at the CPD Focus Skillnet launch, which took place on Friday 5 December in the Radisson SAS Hotel in Dublin are (back, l to r): James O'Sullivan (chairman, Skillnet Steering Committee), Deirdre Keane (programme support manager, Skillnets), Conor MacGuill (Skillnet Steering Committee member), Michelle Nolan (Skillnet Steering Committee secretary) and Ken Murphy (director general). (Front, l to r): Gerry Doherty (senior vice-president), Dr Bill Cullen (guest speaker) and Attracta O'Regan (head of CPD Focus)



Representatives of the Kosovo Chamber of Advocates (KCA) visited Ireland on a study visit in December. The visit was part of a 'rule of law' proposal to run a professional practice course in Pristina for KCA members. The group was shown how professional legal education works in the Law Society and King's Inns. The visit was co-funded by the KCA, ABA, the Law Society and King's Inns. The participants included (back, l to r): Florin Vertopi, Daragh O'Shea, Ibrahim Dobruna, Musa Dragusa, TP Kennedy and Kieran Falvey. (Front, l to r): Eva Massa and Fatmir Kutllilovci

Leitrim marks judge's retirement

Almost 60 practitioners from Leitrim and the surrounding counties attended a function on Friday 5 December 2008 to mark the retirement of Judge Oliver McGuinness, writes *Doireann Ní Riain*. In addition, a special presentation was made to Judge Kevin P Kilraine on his appointment. The function was held in Lough Rynn, Mohill, Co Leitrim.

Speeches were made by Judge McGuinness, Judge Geoffrey Browne, Judge Conal Gibbons, Judge Kilraine, the President of the Leitrim Bar Association, Noel Quinn, and District Court clerk Leo Mulvey. Presentations were made on behalf of the bar association to Judge McGuinness and Judge Kilraine.



Bernadette McTiernan (Walter P Toolan & Sons), Michael Keane (Flynn & McMorow) and secretary of the Leitrim Bar Association, Doireann Ní Riain (Walter P Toolan & Sons)



Bride Quinn (Delaney Quinn Solicitors), Judge Kevin Kilraine, Noel Quinn (Delaney Quinn) and Kathleen McCabe Gibbons (George V Maloney Solicitors)



Judge Geoffrey Browne, Judge Kevin Kilraine, Judge Oliver McGuinness and Judge Conal Gibbons



John McNulty (Kevin P Kilraine & Co Solicitors), Andrea Reynolds (Brendan T Muldowney Solicitors) and Cliadhna Sheridan



Kieran Ryan (Kelly & Ryan Solicitors), Gabriel Toolan (Walter P Toolan & Sons) and James Faughnan (CL Flynn & Co)

ALL PICS: BRIAN DUGAN, DUGAN PHOTOGRAPHY

Sir John Mortimer

21 April 1923 – 16 January 2009



Sir John Mortimer QC, barrister and writer, died at the age of 85 on 16 January 2009. His career as a writer preceded and exceeded his practice at the bar, which lasted from being called in 1948, taking silk in 1966, to his retirement in the early 1980s. In going to the bar, he followed in his father's footsteps – his father Clifford was the Mortimer on *Wills, Probate and Divorce*.

The young Mortimer specialised in his father's areas while a junior counsel, before taking up the more exciting areas of criminal and obscenity defence on being elevated to Queen's Counsel. In 1968, he successfully defended the publishers of *Last Exit to Brooklyn* on appeal from their conviction of obscenity, which started a run of obscenity cases, often with Geoffrey Robertson, who remembers Mortimer the lawyer as "my own forensic father, teaching by example that the art of cross-examination is not to examine crossly and that it is a fearful thing to have responsibility for another's fate".

One of the more famous quotes about Mortimer has its origin in a comment he made to a jury towards the end of his career, congratulating them on their fortitude in sitting through one of the most boring trials ever to be run. The judge responded: "It may surprise you to know, members of the jury, that the sole purpose of the criminal law in England is not to entertain Mr Mortimer."

But the judge was wrong – Mortimer created, in his famous literary character, Rumpole of the Bailey, a lawyer that people could warm to and one who provided entertainment in the criminal law for generations of TV viewers and readers. Through his spats with his wife, Hilda

– "she who must be obeyed" – or in court before the Circus (Circuit) judges, or getting up the noses of his fellow barristers in chambers, Rumpole always entertained and never let friend or foe interfere in his defence of his clients.

Prior to Rumpole's creation in the 1970s, Mortimer had been a novelist in the 1940s and '50s and a TV and stage playwright in the '50s, '60s and '70s, most famously with *A Voyage Round my Father*, which hilariously and poignantly dealt with the often-strained relationship between father and son. Other writing pre- and post-Rumpole included over 30 TV plays, film screenplays and many radio plays, as well as a number of short autobiographies starting with the well-titled *Clinging to the Wreckage*.

A reluctant lawyer, Mortimer always thought of himself primarily as a writer and agonised that he was wasting his talent for writing while at the bar, a profession for which his father, in *Voyage Round my Father*, tells him: "No brilliance is needed in the law. Nothing but common sense and relatively clean fingernails."

Without the law, there would have been no Rumpole, and we must thank Mortimer Senior for persuading his son to follow him into the second-oldest profession and John Mortimer for creating the world's favourite lawyer.

Sir John Mortimer, QC, writer, born 21 April 1923, died 16 January 2009. Married twice, first to Penelope Fletcher, 1949 (divorced 1972), and then to Penelope Gollop, who survives him, as do their two daughters. He is survived by one son and a daughter from his first marriage, and a son with Wendy Craig. **G**

KW

student spotlight



Cork rebels rout Dublin squad

The second annual Cork PPCI v Dublin PPCI soccer match took place in Cork on 15 November 2008. In front of a sizeable crowd of supporters, the game was played at a fast tempo. On the day, Cork was just too strong for Dublin and ran out eventual winners at 6-1. Cork's scorers included Brendan O'Sullivan (3), Con Aherne (2) and Neil Coffey (1), while Brian Murphy (1) scored for Dublin.

Cork's PPCI 2008 ladies team, managed by Ray 'Steven Staunton' McGrath, also took on Dublin the same day. The game was fiercely competitive. The 'make-up' of the Dublin team however was somewhat suspect – Dublin's male



Cork's PPCI 2008 ladies team fell foul of Dublin's secret weapon – a male goalkeeper! (Back, l to r): Sinead Forde, Catherine Murphy, Rebecca Foley, Orla Cronin, Sharon Kearns, Niamh O'Connor and Georgina O'Halloran. (Front, l to r): Nicole Derham, Nicola Walsh, Patricia Murphy, Ray McGrath (manager), Kate O'Brien and Nessa Foley

goalkeeper had to be quite an advantage. Like Timofte against Bonner in Italia '90, Cork just couldn't get the ball past him. Ultimately Dublin ran out narrow winners. Marie Lou Heavey, Mary O'Dwyer, Katie Joyce, Sarah Cloonan, Laura Spellman and Sibeal Keane played well for the Dubs, while Sinead Forde, Patricia Murphy, Niamh O'Connor, Nicola Walsh and Nessa Foley did Cork proud, with Rebecca Foley scoring a great late goal for the Leesiders.

Cork and Dublin PPCI students met up afterwards for a fun-filled social evening that continued into the early hours that offered some great networking opportunities!

Brendan's a safe pair of hands!

Ireland's intermediate soccer squad has qualified for the UEFA Regions Cup Finals next summer – thanks to the safe hands of trainee solicitor Brendan O'Connell, writes *Colin O'Brien*. Brendan is a trainee solicitor with PJ O'Driscoll & Sons on Cork's South Mall. He jetted off to Milan, Italy, with the Irish team last October for the qualifiers.

Ireland faced the so-called 'group of death', being pitted against England, Scotland and host nation (and hot favourites) Italy. Donning the number one jersey, Brendan found his usual sparkling form to turn in two flawless displays against England and Scotland. He played a huge part in Ireland topping the group and qualifying for the finals. Next summer, the last eight in Europe will battle it out for the top prize in European amateur football.



Brendan dons the yellow jersey for Ireland

Brendan, who plays his club football with Munster Senior League side, Avondale United, has been the number one international goalkeeper since breaking into the squad in 2004. He has been nominee for 'International Player of the Year' for the past two years running.

The Corkman boasts an impressive CV and has had cross-channel interest from clubs like Manchester United, Aston Villa and Preston North End. The former UCC soccer club captain was a member of its historic Collingwood Cup three-in-a-row team.

Blackhall Builders say thanks!

The 2007 and 2008 Blackhall Builders teams wish to express their thanks through the *Gazette* to all members of the profession, firms and colleagues who supported them in their fund-raising efforts to provide sponsorship for the house-building project in Zambia.

Your donations have had a major positive impact on the lives of the 17 families for whom houses were provided.

The 2009 team is already preparing for the July 2009 build, of which more in future issues of the *Gazette*.



books

Inheritance & Succession: the Complete Irish Guide

John G Murphy and Jason Dunne. Liberties Press (2008), Guinness Enterprise Centre, Taylor's Lane, Dublin 8. ISBN: 978-1-905483-40-2. Price: €13.99 (paperback).

In his foreword to this book, Mr Justice Robert Barr notes that "the authors have provided the public with an admirable service". *Inheritance & Succession* is indeed a book for public consumption and, though subtitled 'The Complete Irish Guide', should not be confused with being an authoritative academic or practitioner-focused commentary on succession law. Indeed, the book delves into a wide spectrum of fields, both legal and non-legal alike.

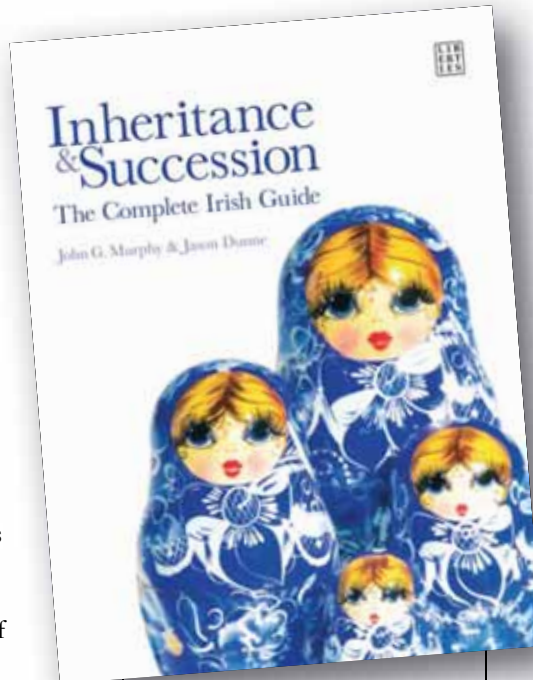
The book opens with a lengthy chapter entitled 'Life', which deals with a wide variety of topics from wealth management to the creation of a life plan from infancy to advanced years. The chapter has the feel of a self-help book rather than a legal tome, though there are nuggets of wisdom interspersed throughout.

Subsequent chapters will feel more familiar to the legal reader, with tax, succession and inheritance occupying

the next three chapters. Issues discussed include the minimisation of tax (ever a client favourite), the need for a considered succession plan, family law, and a useful overview of succession law.

Quite helpfully, the book gives guidance for the public on the inherent risks attaching to DIY wills and makes a simple but convincing case for the involvement of a trained professional and the incurring of reasonable fees in the preparation of what "may be the most important document you ever sign".

Beyond the treatment of wills and succession law, the book proceeds to deal with a number of topics that can often be somewhat taboo with



clients, including care in latter years, nursing home costs and subvention, the potential loss of mental capacity, preparation for death, funeral organisation and administration of the estate.

Seasoned succession law practitioners may take little from *Inheritance & Succession*,

but such practitioners are unlikely to be the target audience. Solicitors returning to the topic following time spent in other fields will find the book to be a very useful refresher tool before weightier consideration of the topic. To the general public, however, *Inheritance & Succession* could be immensely valuable, giving as it does a well-rounded guide to the topics covered in a readily comprehensible format. Whether the book can overcome the public suspicion that 'planning for death invites the Grim Reaper'

remains to be seen, but the book is certainly a worthwhile addition to the reading material in every solicitor's waiting room. **G**

Richard Hammond is a partner at Hammond Good, Solicitors, Mallow, Co Cork.

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council report



Law Society Council meeting, 4 December 2008

Motion: report of Complaints Review Task Force

'That this Council approves the report of the Complaints Review Task Force.'

Proposed: Gerard Doherty

Seconded: Patrick Dorgan

The president noted that contributions made at the November Council meeting had indicated that the majority of the recommendations of the task force were non-contentious, while a small number would require further consideration. Simon Murphy said that, with the recent move of the Regulation Department to new premises, together with the commencement of a lay majority on the committee from 1 January 2009, the committee required some time to adjust to its new circumstances and to assess the resource and workload implications of a number of the recommendations.

The Council agreed to adjourn six of the recommendations for further discussion between members of the task force and members of the Complaints and Client Relations Committee. The Council approved the remaining recommendations of the task force.

Business Disputes Resolution Task Force

The president noted the appointment of the Business Disputes Resolution Task Force, which would be chaired by Mr Liam Kennedy, with the following terms of reference: "To consider developments and trends in business dispute resolution in Ireland and internationally, and to explore opportunities for Irish solicitors to develop their practices and better serve their clients' needs

in relation to the resolution of commercial business disputes.

In this context, the task force will consider:

- The effective use by the profession of the full panoply of dispute resolution solutions – not only litigation, including litigation in the Commercial Court, but also negotiation, mediation, arbitration and other dispute resolution options where appropriate,
- How best to ensure that the profession is trained and equipped to help clients select and implement the most appropriate and effective strategy and dispute resolution solution for the particular situation,
- Opportunities for solicitors to act as arbitrators and mediators and the training and education requirements in that regard,
- How solicitors can adapt to develop their role and better serve their clients,
- Recommendations for ways in which the Society can support the profession in relation to the resolution of business disputes (whether in relation to training and development, assisting in the appointment of arbitrators and mediators, or otherwise), and
- How the Society's internal systems can best be structured to deliver the best support to the profession.

(The range of business disputes involved would not be limited to Commercial Court disputes and would also encompass judicial review proceedings of a commercial nature, regulatory proceedings, construction disputes, domestic and international arbitration.)"

Mr Kennedy noted that it was not intended that the task force would address the specialist areas of practice, such as personal injuries, family law, employment law, but would address the question of disputes resolution in the context of business disputes, which were relevant to all solicitors' firms. In due course, submissions would be invited from Council members and members of the profession.

Approval of practising certificate fees for 2009

Following detailed presentations on the Society's finances by the chairman of the Finance Committee and the director of finance, the Council approved the practising certificate fee for 2009 of €2,433 for a solicitor qualified more than three years, and €2,065 for a solicitor qualified less than three years.


Proposed prohibition on solicitors giving undertakings on their own behalf

The Council noted that there was almost universal consensus within the profession that a solicitor should be prohibited from giving an undertaking on his own behalf. However, a much more difficult question was how far the Society should go beyond that prohibition. It was agreed that a draft statutory instrument should be prepared for approval by the Council at

its next meeting for circulation for the views of the local bar associations.

Report of the Independent Adjudicator

The Council noted the contents of the report of the Independent Adjudicator for the year ending 30 September 2008. In particular, the Council noted Ms Casey's statement that: "I have carried out the duties of the Independent Adjudicator position single-handedly and on a part-time basis with complete passion for delivering a professional, fair and impartial service, and therefore believe the proposed Office of the Legal Services Ombudsman should not be a substantial additional financial burden on members (solicitors and barristers) of either the Law Society or the Bar Council. Furthermore, given that much of the proposed Legal Services Ombudsman's role is similar to what I currently do, I guesstimate that the appointment of an ombudsman with one administrative assistant should be sufficient."

The Council noted that Ms Casey had concluded that: "I have no adverse comment to advise throughout the annual review period and, as such, believe that the public are treated fairly and reasonably with well-considered investigations occurring by professional staff in the Law Society." 

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DRAFTING WILLS FOR THE ELDERLY CLIENT – GUIDELINES FOR SOLICITORS

These guidelines are not intended as a practice note for the preparation and execution of wills in general, but are intended to assist solicitors when acting for the elderly and often vulnerable client. More detailed and general guidelines regarding the preparation of wills can be found in the Law Society publication *Wills, Probate and Estates*.

Solicitors have a duty of care towards their clients, and this duty is heightened when acting for a vulnerable and elderly client who may find him/herself in circumstances of undue influence, or abuse. In addition, a solicitor must often assist the elderly client to understand the many issues involved, to communicate his/her wishes, and to give full and competent instructions.

POINTS FOR CONSIDERATION

1. The client. It is important to ensure that instructions are taken from the intending testator, as it is the testator and only the testator who is the client. Interested family members may be keen to inform or interpret the wishes of elderly relatives for the solicitor preparing the will. Family or friends may feel they 'know what's best'. While the wishes of the testator will often coincide with the wishes of those who wish to assist in the preparation of a will, in many circumstances this will not be the case.

It is important that the testator is seen alone, without the benefit of third-party assistance, in either communicating or formulating his wishes.

Where an elderly client is introduced to a solicitor by a third party for the purpose of making a will, best practice requires

that the solicitor ensures that a full and thorough knowledge of the testator's circumstances is acquired before proceeding. Consideration should be given to the possibility that the elderly person may have his/her own solicitor but may have been diverted to another solicitor in order to bypass advice already received. Such advice, while it would have been given in the best interests of the testator, may not be deemed appropriate by family or friends. Where an elderly client is being referred in such circumstances, full enquiries should be made and a solicitor should be slow to proceed.

Where a solicitor is asked to attend a testator in a hospital or nursing home, it is important to ensure that such attendance is, in fact, at the behest of the client and not at the instigation of a third party.

2. Undue influence. When acting for an elderly client, a solicitor must be alert to the possibility of undue influence and, where there are grounds for concern, take all possible steps to ensure that the client is interviewed on his/her own. Extra care should be taken in situations where the presumption of undue influence will be particularly relevant, such as where the testator, due to age, frailty, or illness, relies upon relatives or carers for day-to-day care and assistance or for transport to and from shops, church services, social functions or medical appointments, and so on.

If instructions are received by letter, or otherwise in writing, a solicitor must consider carefully whether it is prudent to act on

such instructions without the benefit of an initial interview with the elderly client. It is essential that a solicitor makes personal contact to ensure that the instructions received are those of the client, and, if concerned, arranges to interview the testator to obviate the possibility of fraud, assess the testator's capacity, and ensure that comprehensive instructions are freely obtained.

Where instructions are furnished by letter, or otherwise in writing, from someone other than the testator, a solicitor is not in a position to proceed without first making contact with the testator to ascertain if they wish to be advised and to give instructions in the matter.

3. Capacity. The formalities for a valid will are set out in section 77 of the *Succession Act 1965*, which includes a requirement that the person "is of sound disposing mind".

When taking instructions for the making of a will, it is therefore necessary to determine whether or not the client has testamentary capacity. Solicitors should be aware that testamentary capacity and mental capacity are not one and the same.¹ A person may have capacity for some legal purposes but at the same time lack capacity for others. Testamentary capacity is a legal test and requires a high level of capacity. Testamentary capacity, or broadly the test of 'sound disposing mind', is set out in *Banks v Goodfellow*². The testator must understand:

- The nature of the act and its effects,
- The extent of the property of which he is disposing, and
- Be able to comprehend and

appreciate the claims to which he ought to give effect.

Assessment of testamentary capacity can be a difficult matter. Eccentricity or capriciousness does not necessarily indicate a lack of testamentary capacity. Further, testamentary capacity is not an exact science. A client who is unwell may have lucid intervals and sufficient testamentary capacity at the time of instructions, but later become incapable when it comes to reviewing his/her will for execution.³

Some useful pointers in assessing capacity are⁴:

- Persons assessing capacity should take care to fully understand the nature and effect of the transaction and have all the relevant documentation and necessary background information, including details of family members,
- Obtain corroborative information where necessary, including a diagnostic assessment of the client (that is, medical evidence),
- Treat any medical evidence obtained as supplemental to, and not a substitute for, the legal tests for capacity,
- Be fully aware of the legal test for assessing the capacity required in the particular context,
- Ensure that the nature and effect of the transaction is explained to the client in broad terms and simple language,
- After a reasonable time frame, establish whether the client can paraphrase in broad terms the explanation given earlier,
- Be aware of the danger in asking questions that give rise

to the answer 'yes' or 'no',

- Avoid being misled by a client's preserved social skills into believing that they have the necessary capacity to make a particular decision or complete a particular transaction,
- Give consideration as to whether it is necessary to review the assessment of capacity at an additional meeting in the near future,
- Do not regard an individual as lacking capacity because of an apparently imprudent decision, and
- Ensure that immediate and comprehensive notes are made of any assessment of a client's capacity.

It is important to note that mental illness does not preclude testamentary capacity. Where a client with a known mental illness presents himself/herself and indicates a wish to make a will, a solicitor must clearly establish the presence or absence of testamentary capacity. If in doubt, a medical opinion should be sought before proceeding. If the client is under the care of a consultant, his/her opinion may be the more relevant one, rather than the testator's general practitioner. However, it is the solicitor's obligation to determine whether or not the client has testamentary capacity. Medical evidence may be of assistance, but is not a substitute for a legal determination of capacity. Careful notes should be made and recorded where the client lacks sufficient capacity and a solicitor concludes that it is not possible to obtain instructions. Similarly, where there is a doubt as to capacity but a solicitor proceeds to draft a will on the basis that there is capacity, very careful and detailed notes setting out the full circumstances should be made, with a contemporaneous attendance of the circumstances surrounding the taking of instructions and the preparation and execution of the will.

4. Taking instructions. The taking of instructions and the drafting of the attendance are two separate stages in the process of making a will for any client. Instructions⁵ are what the client directs and instructs a solicitor to do in relation to his estate in the course of the interview for preparation of the will. The attendance is the record of what was actually said in the course of the consultation.

The will, when drafted, must reflect the testator's instructions. For this purpose, a solicitor must ensure and take extra care in interviewing the elderly client that:

- a) Details of the assets of the testator have been obtained, including
 - Their nature and extent,
 - Their value,
 - Those held in joint names,⁶ and
 - All/any benefits payable on death.
- b) All information concerning the testator's family is available, including those who
 - Are vulnerable or needy family members particularly dependent on the testator and for whom the testator may have an obligation to provide,
 - Have received sufficient benefit from the testator,
 - Are financially better off than others,
 - Are more caring of/enjoy a closer relationship to the testator.
- c) The testator has been advised comprehensively on
 - The provisions of all relevant legislation,
 - Any tax implications of the testator's wishes for his will.⁷

5. Attendance. Following the taking of instructions and on the completion of the consultation with the elderly client, a solicitor should immediately draft the attendance. This document may be invaluable at a later stage as

evidence of the instructions given that gave rise to the drafting of the will and in establishing that the will of the testator was made in the absence of undue influence. A solicitor should also record in the attendance the assessment of the testator's mental state, particularly so where there may be a doubt about capacity to make the will. The attendance should record details of examinations and findings,⁸ with clear and comprehensive notes of what steps were taken to establish capacity, and, where relevant, to explore any changes or alterations from earlier wills.

6. Execution. Following the taking of instructions and the preparation of the attendance, solicitors should ensure that wills are drafted and executed promptly – particularly when clients are elderly or are known to be ill.⁹ Practitioners should also be aware of their duty of care to putative beneficiaries.¹⁰ Just as when obtaining instructions, it is important that the testator is seen and interviewed alone by a solicitor immediately before the execution of the will to avoid the possibility of undue influence. If this is not possible, due to exceptional circumstances, such as the testator's poor health or otherwise, the client should be seen in the absence of any interested parties.

7. Post-execution. The importance of the attendance notes at the time of the execution of the will should not be overlooked and should be prepared with due care, particularly if there is a doubt about capacity, concerns of undue influence or other circumstances. Capacity to make a will is a requirement when instructions are given and again when the will is executed. A solicitor should, at the time of execution, record and preserve details of his/her attendance on the testator, including those

present (if any) and examinations and findings as to the execution of the will and the testator's capacity.¹¹

The Probate Office may require an affidavit of mental capacity where a testator dies in a nursing home or institution, notwithstanding the date of execution of the will.

It may be prudent for a solicitor to arrange to obtain a medical report as to the testator's cognitive ability from his/her doctor. The reporting doctor should see the patient within 30 days of the execution of the will, though ideally certification should be contemporaneous. The doctor should be advised that the solicitor is endeavouring to assess whether the testator has testamentary capacity. It should be emphasised to the doctor that a general assessment of the client's mental condition is not what is required. As stated above, medical evidence may be of assistance, but it is not a substitute for a legal determination of capacity.

It may also be prudent to have one of the attesting witnesses swear an affidavit of attesting witness.

8. Appointment of executors. Solicitors should ensure that the elderly client gives due consideration to the appointment of executors and, as dictated by circumstances, any advice given should include:

- The advantages in the appointment of the testator's spouse (if any) as sole or co-executor, unless circumstances indicate good reason to do otherwise. This will avoid the possibility of the surviving spouse's wishes or interests being overridden or manipulated by others. Further, where the surviving spouse is an executor, he or she will be best placed to exercise his or her right to the legal right share.¹²

- The potential for conflict of interest in the appointment of certain executors, such as the step-parent of the testator's children, and the effect this may have on the administration of the estate.
- The need for extra care in the choice of executor where the testator wishes to make special provision for needy children or other family members (such as elderly siblings).

9. Confidentiality. A will is a confidential document. Neither the contents, nor the fact of its execution, should be disclosed to any third party. This is of particular relevance where there is any possibility or question of abuse, financial or otherwise. Further, it may not always be wise or prudent to post a draft will for review to a testator.

10. Powers of attorney. While taking instructions for an elderly client concerning the completion of a will, a solicitor should take the opportunity to explain the concept of, and the advantages and risks involved in, completing an enduring power of attorney.

Footnotes

- 1 "'Capacity' means someone's ability to do something. In a legal context, it refers to a person's ability to enter into a transaction or exercise rights which may have legal consequences for other people, such as making a will, a gift, a contract or an enduring power of attorney, or generally being able to manage one's property and affairs" – Tolley's/STEP, *Finance and Law for the Older Client* at D1: Legal Capacity.
- 2 (1870) LR 5 QB 549.
- 3 See *Banks v Goodfellow* (1870) LR 5 QB at 549 and *Richards v Allen* (2001) WLTR at 1031.
- 4 Tolley's/STEP, *Finance and Law for the Older Client* at D1.
- 5 See also comments of Barron J in *Carroll v Carroll* (IR 1999): "a solicitor or other professional person does not fulfil his obligation to his client ... by simply doing what he is instructed to do. He owes such person a duty to exercise his professional skill and judgement and he does not fulfil that duty blithely following instructions without stopping to consider whether to do so is appropriate. Having done so,

he must then give advice as to whether or not what is required of him is appropriate."

- 6 Establish, where real property is held jointly, whether it is held as a tenant-in-common or as a joint tenant. Also, have regard to the fact that elderly people often open or convert bank accounts to a joint basis or will have dual mandates for ease of lodgement or withdrawal due to lack of mobility, frailty or other reasons. A joint account or mandate will not necessarily result in the asset passing by survivorship. The testator's intentions with regard to monies in such an account should be recorded in the attendance and, where it is clear that a resulting trust arises, this asset should be included in the Will. See also the practice note, "Joint bank accounts – guidelines for solicitors", in the December 2008 *Gazette*, p63.
- 7 Where a solicitor does not have the expertise to advise the client on taxation matters, the client should be advised to seek professional advice on the taxation implications of any proposed will before

finalising the document.

- 8 Copies of any medical reports obtained should be retained with the attendance.
- 9 In *X v Woolcombe-Yonge* ([2001] WTLR), the court held that seven days would be a sufficient short period "in most cases" where the client was "elderly or likely to die", but "where there is a plain and substantial risk of the client's imminent death, anything other than a handwritten rough codicil prepared on the spot for signature may be negligent. It is a question of the solicitor's judgement based on his assessment of the client's age and health."
- 10 See the case of *Hooper v Fynmores* (2002) Lloyds Ref PN18, where the court held that the delay caused by the solicitor in failing to ensure the expeditious execution of a will generated a liability to a disappointed beneficiary.
- 11 Including medical reports if obtained at this stage.
- 12 *Succession Act 1965*, s116.

Subcommittee on Financial Aspects of Elder Abuse, Guidance and Ethics Committee

BUSINESS BANKS' TERMS AND CONDITIONS INCORPORATING INDEMNITIES

The Business Law Committee has recently undertaken a review of the standard terms and conditions of several of the commercial banks with whom practitioners may hold client and office accounts. These terms and conditions govern, among other things, the relationship between the bank and the practitioner, where the practitioner requests the bank to act on instructions sent by fax or electronically. The Business Law Committee would like to draw the attention of practitioners to the fact that certain of these terms and conditions incorporate what the committee considers to be onerous indemnities deemed to

be given by the practitioner in favour of the bank.

As drafted, some of the indemnities could cover a situation where the bank, acting on instructions from the practitioner, suffers a loss through no fault whatsoever of the practitioner or, indeed, in some cases through a fault of the bank solely.

Practitioners may consider the indemnities contained in many of the said terms and conditions unreasonable, as going beyond what a bank could reasonably require of them.

In particular, the Business Law Committee is concerned at:

- The extent of the indemnities

sought,

- The failure by the banks in some instances to highlight the indemnity provisions, and
- The provision in certain of the banks' terms and conditions whereby the bank may automatically debit the customer's account in the amount of any claim covered by the indemnity.

The Business Law Committee conveyed its views to the Irish Banking Federation; however, the Irish Banking Federation felt it would not be appropriate for it to recommend a standardised approach to its members. They did, however, agree to request

that their members would highlight the indemnity provisions where possible.

It is recommended that practitioners review the terms and conditions of their practice bank, and in particular the indemnities incorporated therein. Practitioners are urged to exercise caution in agreeing to engage with their bank on the basis of standard terms and conditions and should, in particular, review the indemnities included in those terms and conditions. Where the indemnities are unreasonable, practitioners should raise their concerns directly with their bank. **G**

Business Law Committee

legislation update



18 November '08 – 19 January '09

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

ACTS PASSED

Appropriation Act 2008

Number: 23/2008

Contents note: Appropriates to the proper supply services and purposes sums granted by the *Central Fund (Permanent Provisions) Act 1965*; makes provision in relation to deferred surrender to the Central Fund of certain undischarged appropriations by reference to the capital supply services and purposes, as provided for by section 91 of the *Finance Act 2004*; and makes provision in relation to financial resolutions passed by Dáil Éireann on 14/10/2008.

Date enacted: 18/12/2008

Commencement date: 18/12/2008

Cluster Munitions and Anti-Personnel Mines Act 2008

Number: 20/2008

Contents note: Creates offences in relation to the use, development, production, acquisition, stockpiling, retention or transfer of cluster munitions, explosive bomblets and anti-personnel mines, as required under the *Convention on Cluster Munitions* done at Dublin, 30/5/2008, and the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines*

and on their Destruction done at Oslo, 18/9/1997, and provides for penalties that may be imposed upon conviction.

Date enacted: 2/12/2008

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

Finance (No 2) Act 2008

Number: 25/2008

Contents note: Provides for the imposition, repeal, remission, alteration and regulation of taxation, of stamp duties and of duties relating to excise, and otherwise makes further provision in connection with finance, including the regulation of customs. Implements many of the measures announced in the budget statement 2009 and financial resolutions passed by Dáil Éireann on 14/10/2008, including the introduction of levies on income and on employee parking where an employer provides car-parking facilities for employees. Section 81 of the act provides for an exemption from penalties in respect of any instrument first executed before the passing of the act on which stamp duty chargeable has not been paid, provided that the instrument is delivered to the Revenue Commissioners for stamping before the expiration date, which is the expiration of the period of 56 days commencing on 24/12/2008, the date of passing of the act, and that the stamp duty chargeable, together with interest relating to such duty, is paid on or before the expiration date.

Date enacted: 24/12/2008

Commencement date: 24/12/2008, except where otherwise expressly provided or where commencement order(s) are to be made; 1/1/2009 for part 1 (ss1-45 levies, income tax, corporation tax

and capital gains tax), except where otherwise expressly provided in part 1 (per s102(8) of the act). See act for details

Health Act 2008

Number: 21/2008

Contents note: Provides for the replacement of s45(5A) (inserted by s1 of the *Health (Miscellaneous Provisions) Act 2001*) of the *Health Act 1970*, which provided for automatic entitlement to a medical card for all persons aged 70 years and over who are ordinarily resident in the state, irrespective of their means. Substitutes a new section 45(5A) and inserts an additional s45A in the *Health Act 1970* to provide that those people who are aged 70 or over on 31/12/2008, whose gross income does not exceed specified limits, will be entitled to a medical card. Those whose income is above the specified limits must advise the Health Service Executive by 2/3/2009 that they no longer qualify for a medical card after that date. Provides for related matters.

Date enacted: 12/12/2008

Commencement date: 1/1/2009 (per s1(2) of the act)

Motor Vehicle (Duties and Licences) (No 2) Act 2008

Number: 24/2008

Contents note: Gives effect to increases in motor taxation and trade plate licences announced in the budget statement 2009 on 14/10/2008. Also contains a minor technical amendment to the definition of 'CO₂ emissions' to ensure consistency with the *Finance Act*, which has parallel provisions in relation to the vehicle registration tax system. The increases are effective from 1/1/2009.

Date enacted: 22/12/2008

Commencement date: 22/12/2008

Social Welfare (Miscellaneous Provisions) Act 2008

Number: 22/2008

Contents note: Provides for amendments to the social welfare code, as announced in the budget statement 2009, and includes amendments to PRSI. Amends a number of other acts, including the *Pensions Acts 1990 – 2007*, the *Civil Registration Act 2004* and the *Citizens Information Acts 2000 and 2007*.

Date enacted: 17/12/2008

Commencement date: Commencement order(s) to be made for ss8, 22, 24, 26-29 and for part 5 (ss30-38, dissolution of Combat Poverty Agency). Various commencement dates for other sections – see act for details

SELECTED STATUTORY INSTRUMENTS

Copyright and Related Rights (Public Lending Remuneration Scheme) Regulations 2008

Number: SI 597/2008

Contents note: Establish a public lending remuneration scheme whereby authors will be remunerated, out of moneys voted by the Oireachtas, according to the number of loans of their books by the public library service.

Commencement date: 31/12/2008

Coroners Act 1962 (Fees and Expenses) Regulations 2008

Number: SI 561/2008

Contents note: Prescribe fees and expenses for the purposes of the *Coroners Act 1962*. Revoke the *Coroners Act 1962 (Fees and Expenses) Regulations 2007* (SI 240/2007).

Commencement date: 1/1/2008 and 1/9/2008 for various fees and expenses.

Credit Institutions (Financial Support) (Specification of Institutions) Order 2008

Number: SI 515/2008

Contents note: Section 6(1) of the *Credit Institutions (Financial Support) Act 2008* provides that the Minister for Finance may provide financial support in respect of covered liabilities of any credit institution or subsidiary that the minister may specify by order. EBS Mortgage Finance is specified by this order for the purposes of section 6(1) of the act.

**European Communities
(Electronic Communications
Networks and Services)
(Data Protection and Privacy)
(Amendment) Regulations
2008**

Number: SI 526/2008

Contents note: Amend the *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (SI 535/2003) by increasing the penalty for a summary offence; creating an indictable offence for a contravention of regulation 13, relating to unsolicited communications, and providing for the penalties that may be imposed on conviction of this offence; and by the amendment of regulations relating to confidentiality of communications, unsolicited communications and enforcement.

Commencement date: 13/12/2008 (day after date of publication of notice of SI in *Iris Oifigiúil*, per regulation 1(2) of the SI)

**European Communities
(Environmental Liability)
Regulations 2008**

Number: SI 547/2008

Contents note: Give effect to directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage.

Commencement date: 1/4/2009

**European Communities
(European Order for Payment)
Regulations 2008**

Number: SI 525/2008

Contents note: Make provision

Circuit Court Rules (Consumer Protection Act 2007) 2008

Number: SI 585/2008

Contents note: Insert a new order 72B, 'Consumer Protection Act 2007', in the *Rules of the Superior Courts 1986* (SI 15/1996) to provide for the operation of sections 71 (civil relief by way of prohibition orders), 72 (prohibition order against code owners), 74 (right of action for damages in respect of a prohibited act or practice), 81 (compensation orders) and schedule 6 of the *Consumer Protection Act 2007*.

Commencement date: 19/1/2009

District Court (Bench Warrants) Rules 2008

Number: SI 498/2008

Contents note: Amend order 22 of the *District Court Rules 1997* (SI 93/2007) to allow the particulars of all offences and/or complaints, together with particulars of recognisances that have been breached, to be contained in a bench warrant, either in the body thereof or attached thereto.

Commencement date: 29/12/2008

District Court (Child Care) Rules 2008

Number: SI 469/2008

Contents note: Amend order 61A of the *District Court Rules 1997* (SI 93/1997) by the insertion of a new rule 2 to provide for applications to the court by persons seeking to report proceedings in accordance with section 29(5) of the *Child Care Act 1991* (inserted by section 3 of the *Child Care (Amendment) Act 2007*). Amend order 84 of the *District Court Rules 1997* by the insertion of a new rule 27A to deal with an application for an order by a foster parent or relative with whom a child has been placed for five years or more under section 43A of the *Child Care Act 1991* (inserted by section 4 of the *Child Care (Amendment) Act 2007*).

Commencement date: 16/12/2008

District Court (European Small Claims) Rules 2008

Number: SI 583/2008

Contents note: Insert a new order 53C, 'European small claims procedure', in the *District Court Rules 1997* (SI 93/1997), providing the District Court procedure for the operation of regulation (EC) no 861/2007 establishing a European small claims procedure.

Commencement date: 1/1/2009

for the administration in Irish law of regulation (EC) no 1896/2006 creating a European order for payment procedure.

Commencement date: 12/12/2008

**European Communities
(European Small Claims
Procedures) Regulations 2008**

Number: SI 533/2008

Contents note: Make provision for the administration in Irish law of regulation (EC) no 861/2007 establishing a European small

claims procedure. Provide that the District Court shall have jurisdiction for the purposes of the regulation and that such jurisdiction shall be exercised in accordance with the rules of regulation (EC) no 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Provide that a judgment given in another member state in the European small claims procedure shall be of the same force and effect as a judgment or decree of

the District Court and may be enforced, and proceedings taken on it, as if it were a judgment or decree of that court.

Commencement date: 1/1/2009

**European Communities
(Mergers and Divisions of
Companies) (Amendment)
Regulations 2008**

Number: SI 572/2008

Contents note: Amend the *European Communities (Mergers and Divisions of Companies) Regulations 1987* (SI 137/1987) to give effect to directive 2007/63/EC amending directives 78/855/EEC and 82/891/EEC concerning the requirement of an independent expert's report on the occasion of merger or division of public liability companies. The effect of the amendment made by these regulations is to give holders of shares and other securities with voting rights at general meetings of each of the merging companies (in the case of a merger) and each of the companies involved in a division (in the case of a division) the option, if they all so agree, to dispense with the requirement to have an examination of, and a written expert's report on, the draft terms of a merger or division.

Commencement date: 31/12/2008

**European Communities
(Tax Exemption for Certain Non-
Commercial Goods Imported
in the Personal Luggage of
Travellers from Third Countries)
Regulations 2008**

Number: SI 480/2008

Contents note: Give effect to directive 2007/74/EC, which allows for the exemption from excise duty and value added tax of certain goods, subject to monetary thresholds or quantitative limits, imported in the personal luggage of persons travelling from non-EU member states.

Commencement date: 1/12/2008

**Finance Act 2007
(Commencement of Section**

24(1)) Order 2008**Number:** SI 472/2008

Contents note: Appoints 12/11/2008 as the commencement date for section 24 of the *Finance Act 2007*. Section 24 provides for an extension from 1/1/2007 to 31/12/2008 of the general 25% stock relief for farmers and the 100% scheme of stock relief for certain young trained farmers.

Finance Act 2008 (Section 32) (Commencement of Certain Provisions) Order 2008

Number: SI 560/2008

Contents note: Appoints 17/12/2008 as the commencement date of section 32 (other than subsection (1)(b)) of the *Finance Act 2008*. These provisions extend the scheme of film relief provided for under section 481 of the *Taxes Consolidation Act 1997* from 31/12/2008 to 31/12/2012.

Housing (Standards for Rented Houses) Regulations 2008

Number: SI 534/2008

Contents note: Require landlords of rented houses (including flats and maisonnettes), with some exceptions, to ensure that such houses meet certain minimum standards relating to structural condition, provision of sanitary facilities, food preparation, storage and laundry, availability

Pharmacy Act 2007 (Commencement) Order 2008

Number: SI 487/2008

Contents note: Appoints 29/11/2008 as the commencement date for the following provisions of the act: ss4, 13 (other than subsections (1)(a)(iv) and (1)(c), 14 to 17, 19, 21 to 24 and 59 to 62; part 5 (ss25-32) (other than ss27(e), 28(d) and 29(e); part 7 (ss66-72); part 8 (ss73-76) (except insofar as it is already in operation); schedules 2, 3 and 4. Appoints 1/1/2009 as the commencement date for ss13(1)(a)(iv), 13(1)(c) and 20 of the act, and 1/4/2009 as the commencement date for ss27(e), 28(d) and 29(e) of the act. The above provisions deal with the pharmaceutical registration system, offences, powers of investigation and related issues in the schedules to the act, including the repeal of the pharmacy related enactments as specified in schedule 4.

European Communities (Recognition of Professional Qualifications Relating to the Profession of Pharmacist) (No 2) Regulations 2008

Number: SI 489/2008

Leg-implemented: directive 2005/36/EC as amended by directive 2006/100/EC, insofar as these directives concern the profession of pharmacist.

Revokes: *European Communities (Recognition of Professional Qualifications relating to the Profession of Pharmacist) Regulations 2008* (SI 167/2008).

Commencement date: 29/11/2008

Pharmaceutical Society of Ireland (Council) (Rules) 2008

Number: SI 492/2008**Commencement date:** 29/11/2008

Pharmaceutical Society of Ireland (Education and Training) Rules 2008

Number: SI 493/2008**Commencement date:** 29/11/2008

Pharmaceutical Society of Ireland (Fees) Rules 2008

Number: SI 496/2008

Commencement date: 29/11/2008, except for paragraph 29 (in-service practical training programme fee) of the schedule that will come into force on 1/6/2009

Pharmaceutical Society of Ireland (Registration) Rules 2008

Number: SI 494/2008**Commencement date:** 29/11/2008

Pharmaceutical Society of Ireland (Retail Pharmacy Business) (Registration) Rules 2008

Number: SI 495/2008**Commencement date:** 29/11/2008

Regulation of Retail Pharmacy Businesses Regulations 2008

Number: SI 488/2008

Commencement date: 29/11/2008 for all regulations, except regulation 4(3), which will come into force on 1/11/2010. Regulation 4(3) relates to the provision of a separate and designated area within the pharmacy where a pharmacist can have a private discussion with the person for whom a prescription has been issued or with the carer of such a person

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of adequate heating, lighting and ventilation, safety of electricity and gas installations, fire safety and refuse facilities.

Commencement date: 1/12/2009, with the exception of articles 6 to 8 (sanitary, heating, food preparation, storage and laundry facilities) in respect of existing tenancies, which will come into operation on 1/12/2013

Industrial Development (Enterprise Ireland) Act 1998 (Section 50) Commencement Order 2008

Number: SI 530/1998

Contents note: Appoints 9/12/2008 as the commencement date for section 50 of the act. Section 50 provides for the transfer of staff from Forfás to the National Standards Authority of Ireland.

Insurance Act 1989 (Regulation of Reinsurance) (Commencement) Order 2008

Number: SI 520/2008

Contents note: Appoints 5/12/2008 as the commencement date for section 22A (persons not to carry on certain reinsurance business without authorisation) (substituted by section 35 of, and item 20 of part 8 of schedule 1 to, the *Central Bank and Financial Services Authority of Ireland Act 2003*) of the *Insurance Act 1989*.

Rules of the Superior Courts (Amendment to Order 118) 2008

Number: SI 562/2008

Contents note: Amend order 118, rule 4(2), of the *Rules of the Superior Courts 1986* (SI 15/1986) to provide that the opening hours of the public offices of the High and Supreme Courts shall be 10.30am to 4.30pm, save for Christmas Eve, when the opening hours shall be 10.30am to 1.00pm.

Commencement date: 16/12/2008

Rules of the Superior Courts (European Orders for Payment) 2008

Number: SI 551/2008

Contents note: Insert a new order 42C, 'European orders for payment', in the *Rules of the Superior Courts 1986* (SI 15/1986) to facilitate the operation of regulation (EC) no 1896/2006 creating a European order for payment procedure.

Commencement date: 16/12/2008

Rules of the Superior Courts (Residential Institutions Redress Act 2002) 2008

Number: SI 529/2008

Contents note: Insert a new order 134A, 'Residential Institutions Redress Act 2002', in the *Rules of the Superior Courts 1986* (SI 15/1986) to prescribe procedures for applications under subsections 14 and 15 of section 13 of the *Residential Institutions Redress Act 2002* (added to section 13 (award of the board) by section 34(e)(iv) of the *Commission to Inquire into Child Abuse (Amendment) Act 2005*), and to provide for related matters.

Commencement date: 29/12/2008

Medical Practitioners Act 2007 (Commencement) (No 3) Order 2008

Number: SI 554/2008

Contents note: Appoints 31/12/2008 as the commencement date for the following provisions of the *Medical Practitioners*

Act 2007 (as amended by the *Health (Miscellaneous Provisions) Act 2007*): s3(1) and part 1 of schedule 1, insofar as they relate to the repeal of chapter 2 of part IV of, and the third schedule to, the *Medical Practitioners Act 1978*; s86, other than paragraphs (c) and

(d) of subsection 3; s88(9); part 12 (ss96-103). The provisions commenced allow for the dissolution of the Postgraduate Medical and Dental Board, the transfer of its staff, property and liabilities to the Health Service Executive, and related matters; 1/1/2009 appointed as the transfer day by the *Medical Practitioners Act 2007 (Transfer Day) Order 2008* (SI 555/2008).

Water Services Act 2007 (Commencement) Order 2008

Number: SI 528/2008

Contents note: Appoints 15/12/2008 as the commencement date for section 56 (conservation of water) of the act and for the repeal of the *Waterworks Clauses Act 1863* under section 4(1) of, and schedule 1 to, the *Water Services Act 2007*.

Private Security Services Act 2004 (Commencement) Order 2008

Number: SI 497/2008

Contents note: Appoints 1/12/2008 as the commencement date for section 37 of the act, insofar as it refers to a provider of protected forms of transport referred to in paragraph (f) of the definition of 'security service' in section 2(1) of the act. **G**

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Solicitors Disciplinary Tribunal

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In the matter of Matthew Breslin, a solicitor practising as Donal J O'Neill & Company, Solicitors, 3 Denny Street, Tralee, Co Kerry, and in the matter of the *Solicitors Acts 1954-2002*

Law Society of Ireland (applicant)
Matthew Breslin (respondent solicitor)

On 24 July 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to provide adequate legal services to the complainant in relation to the stamping and registration of a conveyance made between the complainant and other named persons, made on 30 December 1997 and in relation to property at a named location,
- b) Failed to clarify queries in relation to property at another named location to the complainant and his named solicitor,
- c) Failed to respond adequately to letters from named solicitors dated 25 April 2006, 15 May 2006, 13 July 2006, 11 August 2006 and 7 September 2006 respectively,
- d) Failed to adequately respond to the Society's correspondence and, in particular, letters dated 4 January 2007, 22 January 2007, 1 February 2007, 26 March 2007, 4 April 2007, 23 April 2007, 23 May 2007 and 29 May 2007 respectively.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €10,000 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 Helen Lucey, a solicitor practising under the style and title of Marshall & Macauley Solicitors, The Square, Listowel, Co Kerry, and in the matter of the *Solicitors Acts 1954-2002*

Law Society of Ireland (applicant)
Helen Lucey (respondent solicitor)

On 30 July 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Was in serious delay in handing over the file of her client to his new solicitors,
- b) Failed to respond to multiple correspondence from her client's new solicitors about taking up her former client's file,
- c) Effectively prevented her former client's case being progressed by retaining her former client's file from August 2005 to 28 April 2006,
- d) Failed to reply to multiple correspondence from the Society,
- e) Failed to comply with a direction of the Complaints and Client Relations Committee on 1 February 2006,
- f) Through her conduct, demonstrated a cavalier attitude towards the Society's statutory obligation to investigate and deal with complaints,

- g) Through her conduct, showed a complete lack of concern towards her former client and, in particular, given the circumstances of her former client.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay the sum of €10,000 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 Helen Lucey, a solicitor practising under the style and title of Marshall & Macauley Solicitors, The Square, Listowel, Co Kerry, and in the matter of the *Solicitors Acts 1954-2002*

Law Society of Ireland (applicant)
Helen Lucey (respondent solicitor)

On 30 July 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Was in serious delay in completing the distribution of moneys in an estate between 2001 and 2006,
- b) Retained moneys due to the beneficiaries from 2001 to 2006,
- c) Despite numerous attempts by the person acting on behalf of the beneficiaries to find out what was happening in relation to the estate between June 2003 and June 2004, did not respond to these enquiries,
- d) Failed to comply within the time specified with a notice

pursuant to section 10 of the *Solicitors (Amendment) Act 1994*, dated 26 September 2004,

- e) Failed to subsequently give priority to the file as directed by the Complaints and Client Relations Committee on 9 February 2005,
- f) Failed to furnish two monthly reports as directed by the committee on 9 February 2005,
- g) Failed to reply to subsequent correspondence from the complainant,
- h) Caused the complainant considerable distress, as evidenced by the complainant's letter to the Society dated 9 May 2005,
- i) Failed to reply to numerous letters from the Society,
- j) Failed to comply with a direction of the committee of 1 February 2006 that she transfer the file to another solicitor to be nominated by the complainant, pursuant to section 8(1)(d) of the *Solicitors (Amendment) Act 1994*,
- k) Notwithstanding that the foregoing direction had become absolutely binding upon her, retained the file concerned and continued to deal with it,
- l) Failed to comply with the further direction of the committee on 1 February 2006 that she submit a full and satisfactory response to the complaint of the complainant, and notwithstanding that this direction had become absolutely binding upon her,
- m) Failed to respond to the letter from the complainant to her, dated 16 May 2006, in relation to what the complainant believed was the payment of an incorrect

amount to her as her share of her mother's estate and the question of the payment of interest,

- n) Through her conduct, showed a serious disregard for the statutory responsibility of the Society as the statutory regulator of the solicitors' profession,
- o) Through her conduct, showed a serious disregard for the Society as a statutory regulator of the solicitors' profession.

The tribunal made an order:

- a) Censuring the respondent solicitor,
- b) Ordering the respondent solicitor to pay the sum of €11,000 to the compensation fund,
- c) Ordering the respondent solicitor to 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.

The tribunal took into account the following findings of misconduct on the part of the respondent solicitor previously made by them (and their predecessors, the Disciplinary Committee) and not rescinded by the High Court and in respect of the respondent solicitor, namely:

- Order of the High Court made on 22 February 1986,
- Order of the High Court made on 16 January 1989,
- Order of the Solicitors Disciplinary Tribunal made on 21 June 2001,
- Order of the Solicitors Disciplinary Tribunal made on 21 June 2001,
- Order of the Solicitors Disciplinary Tribunal made on 5 July 2004.

In the matter of Michael Hinkson, solicitor, practising as Hinkson Solicitors, Fields Corner, Churchtown, Dublin 14, 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 1954-2002

Law Society of Ireland (applicant)

Michael Hinkson (respondent solicitor)

On 30 September 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Breached regulation 21(1) of the *Solicitors' Accounts Regulations*, SI no 421 of 2001, in failing to ensure that there was furnished to the Society an accountant's report covering his financial year ended 31 March 2007 within six months thereafter, that is, by 30 September 2007,
- b) Through his conduct, showed a disregard for his own statutory obligations and the Society's statutory obligations to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients, the solicitors' profession and the public.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay the sum of €3,000 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 Michael O'Loughlin, a solicitor practising in the firm of MD O'Loughlin & Company, Solicitors, Suite 11, Parklands Office Park, Southern Cross Road, Bray, Co Wicklow, and in the matter of the Solicitors Acts 1954-2002

Law Society of Ireland (applicant)

Michael O'Loughlin (respondent solicitor)

On 16 October 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Misrepresented to the complainant that he had received a further "offer of settlement" of €7,500 plus costs from Ulster Bank Limited in the complainant's named action against Ulster Bank (Ireland) Limited in the Dublin Circuit Court and bearing a stated record number, when in fact he had received no such offer from Ulster Bank Limited,
- 2) Advised the complainant to accept this "offer of settlement" and ostensibly to compromise his claim in the complainant's action referred to above,
- 3) Misaid and lost the complainant's file and papers relating to the complainant's action referred to above and misrepresented to the complainant that he was progressing the complainant's action and awaiting a court date, when in fact he had lost the complainant's file and had not progressed the complainant's action other than to issue and serve a civil bill.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €7,500 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, including witnesses' expenses, as taxed by a taxing master of the High Court, in default of agreement.

In the matter of W Joseph Fahey, a solicitor of Ballygar Road, Mounthellev, Co Galway, and in the matter of the Solicitors Acts 1954-2002 [6687/DT37/08]

Law Society of Ireland (applicant)

W Joseph Fahey (respondent solicitor)

On 23 October 2008 and 13 November 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Retained at least €3,800 in respect of stamp duty on behalf of a named complainant, but failed to furnish same to the Revenue or to return same to the client in a timely manner,
- b) Failed to reply to the Society's correspondence and, in particular, the Society's letters of 17 August 2007, 30 August 2007, 7 September 2007, 24 September 2007, 10 October 2007, 19 October 2007, 5 November 2007,
- c) Failed to comply with the direction of the Complaints and Client Relations Committee, made at its meeting on 28 November 2007, to respond to the Society's letter of 24 September 2007 within one month,
- d) Failed to register the named complainant's property in the Land Registry in a timely manner or at all,
- e) Failed to reply to all the issues raised in a letter from the named complainant dated 7 September 2007.

And by reason of the submissions made and the fact that the respondent solicitor has voluntarily agreed to pay the stamp duty (which in the normal course of events would be the responsibility of the client) in addition to the penalty imposed by the Revenue (upwards of €20,000), the tribunal is of the opinion that it is appropriate to make an order pursuant to subsection 9 of section 7 (as substituted by section 17 of the *Solicitors (Amendment) Act 1994* and amended by section 9(d) of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1960*.

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 Patrick Gillespie, a solicitor practising as P Gillespie & Company, Solicitors, at Bury Street, Ballina, Co Mayo, and in the matter of the *Solicitors Acts 1954-2002* [6919/DT44/08]

Law Society of Ireland

(applicant)

Patrick Gillespie

(respondent solicitor)

On 23 October 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Released funds of €182,900 furnished to him on 11 October 2006, which funds were to be held on trust pending the furnishing of

completion documentation, without the consent of the complainant,

- b) Failed to respond to the complainant's correspondence,

c) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 14 March 2007, 2 April 2007, 13 April 2007, 23 April 2007, 21 May 2007, 27 June 2007, 19 October 2007, 8 November 2007, 17 December 2007,

- d) Failed to comply with the High Court order dated 8 October 2007, which order directed the solicitor to respond appropriately to the Society's correspondence in relation to this complaint,

e) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting of 12 December 2007 to furnish a progress report to the Society on or before 15 January 2008,

- f) Failed to provide the closing documents to his colleague in a timely manner or at all, and in particular the premier certificate, which is still outstanding.

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 Elizabeth Farquharson, solicitor, and William A Stokes, solicitor, carrying on practice under the style and title of Herman Good & Company, Solicitors, at 22/23 Dawson Street, Dublin 2, and in the matter of the *Solicitors Acts 1954-2002* [3188-5032/DT83/07]

Law Society of Ireland

(applicant)

Elizabeth Farquharson and William A Stokes
(respondent solicitors)

On 28 October 2008, the Solicitors Disciplinary Tribunal found the first-named respondent solicitor and the second-named respondent solicitor guilty of misconduct in their practices as solicitors in that they:

- a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2006 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001*, SI no 421 of 2001, in a timely manner,
- b) Through their conduct, showed disregard for their statutory obligations to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance

STAGE INTERNATIONAL A PARIS

Aux mois de septembre et octobre, le barreau de Paris organise chaque année le Stage International. Ce stage constitue une opportunité extraordinaire, pour les professionnels du droit à l'international, de découvrir et de pratiquer le droit français, au cœur de Paris..

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with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the first-named respondent solicitor and the second-named respondent solicitor:

- Do stand censured,
- Jointly and severally pay a sum of €1,000 to the compensation fund,
- Jointly and severally 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 John J Kilrairie, solicitor, formerly practising as Kilrairie & Company at Nile Lodge Corner, Galway, and in the matter of the *Solicitors Acts 1954-2002* [6868/DT58/08] *Law Society of Ireland* (applicant)
John J Kilrairie (respondent solicitor)**

On 4 November 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- Failed to comply with the direction of the Complaints and Client Relations Committee given on 28 November 2007 that he pay a total contribution of €1,000 towards the costs of the Society for his failure to correspond with the Society in respect of the complaint of a named complainant within one month of being informed of the said direction, having been so informed by letter dated 10 December 2007, and failed to pay the said contribution up to the date of the swearing of the Society's affidavit (on 5 June 2008),
- Failed to reply in a timely manner to the Society's correspondence in respect of the complaint made by the complainant and, in particular, to the Society's letters seeking a response to the complainant's letter of complaint dated 3 September 2007.

The tribunal ordered that the respondent solicitor:

- Do stand censured,
- Pay a sum of €1,000 to the compensation fund,
- Pay a sum of €1,000 to the

- Law Society of Ireland in respect of the sum identified as due and owing to the Society in charge (a) above,
- 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 John A McDonough, solicitor, practising as McDonough & Breen, Solicitors, Distillery House, Distillery Lane, Dundalk, 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 1954-2002* *Law Society of Ireland* (applicant)
John A McDonough (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:
- Failed to comply with the complainant's letter dated 10 March 2005 to provide certain items and to hold monies on trust until these items were resolved,

- Failed to adequately respond to the complainant's letters dated 10 March 2005, 24 May 2005, 31 May 2005, 21 June 2005, 21 July 2005, 25 July 2005, 19 September 2005, 6 October 2005, 21 August 2006, 6 November 2006 and 9 January 2007 respectively,
- Failed to respond adequately to the Society's correspondence during the course of this investigation, resulting in the respondent solicitor paying a contribution of €500 towards the costs of the Society's investigation,
- Failed to reply adequately to all of the outstanding matters raised in the complainant's letter to him, dated 15 August 2007.

The tribunal ordered that the respondent solicitor:

- Do stand admonished and advised,
- Pay a sum of €5,000 to the compensation fund,
- Pay the whole of the costs of the Law Society of Ireland, or of any person appearing before them, as taxed by a taxing master of the High Court, in default of agreement. **G**

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

CRIMINAL LAW

European arrest warrant

Surrender – correspondence of offences – road traffic offences – how the court was to judge correspondence – perverting the course of justice – causing death by dangerous driving – whether correspondence – European Arrest Warrant Act 2003.

The applicant sought to surrender the respondent to Britain for offences relating to a road traffic incident. The respondent objected to his surrender on the basis that no correspondence was made out as to the offences in the warrant and that correspondence could only have been made out by reference to the warrant.

Peart J held that, although the offence was a summary offence, correspondence had been made out. The court was required to make the order for surrender as sought to the issuing state.

Minister for Justice, Equality and Law Reform (applicant) v Ward (respondent), High Court, 4/3/2008 [FL 15183]

IMMIGRATION AND ASYLUM LAW

Judicial review

Certiorari – deportation – Nigerian national – natural father of unborn child – relevance of constitutional rights of child – failure to take into account rights – considerations relevant for minister – whether injunction merited – Immigration Act 1999 – articles 40.3, 41 of the Constitution – article 8 of the ECHR.

The decision of the respondent to deport the Nigerian national father of an Irish child was alleged to have failed to take

into account the constitutional rights of the then unborn child and now second applicant. The applicants sought an order directing the respondent to reconsider the deportation order made in respect of the applicants and an injunction to prevent the proposed deportation. The issue arose as to what the minister was mandated to consider in exercising his powers.

Irvine J held that the applicants enjoyed constitutional rights requiring vindication. The applicant had discharged the onus of proof to establish the type of inquiry that the impending birth of the second applicant had established. An order would be made directing the respondent to reconsider the deportation order made. An injunction would be granted to maintain the status quo.

E(O) (applicant) v Minister for Justice, Equality and Law Reform (respondent), High Court, 4/3/2008 [FL 15205]

JUDICIAL REVIEW

Fisheries law

Certiorari – mackerel fishing quota – Scotland – Atlantean Limited v Minister for Communications and Natural Resources – consequences of decision – whether minister exceeded statutory discretion in making decision.

In a previous related decision of the High Court in *Atlantean Limited v Minister for Communications and Natural Resources*, it was held that the minister had not followed fair procedures in deciding that a company had been guilty of undeclared landings relating to a mackerel quota dispute.

The minister took decisions subsequent to the judgment that were alleged to have exceeded her statutory discretion and warranted being quashed. It was alleged that the decision affected the ability of the applicant to carry on business.

Clarke J held that the minister was entitled to make the decision, as taken. No case had been set out to the effect that the minister had exceeded her statutory discretion. There was no legal basis to quash the first decision. The second decision challenged did not sufficiently affect rights and entitlements for it to be reviewed.

O'Shea Fishing Company Ltd (applicant) v Minister for Agriculture (respondent), High Court, 7/3/2008 [FL 15203]

PRACTICE AND PROCEDURE

Order for a modular trial

Principal proceedings – whether single trial of all issues appropriate – whether advantages to having modular trial.

In the substantive proceedings at issue, the plaintiffs claimed damages for the alleged supply of defective commercial products. Numerous parties were involved in the proceedings and the issue arose as to whether it was appropriate to order a modular trial, and whether any advantages accrued from the order in light of the procedural challenges at stake.

Clarke J held that the basic conditions for ordering a modular hearing were present. No significant overlap existed as to evidence for each of the modules. There was a strong case for a modular trial and it

would be so ordered. If there was a real risk of injustice, the issue could be revisited. Appropriate procedural directions would be made.

Cork Plastics Manufacturing & Others (plaintiffs) v Ineos Compound UK Limited (defendant), High Court, 7/3/2008 [FL 15186]

STATUTORY INTERPRETATION

Purposive construction

Literal interpretation – words and phrases – 'claimant' – whether singular incorporating the plural – dependants of hepatitis C victim – claim by dependants – claim for mental distress and general damages – whether acceptance of award by one dependant precludes appeal by other dependants – whether such dependant entitled to appeal totality of award – Civil Liability Act 1961 (no 41), s47 – Hepatitis C Compensation Tribunal Act 1997 (no 25), s5 – Interpretation Act 2005 (no 23), s18.

Section 5(15) of the *Hepatitis C Compensation Tribunal Act 1997* provides, among other things, that "an appeal shall lie ... by a claimant [who is defined in the act as a dependant, within the meaning assigned by section 47(1) of the *Civil Liability Act 1961*, making a claim] ... in respect of any decision". Section 5(6) provides that the tribunal shall assess and make any award for general damages on the basis of a single lump-sum award. The tribunal made an award and apportioned it between the various dependants of the deceased, each of whom had made a claim to it for mental distress and general damages.

The tribunal held that the parties did not have claims in

their own right, but only as dependants within the meaning of the *Civil Liability Act 1961*. The deceased's parents and nine of his siblings filed a notice of appeal. The other parties accepted the award. The High Court (O'Neill J) held that all of the appellants who had submitted individual claim forms or who were included in the claim of *KW* and *KC* were to be regarded as 'claimants', and that, in the event of an appeal by one or more dependants in respect of an assessment of the quantum of general damages or the award to him of compensation following a division of that award, the appeal had the effect of defeating an acceptance by another dependant. The tribunal appealed to the Supreme Court.

The Supreme Court dismissed the appeal, holding that the wording of section 5(1) of the 1997 act was clear and prescribed the basis upon which awards of the tribunal should be made, which was on the same basis as an award of the High Court calculated by reference to the principles

that governed the measure of damages in the law of tort and any relevant statutory provisions, including part IV of the *Civil Liability Act 1961*, and that, on a literal reading of it, the provisions of section 48(2) of the *Civil Liability Act 1961* were not incorporated into the statutory scheme. Nor was such incorporation required by any necessary implication. There was, therefore, no requirement that there should be a single claim by and on behalf of all persons coming within the definition of dependant in the act. Though the 1997 act spoke throughout of 'a claimant' in the singular, it was clear from the nine categories of claimant in section 4(1) that several individual claims could be brought in respect of the same person who had been infected. Those claims did not overlap, and there was no requirement in logic that there should be a single claim only, that construction of the provision was not affected by section 5(6), which provided that the tribunal shall assess and make any award for general or special damages

on the basis of a single lump-sum award. What was required by section 5(6) was that each claimant would receive a single lump-sum award for damages. In claims by dependants, each dependant would receive an award of his apportioned share of the total award for mental distress and general damages.

If, pursuant to procedures adopted by the tribunal pursuant to section 3(11) of the 1997 act, a single claim should only be permitted, that could not deny a dependant that right of appeal that he would have enjoyed as an individual claimant.

Where a representative claim was brought, each person on whose behalf it was brought was nonetheless a claimant and enjoyed the right of appeal provided under the act as such. The award to each such claimant was an award of compensation and could be appealed by him. His position should not be adversely affected by the accident that, as a matter of administrative convenience, a representative claim was brought. As each of the dependants made a claim

to the tribunal, on a literal construction of the 1997 act, they were entitled to appeal. Accordingly, where the word 'claimant' was used in the act of 1997, it should be interpreted as 'claimants' where there was, in fact, more than one person making a claim under the act. That interpretation was fortified by section 18 of the *Interpretation Act 2005*, which provided that a word importing the singular shall be read as also importing the plural.

(*Per Kearns J, dissenting*): the statutory language was not so clear as to suggest that the legislature intended that each dependant should have a separate and distinct claim, and the legislature should not be taken as having intended such an absurdity.

C (respondents/claimants) v Minister for Health and Children (respondent), Supreme Court, 7/5/2008 [FL 15198] **G**

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

Metock: family reunion and union citizenship

European legislation has long recognised that a national of a EU member state exercising rights of free movement has the right to be accompanied by certain family members, including his or her spouse, even where they are third-country nationals.

Previous provisions were repealed with effect from 30 April 2006 and replaced by provisions in directive 2004/38 on the right of citizens of the union and their family members to move and reside freely within the territory of the member states (the *Residence Directive*). Under article 3(1), rights of free movement and residence are to be enjoyed by “all union citizens who move to or reside in a member state other than that of which they are a national” and to their family members who “accompany or join them”. Such family members include spouses and, as far as the basic rights of entry and residence are concerned, the nationality of the spouse is not relevant. Restrictions on entry and residence of family members are tightly drawn. They may be justified on strictly defined grounds of public policy, public security or public health. Member states may also adopt the necessary measures to refuse, terminate or withdraw any directive right in the case of abuse of rights or fraud, such as marriages of convenience. Such measures are to be proportionate and subject to procedural safeguards.

In a number of cases, member states have sought to refuse entry to, or expel, third-country

family members on grounds of their illegal residence. In dealing with these cases, the ECJ has generally given priority to rules of free movement over national immigration control laws, essentially on the ground that a refusal to accord family reunification rights would discourage the exercise of fundamental *EC Treaty* freedoms.

Particular difficulties have arisen in relation to the right to join a free-moving union citizen in his or her member state of nationality. The 1992 *Singh* case and the 2002 *Carpenter* case made it clear that third-country national spouses were entitled to reside in the union citizen's own member state to which he or she had returned (or in *Carpenter*, from which he was providing services), even though the third-country national concerned was not lawfully resident under national immigration laws.

However, the idea that a third-country national spouse should have community law entry and residence rights in all member states to which the union citizen moved, including his or her country of origin, was challenged in the 2003 *Akrich* case. The court there ruled that a third-country national married to a union citizen could only benefit from ‘installation’ rights under regulation 1612/68 where he or she was lawfully resident in a member state before moving to another member state to which the union citizen was moving or had moved. The case concerned the rights of the third-country national spouse with regard to access to the

territory of the EC: the third-country national spouse could not claim to be lawfully resident in Britain (where he sought to be ‘installed’) or Ireland (to which he had been deported, joining his wife, and from where they sought to return to Britain) and the court held that there could be no “discouragement” of the union citizen's rights of free movement in such circumstances. Nevertheless, the court made it plain, referring to *Carpenter*, that, where the marriage was genuine, regard had to be paid to respect for family life under article 8 of the ECHR.

The *Residence Directive* has been implemented in Ireland by means of the *European Communities (Free Movement of Persons) (No 2) Regulations 2006*. Regulation 3(1), as it first stood, provided that third-country national family members had to be lawfully resident in another EU member state in order to enjoy entry and residence rights. This clearly reflected the ruling in *Akrich*. Concerns about abuse of rights were addressed by a provision that the term ‘spouse’ did not include a party to a marriage of convenience and, more generally, by a provision that a person found to have acquired rights or entitlements by fraudulent means – including marriages of convenience – would immediately cease to enjoy them.

The requirement for prior lawful residence in another EU member state was challenged in a number of cases before the High Court by four third-country spouses of union citizens. Each

of them had entered Ireland as an asylum-seeker, with their applications being subsequently refused. After entry, each had married an EU citizen from another member state living and working in Ireland. In each case, the third-country national spouse was refused a residence card. In three cases, refusal was based on the sole ground that the applicants could not show prior lawful residence in another member state. In a fourth case, the decision not to grant a residence card was based on the ground that the applicant was unlawfully resident at the time of marriage (but the regulation 3(1) point was considered relevant to a redetermination of the application). In one case, the applicant was subject to a deportation order prior to marriage and was arrested for this purpose after marriage: he failed to obtain an injunction preventing deportation and was deported (to Nigeria) in December 2007.

The Metock ruling

The High Court referred a number of questions to the ECJ on 14 March 2008. The Grand Chamber of the court delivered its ruling on 25 July 2008.

In its first question, the High Court asked whether the *Residence Directive* precluded national legislation requiring third-country national spouses of union citizens to have previously been lawfully resident in another member state in order to benefit from the directive.

The court pointed out that no reference was made in the

directive to any requirement of prior lawful residence. Had this been envisaged, this would have been reflected in the directive's wording. The directive thus had to be interpreted as applying to all non-national family members accompanying or joining the union citizen, whether or not they already resided lawfully in another member state.

This interpretation was supported by the court's case law on secondary legislation on free movement adopted prior to the 2004 directive, which recognised the importance attached by the community legislature to protecting the family life of nationals of the member states in order to eliminate obstacles to the exercise of fundamental freedoms guaranteed by the *EC Treaty*.

Akrich was then addressed. Even in relation to the rights in article 10 of regulation 1612/68, the court stated that the conclusion in *Akrich* had to be reconsidered since, as earlier case law had made clear, "the benefit of such rights cannot depend on the prior lawful residence of such a spouse in another member state". This reconsidered interpretation was to be adopted *a fortiori* for the 2004 directive: since it aimed to strengthen the right of free movement and residence of union citizens, union citizens could not derive less rights from that directive than from the instruments of secondary legislation that it amended or repealed.

In a carefully set out argument, the court held that this interpretation was consistent with the division of competences between the member states and the community. It rejected Irish and other member state arguments that the member states retained exclusive competence, subject to title IV of part 3 of the *EC Treaty*, to regulate the first access to community territory

of third-country national family members of a union citizen. Noting that the community enjoyed competence – under articles 18(2), 40, 44 and 52 EC – to enact necessary measures to bring about freedom of movement for union citizens, the court stated that the community legislator could act where the denial of family reunion would discourage the union citizen from exercising rights of free movement. The refusal of the host member state to grant rights of entry to family members was "such as to" discourage the union citizen from moving to or residing there, even if the family members were not already lawfully resident in the territory of another member state. The community legislator thus had competence to regulate the entry and residence of third-country national family members in such cases.

The court made two points supporting this conclusion. First, to recognise such exclusive competence on the part of the member states would result in varying positions as between the member states, which would not be compatible with the internal market objective set out in article 3(1)(c) EC. The establishment of an internal market implied that the conditions of entry and residence of a union citizen in a member state whose nationality he did not possess were the same in all member states. Second, to support the Irish position would lead to the paradoxical outcome that third-country nationals under the 2003 *Family Reunification Directive* would have the right to be joined by dependants in circumstances where a union citizen would not. (It should, however, be noted that Ireland has not signed up to the 2003 directive.)

The court then considered and dismissed two further arguments. The first was that to remove the ability to require prior lawful residence would undermine the ability of

the member states to control immigration at their external frontiers and could result in a great increase in the number of persons able to benefit from a community right of residence. The court responded that it was only third-country national family members of union citizens who enjoyed rights under the 2004 directive, and not all third-country nationals. The member states retained the possibility of controlling entry on grounds of public policy, public security or public health, and could refuse, terminate or withdraw rights in the case of abuse of rights or fraud, such as marriages of convenience.

The second argument was that the court's interpretation of the 2004 directive would lead to unjustified reverse discrimination insofar as non-free-moving nationals of the host member state would not derive rights of entry and residence from community law for their third-country national family members. The court referred to its settled case law on situations internal to a member state and stated that "any difference in treatment between those union citizens and those who have exercised their right to freedom of movement, as regards the entry and residence of their family members, does not fall within the scope of community law". For good measure, it added that all of the member states were party to the ECHR, which enshrined in article 8 the right to respect for private and family life.

The second question referred by the High Court was whether the third-country national spouse of the union citizen 'accompanied' or 'joined' that citizen within the meaning of article 3(1) of the directive, irrespective of when and where the marriage took place and the circumstances in which he/she entered the host member state.

The court responded affirmatively to this question.

First, the time at which the family was founded was not material. None of the provisions of the 2004 directive required the union citizen already to have founded a family at the time of moving to the host member state. By providing that family members could 'join' the union citizen, the legislature accepted the possibility that a family could be founded after the union citizen had exercised the right to free movement. This was consistent with the purpose of the directive, which "aims to facilitate the exercise of the fundamental right of residence of union citizens in a member state other than that of which they are a national". The failure of a member state to admit family members where the family had been founded after entry would discourage the union citizen from continuing residence and would encourage him to leave in order to achieve family reunion elsewhere.

Second, it made no difference whether the third-country national entered before or after becoming a family member, since a refusal to grant residence would be equally liable to discourage the continued residence of the union citizen. Given the need not to interpret the directive's provisions restrictively and not to deprive them of their effectiveness, 'family members' were thus those who entered with the union citizen as well as those who resided with him (irrespective of when they entered the state and when they become family members). The court added that application of the directive solely to family members who "accompanied" or "joined" the union citizen would be "equivalent to limiting the rights of entry and residence of family members of a union citizen to the member state in which that citizen resides".

Once the third-country national family member derived rights of entry and residence

from the directive, these rights could only be restricted in compliance with articles 27 (general principles) and 35 of the directive (abuse of rights). If the member state wished to penalise the third-country national for entry or residence in breach of its immigration rules, compliance with article 27 would be required. The court, however, accepted that, even if the personal conduct of the person concerned did not justify measures on grounds of public policy/public security, the member state could impose proportionate penalties that did not interfere with freedom of movement.

Third, the court simply stated that the directive did not contain any requirements as to the place where the marriage is solemnised. The court appeared to be suggesting that the absence of provisions requiring the marriage to be solemnised outside the host member state meant that the marriage could take place there, thereby negating any idea of accompanying or joining across member state borders.

The aftermath of *Metock*

The Irish government adopted regulations amending the offending part of the 2006 regulations only four working days after the court delivered its judgment. In respect of family members who are not union citizens, the requirement of prior lawful residence has now been removed and a distinction is now drawn between those who seek (i) to enter the state in the company of the union citizen family member(s), and (ii) "to join those union citizens, in respect of whom they are family members, who are lawfully in the state".

The Irish government, with support from some other member states, is campaigning for an amendment to the 2004 directive to counter abuse.



Ireland is apparently troubled with "marriages of convenience" and a significant number of persons refused residence rights before *Metock* were asylum seekers with the "tendency to marry at points of jeopardy in the asylum/deportation process". The application of the public policy, public security or public health derogation to such cases, would, according to one official, create a "huge administrative burden".

Ireland and Denmark have raised the issue in the Justice and Home Affairs (JHA) Council and the implications of *Metock* in the context of tackling illegal immigration were discussed by the JHA Council in September 2008. The commission stated that it would be presenting a report on the transposition of the 2004 directive by the end of 2008 and that it would "be prepared, on the basis of that evaluation, to present all appropriate guidelines or proposals which might prove necessary, *inter alia*, in order to combat any misuse, offences or abuse". The council was to examine the issue immediately thereafter.

The commission's report was published in early December. It noted that the *Akrich*-based requirement of prior lawful residence had been applied by 11 member states. It also noted that article 35 (abuse of rights) had, despite its importance, not been transposed by all member states. Pointing out that none of the cases in *Metock* involved marriages of convenience, it concluded that, at this stage, it was not necessary to propose

amendments to the directive. However, it noted that a group of experts from the member states had been appointed to identify difficulties and clarify issues of interpretation. The issues of criminality and abuse required further discussion and clarification and member states were being asked to provide more information, including statistical data and best practice. Guidelines for the benefit of member states and union citizens would be issued in the first half of 2009 in relation to problematic issues such as the fight against abuse.

It remains to be seen how the council will respond to this approach.

Comments

A number of brief comments can be made on this important judgment.

The key issue was whether the requirement to show prior lawful residence in another member state discouraged the free movement of the union citizen. In holding that the failure to facilitate family reunion had such an effect, the court explicitly departed from its approach in *Akrich*. Strictly speaking, the case does not kill off *Akrich* completely, since the directive does not apply to entry and residence in the union citizen's own member state, but even in this case it seems that the last rites have been administered.

It should be remembered that the primary right is that of the union citizen exercising free movement. Provided there has been no abuse of rights, there seems little justification for treating spouses with derivative rights differently depending on whether they have third-country or EU member state nationality. In the absence of narrowly defined public policy/security/health grounds or abuse of rights, the mere fact of illegal residence will not trump the right to family reunion.

The court can nevertheless be criticised for its very loose interpretation, or indeed for its dismissal, of the requirements that the family member "accompany or join" the union citizen. At the same time, the authors of the directive could have been rather more precise had they intended a different result.

The requirement of prior lawful residence may be seen as a rather blunt and tardy instrument of immigration policy. By adopting the approach in *Akrich*, the Irish government imposed a requirement that had no direct bearing on the third country national's status in Ireland. Indeed, for most of those concerned, the fact of illegal residence was not used as a ground for refusal. The whole saga has exposed an inability to deal with illegal immigration at source and with the question of abuse, including marriages of convenience. Thought will have to continue to be given at national and community level to dealing with these issues and as to the nature of the proportionate measures that may be employed.

The *Metock* judgment may – seen from the optic of a lawfully married union citizen – be correct as to its result, but the way in which the court arrived at this result may nonetheless be questioned. Absent a clearly established marriage of convenience or other abuse of rights, the third-country national spouse will now be able to join the union citizen from outside the EU and enjoy community rights of entry and residence. As for non-free-moving Irish nationals and third-country nationals seeking family reunion rights, increased attention will doubtless be focused on article 8 of the ECHR. **G**

John Handoll is head of the Competition and Regulation Unit in William Fry, Solicitors.

LOST LAND CERTIFICATES

Registration of Deeds and Title Acts 1964 and 2006

An application has been received from the registered owners mentioned in the schedule hereto for an order dispensing with the land certificate issued in respect of the lands specified in the schedule, which original land certificate is stated to have been lost or inadvertently destroyed. The land certificate will be dispensed with unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.
*Property Registration Authority,
Chancery Street, Dublin 7
(published 6 February 2009)*

Regd owner: Liam Flanagan, c/o Carolan Sheridan and Company, Solicitors, Bailieborough, Co Cavan; folio: 9564F; lands: Killeter; **Co Cavan**

Regd owner: Frank Smith, Corlat, Mullagh, Kells, Co Meath; folio: 3474F; lands: Clonarnsey, Cornaglare and Corlat; **Co Cavan**

Regd owner: Bernadette Duffy, Fyhora, Moyne, Co Longford; folio: 1150; lands: Stragelliff; **Co Cavan**

Regd owner: James Francis O'Rourke, Tullyco, Cootehill, Co Cavan; folio: 26849; lands: Tullycoe; **Co Cavan**

Regd owner: Peter A Skelly, Lismeen, Ballyjamesduff, Co Cavan; folio: 32F; lands: Drumfomina and Lismeen; **Co Cavan**

Regd owner: John C McCarthy; folio: 17736; lands: townland of Clonroad More and barony of Islands; **Co Clare**

Regd owner: Shannon Free Airport Development Company; folio: 1887L; lands: townland of Smithstown and barony of Bunratty Lower; **Co Clare**

Regd owner: Patrick Hehir; folio: 25376; lands: townland of Formoyle Oughteragh (West) and barony of Inchiquin; area: 13.0005 hectares; **Co Clare**

Regd owner: Paddy Keane, Brian Geary, Billy Cotter, Frank Murphy, Donal O'Niollain; folio: 27230F; lands: plot of ground situate in the townland of Pembroke, known as Passage West, and barony of Kerrycurrihy and in the county of Cork; **Co Cork**

Regd owner: Frank Power; folio: 4119F; lands: plot of ground situate in the townland of Dromleigh

North and barony of Bantry in the county of Cork; **Co Cork**

Regd owner: Denis Holmes; folio: 7228; lands: plot of ground situate in the townland of Moanroe (ED Milford) and barony of Orrery and Kilmore in the county of Cork; **Co Cork**

Regd owner: David Foley and Mary Foley; folio: 4985F; lands: plot of ground situate in the townland of Ballycunningham and barony of Muskerry East in the county of Cork; **Co Cork**

Regd owner: Buttevant Muintir Community Council Limited; folio: 63313F; lands: plot of ground situate in the townland of Buttevant and barony of Orrery and Kilmore in the county of Cork; **Co Cork**

Regd owner: Michael O'Boyle and Mary Dymrna O'Boyle; folio: 2095L; lands: plot of ground situate in the townland of Killetra and barony of Fermoy in the county of Cork; **Co Cork**

Regd owner: Aileen Rose Driver (deceased); folio: 5788F; lands: plot of ground situate in the townland of Raleigh North and barony of Muskerry West in the county of Cork; **Co Cork**

Regd owner: Waterford Co-operative Society Limited; folio: 23404; lands: plot of ground situate in the townland of (1) Ballynoe, (2) Ballinscurloge and barony of (1) Kinattalloon, (2) Kinattalloon and both in the county of Cork; **Co Cork**

Regd owner: Patrick J O'Sullivan and Margaret O'Sullivan; folio: 59176; lands: plot of ground situate in the townland of Kilmackowen, known as Argave, Kilmacowen, Eyeries and barony of Bear, in the county of Cork; **Co Cork**

Regd owner: Bridget O'Carroll and Edward O'Carroll; folio: 36633; lands: plot of ground situate in the townland of Knocknagore and barony of Kerrycurrihy, in the county of Cork; **Co Cork**

Regd owner: Liam Doherty and Son Limited, Glebe, Letterkenny, Co Donegal; folio: 53203F; lands: Cullion; **Co Donegal**

Regd owner: Crona Byrne, Onslow, Carrickbrack Road, Baily, Co Dublin; folio: 35179; lands: Toberkeen; **Co Donegal**

Regd owner: Billy Griffen; folio: DN45179F; lands: property situate in the townland of Drinan and barony of Coolock; **Co Dublin**

Regd owner: Ciaran Kelly and Carmel Kelly; folio: DN473L; lands: property known as no 88 Home Farm Road, situate on the south side of the said road in the parish of Clonturk, district of Drumcondra; **Co Dublin**

Regd owner: Michael Hoey; folio: DN9191; lands: property situate in the townlands of Rathmooney and barony of Balrothery; **Co Dublin**

Regd owner: Margaret Bannon; folio: DN66131F; lands: property situate in the townland of Ballisk Common and barony of Nethercross; **Co Dublin**

Regd owner: Cassin Road Haulage Limited (now known as Exel Freight Management (Ireland) Ltd); folio: DN83738L; lands: property situate in the townland of Turnapin Great and barony of Coolock; **Co Dublin**

Regd owner: Andrew Daly and Sinead Corrigan; folio: DN96034F; lands: property situate in the townland of Murphysstown and barony of Rathdown; **Co Dublin**

Regd owner: Anne Marie Sheehan; folio: DN101901L; lands: property being an apartment known as Apt no 7, Block Floor, Clarion Quay, Excise Walk, International Financial Services Centre, together with car space at basement level, in the parish of St Thomas and in the district of North Central and in the county of Dublin; **Co Dublin**

Regd owner: John Dolan and Mary McDonagh; folio: DN127834F; lands: property known as site no 27 Bramblefield Crescent, off the Navan Road, Blanchardstown, in the townland of Huntstown and barony of Castleknock; **Co Dublin**

Regd owner: Mary McGowan; folio: DN1334F; lands: property situate in the townland of Carrickhill and barony of Coolock; **Co Dublin**

Regd owner: Thomas Costello; folio: DN11400F; lands: property situate in the townland of Kilbogget and barony of Rathdown; **Co Dublin**

Regd owner: Stephen Freeman and Maev Kennedy; folio: DN17070; lands: a plot of ground situate on the north side of 'Abbeyfield' in the parish and district of Killester and city of Dublin; **Co Dublin**

Regd owner: William Chaney; folio: DN19676; lands: a plot of ground situate to the north of Howth Road on the south side of Middlethird in the parishes of Clontarf and Killester, district of Killester and city of Dublin; **Co Dublin**

Regd owner: Thomas O'Donoghue and Maire O'Donoghue; folio: 56431; lands: townland of Claretuam and barony of Clare; area: 21.3320 hectares; **Co Galway**

Regd owner: Frank Keane and Margaret Keane; folio: 10959F; lands: townland of Maumeen and barony of Moycullen; area: 0.3040 hectares; **Co Galway**

Regd owner: Martin Kenneth Lyons (deceased); folio: 8510; lands: townland of Kilmalaw and barony

of Clonmacnowen; **Co Galway**

Regd owner: Thomas Linnane; folio: 20867F; lands: townland of Stradbally North and barony of Dunkellin; area: 1.2140 hectares; **Co Galway**

Regd owner: Bridget Hogan (deceased); folio: 30019F; lands: townland of Ballindoooley and barony of Galway; **Co Galway**

Regd owner: Daniel Walsh; folio: Gurrabaun, Lavally, Tuam, Co Galway; lands: townland of Gurrabaun, Meelick More, Mananagh and barony of Ballymoe; **Co Galway**

Regd owner: Thomas Hession; folio: 49860F; lands: townland of Lisheenkyle East, Caherbriskau, Derrydonnell North and barony of Clare, Dunkellin; **Co Galway**

Regd owner: Joseph O'Toole; folio: 14161; lands: townland of Kill (Ballindoon PH) and barony of Ballynahinch; area: 6.1663 hectares; **Co Galway**

Regd owner: Patrick Folan and Kathleen Folan; folio: 2954L; lands: townland of Rahoon and barony of Galway; **Co Galway**

Regd owner: Daniel Emperor; folio: KY4877; lands: townland of Knockbrack and barony of Trughanacmy; **Co Kerry**

Regd owner: Bridget Moran; folio: KY4882F; lands: townland of Ballydavid and barony of Corkaguiny; **Co Kerry**

Regd owner: Michael O'Shea; folio: KY29862; lands: townland of Annagh and barony of Trughanacmy; **Co Kerry**

Regd owner: Stephen Corrigan and Mary Corrigan, 32 Glendale Meadows, Leixlip, Co Kildare; folio: 19982F; lands: the parish of Confey, situate in the townland of Confey, known as 32 Glendale Meadows, Leixlip, Naas, in the barony of Saltnorth, in the electoral division of Leixlip; **Co Kildare**

Regd owner: Eugene O'Driscoll; folio: 5789; lands: Ardra and barony of Fassadinin; **Co Kilkenny**

Regd owner: Patrick Kennedy (Junior) and Thomas Kennedy; folio: 4432 x 2 (tenant-in-common); lands: Furzehouse and Shillelogher; **Co Kilkenny**

Regd owner: James Graham (deceased) and Kathleen Butler; folio: 772L; lands: Maryborough and barony of Maryborough; **Co Laois**

Regd owner: James Dervan; folio: 53041; lands: townlands of Kilbocht and Drought and barony of Leitrim; **Co Leitrim**

Regd owner: John Ellis TD, Foxfield PO, Fenagh, Co Leitrim; folio: 3404F; lands: Drumgowla, Drumgownagh and Drumconny; **Co Leitrim**

Regd owner: Thomas P Kelleher, Cloontumpher, Bornacoola, Co Leitrim; folio: 873; lands: Cloonmorris, Cloontumpher, Meelragh; **Co Leitrim**

Regd owner: Edmond O'Donnell; folio: LK2900L; lands: townland of Shannabooly and barony of North Liberties; **Co Limerick**

Regd owner: Michael Coffey and Andreina Coffey; folio: LK2580F; lands: townland of Newcastle and barony of Clanwilliam; **Co Limerick**

Regd owner: Bridget Lenihan; folio: LK2669, LK2670; lands: townland of Ballynash (Clare) and barony of Shanid; **Co Limerick**

Regd owner: William Lenihan; folio: LK3581; lands: Glebe and barony of Coshma; **Co Limerick**

Regd owner: Patrick O'Driscoll and Ann O'Driscoll; folio: LK49545F; lands: townland of Ashroe and barony of Ownybeg; **Co Limerick**

Regd owner: Denis O'Keeffe; folio: 24837F (part 7516F) Co Limerick; lands: townland of Mountplummer and barony of Glenquin; **Co Limerick**

Regd owner: Walter Ambrose Beatty; Apartment 2, Bridewell Court, Carlow, Co Carlow; folio: 7635; lands: Caldragh and Corry; **Co Longford**

Regd owner: Kevin Smith and Margaret Smith, Derryoghill, Killashee, Co Longford; folio: 4504F; lands: Kilbride; **Co Longford**

Regd owner: John P Gallagher, c/o Regional College, Dublin Road, Dundalk, Co Louth; folio: 1952L; lands: Marshes Upper; **Co Louth**

Regd owner: James Quigley, Newtownbalregan, Dundalk, Co Louth, and James Quigley, Castletown, Dundalk, Co Louth; folio: 9970; lands: Castletown, Newtownbalregan, **Co Louth**

Regd owner: Denis Farrelly and Christina Ann Farrelly, Knockagh, Hackballscross, Dundalk, Co Louth; folio: 2870F; lands: Knockagh; **Co Louth**

Regd owner: the Right Honourable Dominick Geoffrey Edward, baron Oranmore and Browne; folio: 11025; lands: townland of Derry (ED Crossboyne) and barony of Clanmorris; area: 1.7086 hectares; **Co Mayo**

Regd owner: Romilly Larken (deceased); folio: 35135; lands: townland of Rosmoney and barony of Burrishoole; **Co Mayo**

Regd owner: Gerard Flannelly; folio: 49575F; townland of Ballysakerri and barony of Tirawley; **Co Mayo**

Regd owner: Thomas Brophy and Bernadette Brophy; folio: 20959F;

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lands: townland of Garryduff and barony of Carra; **Co Mayo**

Regd owner: Cornelius Hyland; folio: 18309F; lands: townland of Tawnagh Beg, Rathrusel and barony of Gallen; **Co Mayo**

Regd owner: Martin Nally (deceased); folio: 50792; lands: townland of Tully (ED Breaghwy), Clogherowan, Lugaphuill and barony of Carra; **Co Mayo**

Regd owner: Martin Walsh; folio: 19645 and 47975; lands: townland of Derrypark and Derry and barony of Ross and Owenbrin; **Co Mayo**

Regd owner: Michael Sheerin, Newtownbutler, Clones, Co Monaghan; folio: 1979F; lands: Clondergole; **Co Monaghan**

Regd owner: John McCabe, Lisagoan, Kingscourt, Co Cavan; folio: 7105; lands: Lavagilduff; **Co Monaghan**

Regd owner: Gerard Scally and Bernadette Scally; folio: 7525F; reference: S2008TJ000386A; lands: Puttaghan (Ballycowan By), known as Arden View and barony of Ballycowan; **Co Offaly**

Regd owner: Raymond Devine; folio: 6826; lands: townland of Ballagherreen and barony of Costello; **Co Roscommon**

Regd owner: Patrick Melvin and Theresa Melvin; folio: 10358F; lands: townland of Cloonargid and barony of Frenchpark; area: 0.112 hectares; **Co Roscommon**

Regd owner: Aldeline Jane Helen Conboy; folio: 14530; lands: townland of Tawnagh and barony of Tirerrill; area: 14.0628; **Co Sligo**

Regd owner: Daniel O'Boyle and Attracta O'Boyle; folio: 9203F;

lands: townland of Bunduff and barony of Carbury; area: 6.652 hectares; **Co Sligo**

Regd owner: Kevin McGowan (deceased); folio: 23912; lands: townland of Teesan and barony of Carbury; **Co Sligo**

Regd owner: Mary Ellen Feeney; folio: 3480; lands: townland of Carrowmore and barony of Carbury; **Co Sligo**

Regd owner: Marguerita Kenihan; folio: TY28837F; lands: townland of Bowling Green and barony of Eliogarty; **Co Tipperary**

Regd owner: Tomas O'Casaide and Christine O'Casaide; folio: TY7177F; lands: townland of Lackmore and barony of Owny and Arra; **Co Tipperary**

Regd owner: Padraig O'Brien and Siobhan O'Brien; folio: 7171F; lands: plot of ground situate in the townland of Russellstown New and barony of Glenahiry in the county of Waterford; **Co Waterford**

Regd owner: Michael Joseph Cheasty and Catherine Cheasty (deceased); folio: 3054F; lands: plot of ground situate in the parish of Trinity Without, known as 3 Hawthorn Grove, Hillview, Carrickbeg, and in the county of Waterford; **Co Waterford**

Regd owner: Ms Catherine Farrell, Mullingar Road, Castlepollard, Co Westmeath; folio: 16528; lands: Kinturk Demesne; **Co Westmeath**

Regd owner: Thomas Duignan, Swellan, Cavan, Co Cavan; folio: 1872; lands: Habsborough; **Co Westmeath**

Regd owner: James Leacy (deceased);

folio: 8918; lands: Courtclogh Upper and barony of Ballaghkeen South; **Co Wexford**

Regd owner: Felix A Molloy and Kathleen Lindsey (deceased); folio: 1407F; lands: Bolany and barony of Gorey; **Co Wexford**

Regd owner: James Doyle and Frances Doyle; folio: 12677; lands: Murntown and Harristown Little and barony of Shelmalieri West; **Co Wexford**

Regd owner: Christopher Moorehouse and Elizabeth Moorehouse; folio: 13740; lands: Killagoley and barony of Ballaghkeen South; **Co Wexford**

Regd owner: Christopher Moorehouse and Elizabeth Moorehouse; folio: 13761; lands: Templeshannon and barony of Ballaghkeen South; **Co Wexford**

Regd owner: Harry Farrell (Senior), Harry Farrell (Junior), Gerard Farrell, Joseph Farrell and William Farrell, all of Tay Lane, Rathcoole, Co Dublin; folio: 19195F and 7044F; lands: townland of Middletown and barony of Ballaghkeen North and electoral division of Ardamine; area: 5.6174 hectares and 7.592 acres respectively; **Co Wexford**

Regd owner: William Tanner and Dawn Tanner; folio: 13837F; lands: Hilltown and barony of Forth; **Co Wexford**

Regd owner: Mary Doyle; folio: 16584F; lands: Enniscorthy and barony of Scarawalsh; **Co Wexford**

Regd owner: Thomas O'Donoghue and Mary O'Donoghue; folio: 17165; lands: Horetown and barony

of Forth; **Co Wexford**
Regd owner: John Daid E Griffiths, Margaret Griffiths; folio: 1884F; lands: Ballybro and barony of Forth; **Co Wexford**

Regd owner: Martin Thomas Murphy; folio: 3636F; lands: Ballaghablake and Ballinamorrhagh and barony of Shelmaliere East; **Co Wexford**

Regd owner: William Doyle (deceased); folio: 19573; lands: Nemestown and barony of Bargy; **Co Wexford**

Regd owner: Maura Mahon; folio: 1260; lands: Ballygoman and barony of Shelmaliere West; **Co Wexford**

Regd owner: Geoffrey Lewis, Desmond Lewis and David Adams, of 40 Corbawn Drive, Shankill, Co Dublin; folio: WW16660F; lands: townland of Kilruddery Demesne West in the barony of Rathdown in the electoral division of Kilmacanogue; **Co Wicklow**

Regd owner: David O'Neill and Christine O'Neill (veterinary assistant), of 6 The Pines, Herbert Road, Bray, Co Wicklow; folio: 13194F; lands: the south of Boghall Road in the urban district of Bray, being part of the townland of Oldcourt and barony of Rathdown; Co Wicklow

WILLS

Barry, James (deceased), late of Baltrasna, Ratoath Road, Ashbourne, Co Meath, who died on 1 October 2007. Would any person having knowledge of a will made by the above-named deceased please contact Patrick Tallan & Co, Solicitors, New Town Centre, Ashbourne, Co Meath; tel: 01 835 2027, fax: 01 835 2029, email: moreilly@patricktallan.ie; ref: 3272/0001

Clarke, Margaret (deceased), late of 31 Wolfe Tone Square North, Bray, Co Wicklow. Would any person having knowledge of a will made by the above-named deceased, who died on 23 February 1998, please contact Maguire McNeice & Co, Solicitors, Bray House, 2 Main Street, Bray, Co Wicklow; tel: 01 2862 399, fax: 01 2829 428

Columby, Christina (deceased), late of Newtown, Killaloe, Co Clare. Would any person having knowledge of a will made by the above-named deceased, who died on 11 November 2007, please contact Culhane Judge & Co, Solicitors, The Square, Newcastlewest, Co Limerick; tel: 069 62969, fax: 069 62396

Condon, Mark (deceased), late of Ballycarroll, Portlaoise, Co Laois.

Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 15 September 2008, please contact: Bolger White Egan & Flanagan, Solicitors, 8 Limard Court, Portlaoise, Co Laois; tel: 057 862 1468, email: info@bweflaw.com

Cunningham, Eric (deceased), late of 4 Sheephill Green, Blanchardstown, Dublin 15. Would any person having knowledge of a will executed by the above-named deceased, who died on 27 December 2008, please contact Plunkett Kirwan & Company, Solicitors, 175 Howth Road, Killester, Dublin 3; tel: 01 833 8254, fax: 01 833 8259, email: Linda.ocallaghan@plunkett-kirwan.com

Dee, Walter (deceased), late of 32 The Fairways, Abbeyleix, in the county of Laois. Would any person having knowledge of a will executed by the above-named deceased, who died on 4 January 2009, please contact James E Cahill and Company, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 1246/873 1220, fax: 057 873 1480, email: lmbjcahill@eircom.net

Harrington, Nora (deceased) (retired shop assistant), late of Bank Place, Castletownbere, Co Cork. Would any person having knowledge of a will made by the above-named deceased, who died on 29 June 2007, please contact Mary Dorgan, solicitor, of 96 South Mall, Cork; tel: 021 427 6556

Hehir, Henry (deceased), late of 11 Church View, Sixmilebridge, Co Clare. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 15 January 2006, please contact Bowen & Co Solicitors, Pound Street, Sixmilebridge, Co Clare; tel: 061 713 767, fax: 061 713 642, email: gwen@legalsupportservices.ie

Kearney, Peter (deceased), died in England on 26 August 1960, formerly of Coopers Cross, Castlebellingham, Co Louth, and **Rose Daly (née Kearney) (deceased)**, late of Coopers Cross, Castlebellingham, Co Louth. Would any person know the whereabouts of any next of kin of the late Peter Kearney and Rose Daly, née Kearney, late of Coopers Cross, Castlebellingham, Co Louth, please contact Catherine Allison & Company of 6 Roden Place, Dundalk, Co Louth; tel: 042 932 0854, fax: 042 932 0855, email: info@callison.ie

Kinane, Patrick (deceased), late of 53 Barton Road East, Churchtown, in the

county of Dublin. Would any person having knowledge of a will executed by the above-named deceased, who died on 14 August 2008, please contact Peter Morrissey & Company, Solicitors, Merriem Building, Lower Merriem Street, Dublin 2

Lynch, Bridget (deceased), late of 106 St Attracta Road, Cabra, Dublin. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 17 March 2008, please contact: RT Ringrose & Co, Solicitors, 3 Chancery Place, Dublin 7; tel: 01 677 7495, email: rtringrose@eircom.net

Lynskey, Brigid (deceased), late of Ballinamana, Clarenbridge, Co Galway, and formerly of 46 Westfield Road, South Tottenham, London N15 5LD, England. Would any person having knowledge of a will made by the above-named deceased, who died on 27 February 2008, please contact Emerson and Conway Solicitors, 1 St Francis Street, Galway; tel: 091 562 531, email: susan@ecsolicitors.com

McGrath, James (or se Jimmy) (deceased), late of Ballyknock, Kenagh, Longford, retired army officer, unmarried, who died 13 August 2008 at St Joseph's Care Centre, Longford. Would any person having knowledge of a will made by the aforementioned deceased please contact Thomas K Madden & Co, Solicitors, 1 Camlin View, Longford; tel: 043 41192, fax: 043 41561

Madden, John Patrick (deceased), late of 59 Woodford Villas, Clondalkin, Dublin 22, and 17 St Anne's Avenues, Raheny, Dublin, who died on 9 November 2008. Would any person having knowledge of the whereabouts of any will made by John Patrick Madden please contact O'Brien Ronayne, Solicitors, 5A Main Road, Tallaght, Dublin 24; tel: 01 424 6200, fax: 01 424 6201

Murphy, Mary Catherine (deceased), late of 9 Emmet Street, Sallynoggin, Co Dublin, who died 9 July 2007 in Earlsbrook Nursing Home, 41 Meath Road, Bray, Co Wicklow. Would any person having any knowledge of a will made by the above-named person please contact Elizabeth Ward & Co, Solicitors, Clifton House, Lower Fitzwilliam Street, Dublin 2; tel: 01 661 3788, fax: 01 230 3855

O'Brien (Bryan), William (deceased), late of Bawnballinlough, Johnstown, Co Kilkenny. Would any solicitor holding or having knowledge of a will made by the above-named

deceased, who died on 29 March 1945, please contact James J Kelly & Son, Solicitors, Templemore, Co Tipperary; tel: 0504 31278, email: info@jjkellylaw.ie

Smyth, William (otherwise known as Bill Smyth), late of Firmount, Castlelyons, Co Cork, who died on 2 November 2008. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Healy Crowley & Co, Solicitors, 9 O'Rahilly Row, Fermoy, Co Cork; tel: 025 32066, fax: 025 32231, email: info@healcrowleysolsr.com

MISCELLANEOUS

Serviced office (solicitor's office) to let in the Dublin 7 area. Would suit newly qualified solicitor starting out on their own. Fully furnished office with storage space, shared client room and reception area, full use of the fax machines and photocopiers etc; please contact Tina for information on 01 882 4344

Harrington, Nora (deceased) (retired shop assistant), late of Bank Place, Castletownbere, Co Cork. Would any person having knowledge of title documents pertaining to property at Bank Place, Castletownbere, in the name of the above-named deceased, who died on 29 June 2007, please contact Mary Dorgan, solicitor, of 96 South Mall, Cork; tel: 021 427 6556

Small to medium-size solicitors practice required - North West region - Sligo/Donegal/Leitrim

Interested in selling your legal practice? Wishing to stay on as a consultant full-time or part-time? Wishing to retire? If interested, please contact the box number referred to below. Willing to take over current staff of firm. Genuine enquiries only please. All enquiries and communications will be treated in the strictest of confidence and a confidentiality agreement can be signed and furnished if desired. Please reply to **box no 0109/01**

Full off-licence - intoxicating liquor licence (spirits, beer and wine) - for sale. All enquiries to Sreenan & Company, Solicitors, Kenmare: 064 664 2656, fax: 064 664 2658

Plush office for sale or rent. Over main door of Arthur Quay Shopping Centre, at the centre of Limerick. Ideal for 2 to 3 solicitors. Knock-out price: €450,000. Please reply to **box no 0109/03** or mobile: 086 253 0244

Reduce your overheads – outsource your bookkeeping/accounts. West-side Bookkeeping Services. Specialising in all aspects of solicitors' accounts/payroll. Experienced bookkeeper available on a contract basis – on site. Excellent references available. Contact: Michelle Ridge at 087 293 0347, email: mridge@indigo.ie

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

Seven-day intoxicating liquor licence for sale. Contact Eamonn Greene & Company, Solicitors, 19 Clanwilliam Square, Dublin 2; tel: 01 678 0020 or email: law@aemongreene.ie.

Ordinary seven-day on-licence for sale. Contact Stephen Ahern, tel: 01 661 6102

Solicitors – a rare and unusual opportunity arises to extend your practice into the thriving area of professional legal costs drawing. An experienced, long-practising legal costs accountant has a proposal available, no purchase expenditure required; would suit legal firm with excess capacity. Principals only to **box no 0109/02**

TITLE DEEDS

Lost title deeds – Whelan, Christopher and Veronica, of 100 Barton Road East, Dublin 14. Property at 100 Barton Road East, Dublin 14, barony of Rathdown and county of Dublin. Anybody with information regarding the whereabouts of the title documents relating to the above property, purchased by Christopher Whelan (now deceased) and now vested in his widow Veronica Whelan, on or about November 1990, please contact Moran Solicitors, 2 Westland Square, Dublin 2 (DX 185 Dublin)

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978, as amended, and in the matter of 31 Kenyon Street (formerly Barrack Street), Nenagh,

Co Tipperary: an application by Louis BD Courtney and Michael V O'Mahony

Take notice that any person having an interest in the freehold or an intermediate interest in the aforesaid property, which was demised by lease dated 22 October 1881 made between Bassett William Holmes of the one part and Mary Charles of the other part for a term of 99 years from 25 March 1881 at a yearly rent of four pounds, and subject to the covenants and conditions therein contained.

Take notice that Louis BD Courtney and Michael V O'Mahony, as personal representatives of the late AD Courtney, intend to submit an application to the registrar of titles for acquisition of the freehold and any intermediate interest in the aforesaid property, and any party asserting that they hold an interest in the aforesaid property are called upon to furnish evidence of title to the aforesaid property to the below named within 21 days of the date of this notice.

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

Date: 6 February 2009

Signed: Arthur Cox, Earlsfort Centre, Earlsfort Terrace, 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 in application by Michael Murphy Holdings Limited

Take notice that any person having any interest in the freehold estate of the following property: all that and those the premises known as 20 The Quay, New Ross, in the county of Wexford, formerly used as bank offices, being the lands originally demised by a lease dated 1 April 1789 and made between Thomas Jones of the one part and Philip Hay of the other part, from 1 November 1788 for a term of 999 years at a yearly rent of two pounds, five shillings and six pence (old currency) and subject to the covenants, agreements and conditions therein contained.

Take notice that Michael Murphy Holdings Limited intends to submit an application to the county registrar for the county of Wexford for acquisition of the freehold interest in the aforesaid premises, 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 aforesaid premises to the below named within 21 days from the date of this notice.

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

Date: 6 February 2009

Signed: Reidy Stafford Solicitors, 1-3 Moorefield Terrace, 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) Act 1967 and in the matter of an application by Terence Bennett and Peter Lawless and in the matter of 60a Bolton Street, Dublin 7

Take notice that any person having an interest in the freehold estate or any other superior interest or intermediate interest in the following property: 60A Bolton Street in the parish of St Mary in the city of Dublin, being part of the premises demised by an indenture of lease dated 10 July 1917, made between William Stewart Collis of the one part and Emily Falkner of the other part, subject to the yearly rent of £25 and to the covenants and conditions therein contained.

Take notice that the applicants, Terence Bennett and Peter Lawless, intend to submit an application to the county registrar for the county and city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the freehold interest in the property and all the intermediate interests in the property, and any party or parties asserting that they hold a superior interest or intermediate interest including the freehold reversion in the aforesaid property are called upon to furnish evidence of title to the below named within 21 days of the date of this notice.

In default of any such notice being received, Terence Bennett and Peter Lawless intend to proceed with the application before the county registrar on the expiry of 21 days from the date hereof, and will apply to the county registrar for the county and city of Dublin for directions as may be appropriate on the basis that to have the question of whether they are entitled to acquire the free simple and all the persons beneficially entitled to the superior interest or intermediate

interest including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 6 February 2009

Signed: James Bourke & Company Solicitors (solicitors for the applicants), 165 Roselawn Road, Castleknock, Dublin 15

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) Act 1967 and the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Dublin City Council and in the matter of the properties at 51 and 52 Lower Sean McDermott Street in the city of Dublin

Take notice that any person having an interest in the freehold estate or any intermediate interests in the properties now known as 51 and 52 Lower Sean McDermott Street in the city of Dublin and described in the indentures of lease (details of which are set out below) as "all that and those that plot or parcel of ground situate on the west side of Buckingham Street next adjoining to and on the north side of Lower Gloucester Street in the parish of Saint Thomas and county of the city of Dublin containing in front to Buckingham Street one hundred and twelve feet of building ground the same number of feet in the rear and extending in depth from Buckingham Street to the flank wall of the houses and premises called Gloucester Terrace together with the free use of a lane to be laid out fifteen feet wide at the least from the north west angle of said demised premises to the opening or street called Belle Street". Lease dated 12 June 1843 made between William Parsons Hoey of the one part and William Kenny of the other part, subject to the yearly rent of one pound three shillings and four pence sterling. Lease dated 12 June 1843 made between Anthony Lyster of the one part and William Kenny of the other part, subject to the yearly rent of one peppercorn, if demanded, for the first three years and thereafter three pounds, ten shillings. Lease dated 12 June 1843 made between Lancelot Fisher of the first part, Laurence Walker of the second part and William Kenny of the third part, subject to the rent of £10 sterling. Lease dated 12 June 1843 made between Elfrida Lady Neville of the first part, Higott Tench of the second part and William Kenny of the third part, subject to the yearly rent of one peppercorn, if demanded, for the first three years and thereafter one pound, three shillings and four pence sterling. All of said leases demised for a term of 500 years from 1 May 1843.

Take notice that the applicant, Dublin City Council, intends to submit an application to the county registrar in the county of Dublin for the acquisition of the freehold interest in the aforesaid properties (or either of them), and any party ascertaining that they hold a superior interest or any intermediary interests including the freehold reversion in the aforesaid properties (or either of them) is called upon to furnish evidence of title to the aforesaid properties to the below named within 21 days of this notice.

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

Date: 6 February 2009

Signed: Terence O'Keeffe (law agent and solicitor for the applicant), Dublin City Council, Civic Offices, Wood Quay, Dublin 8

In the matter of the Landlord and Tenant Ground Rents (No 2) Act 1978 and the Landlord and Tenant Amendment Act 1984: notice of intention to acquire fee simple. To: successors in title of Waterford, Limerick and Western Railway Company/Coras Iompair Éireann
Description of lands, hereditaments and premises to which this notice refers: all that plot or parcel of land part of the townland of Ballina, containing 40 perches or thereabouts, and more particularly described on a map attached to a lease of 18 April 1900 and made between the Waterford, Limerick and Western Railway Company of the one part and the Condensed Milk Company of Ireland Limited of the other part.

Particulars of applicant's lease or tenancy: held under indenture of lease dated 18 April 1900 and made between the Waterford, Limerick and Western Railway Company of the one part and the Condensed Milk Company of Ireland Limited of the other part for the term of 31 years at the yearly rent of one shilling. And by a supplemental deed of 14 December 1928 and made between the Great Southern Railways Company of the one part, the Dairy Disposal Company Limited of the other part for a further term of 21 years from 1 April 1931 at a yearly rent of one shilling.

Part of the lands excluded: None.

Take notice that the Dairygold Co-

operative Society Limited, being the successors of the lessees in the above lease, being the person entitled under the relevant sections of the aforesaid acts, proposes to purchase the fee simple interest and all intermediate interests in the lands described in paragraph 1, herein being the person now entitled to the lessee's interest in the said mentioned lease.

Date: 6 February 2009

Signed: Roman Daly Jermyn (solicitors for the applicant), 12 South Mall, Cork

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 to acquire the fee simple in the premises known as 21 Stoneybatter, Dublin 7, in the parish of St Paul and in the city of Dublin, made by Threshold Limited

Take notice that any person having any interest in the freehold estate of the following property: 21 Stoneybatter, Dublin 7, in the parish of St Paul and in the city of Dublin.

Take notice that Threshold Limited intends to submit an application to the county registrar for the county/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 (or any of them) 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, Threshold Limited 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/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: 6 February 2009

Signed: O'Sullivan O'Dowd (solicitors for the applicant), 1 Blackhall Rise, Blackhall Place, 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 Dublin City Council. And in the matter of the former national school at School Street in the parish of St Catherine in the city of Dublin

Take notice that any person having an interest in the freehold estate or any intermediary interest in the property now known as the former national

school at School Street in the parish of St Catherine and city of Dublin, partially held under fee farm grant dated 30 November 1937, made between Gertrude Knox of the one part and the Minister for Education of the other part, subject to the yearly fee farm rent of 21 pounds, 12 shillings and 3 pence, forever and therein described as all that and those the said north side of Crilly's yard situate, lying and being in the county of the city of Dublin aforesaid (save and except the said piece of ground enclosed with walls at the upper end thereof next Belview) together with all houses, buildings and other improvements erected and made thereon, with the rights, members, hereditaments and appurtenances thereunto belonging or in any wise appertaining "but which are now known as the West Dublin Model National School situate in the electoral division or Ward of Ushers Quay in the parish of St Catherine and county of the city of Dublin" and partially held under indenture of lease dated 25 September 1873 made between the Right Honourable William Earl of Meath of the one part and Sir Arthur Edward Guinness and Edward Cecil Guinness of the other part for a term of 200 years from 25 March 1873, subject to the yearly rent of £60 and to the covenants on the part of the lessee and conditions the rein contained in a deed of conveyance dated 10 February 1941 as being part of the premises described as "all that parcel of ground in the manor of Thomas Court and Donore being number 115 on Armstrong's map of the Meath Estate situate in the parish of St Catherine and city of Dublin".

Take notice that the applicant, Dublin City Council, intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and all intermediary interests in the aforesaid property, and any party ascertaining that they hold a superior interest or any intermediary interests including the freehold reversion in the aforesaid property is called upon to furnish evidence of title to the aforesaid properties to the below named within 21 days of this notice.

In default of any such notice being received, the applicant, Dublin City Council, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest and any intermediary interests including

the freehold in the aforesaid property are unknown and unascertained.

Date: 6 February 2009

Signed: Terence O'Keeffe (law agent and solicitor for the applicant), Dublin City Council, Civic Offices, Wood Quay, 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: an application by Croke Park Motors Limited

Take notice that any person having an interest in the freehold estate in the following property: all that and those the hereditaments and premises now known as 28A Jones Road, Dublin 3, and demised by an indenture of lease dated 14 December 1883 between Peter Leech and Thomas McAuley of the first part, Samuel Sherlock of the second part and John Moore Flood of the third part, and therein described as "all that and those the piece or plot of ground situate on the west side of Jones Road containing in front to said road fifty eight feet in breadth in reere sixty two feet six inches and in depth from front to reere on the north side thereof seventy five feet six inches and on the south side thereof seventy three feet three inches be all the said several admeasurements more or less bounded on the north by Russell Avenue on the south by the Mill premises of Andrew Todd and Company on the east by Jones Road and on the west by a back lane or passage and are situate in the parish of Saint George Barony of Coolock and county of Dublin", held for a term of 220 years from 1 September 1882, yielding and paying the yearly rent of £13.

Take notice that Croke Park Motors Limited 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 furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Croke Park Motors Limited, 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 the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 6 February 2009

*Signed: Reddy, Charlton & McKnight,
12 Fitzwilliam 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 Jarmar Properties Limited

Take notice that any person having any interest in the freehold estate in the following property: 154A and 156 Upper Sheriff Street, Dublin, and more particularly described in the indenture of lease dated 25 April 1978 between Richard Martin of the one part and James McDonnell of the other part (hereinafter called 'the lease') as all that and those that piece of ground being part of North Lotts and situate in the parish of St Thomas and the county of the city of Dublin and as more particularly shown on the map or terchart thereof in the margin of these presents, which said piece or parcel of ground contains in the front thereof to Sheriff Street 30ft and in the rear 30ft and from front to rear 85ft, bounded on the north by Sheriff Street and on the south by land in the possession of the said Richard Martin, and on the east by land in the possession of James Flood, and on the west by Isaac Beckett's holding, be the said admeasurements more or less and held under the lease for a term of 200 years from 1 April 1878 and subject to the yearly rent of £30 and to the covenants and conditions on the part of the lessee therein contained.

Take notice that the applicant, Jarmar Properties Limited, intends to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest and all superior interests in the aforementioned property, and any party asserting that

they hold a superior interest in the aforementioned property are called upon to furnish evidence of title to the property to the below named within 21 days from the date hereof.

In default of any such notice being received, the applicant, Jarmar Properties Limited, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of 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 aforementioned property are unknown or unascertained.

Date: 6 February 2009

Signed: Cathal N Young, O'Reilly & Co (solicitors for the applicant), 39 Fleet Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of premises at 27, 27A, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69 Jones Road, Dublin 3: an application by Pairc an Chrocaigh Teoranta

Take notice that any person having an interest in the freehold estate or any superior interest in the properties formerly known as numbers 27, 27A, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69 Jones Road, held under indenture of lease dated 16 April 1864 and made between Robert Fowler of the one part and Maurice Butterly of the other part for a term of 500 years from 1 May 1863 and therein described as "all that and

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*.

those that the several lots or parcels of ground situate on the South Side of Clonliffe Road in the parish of Saint George and county of Dublin containing altogether 21 acres 1 rood and 12 perches Statute measure as the same are now in the possession and occupation of John Kelly, John Walsh, Henry O'Grady, Michael Donnelly Junior and assignees of William McClenahan and of Thomas Cullinane of whom the said Maurice Butterly is undertenant and the several Boundaries of which are particularly mentioned and described in the Map on the margin hereof together with the rights members and appurtenances to the same belonging or in anywise appertaining in as full and ample a manner as the same are held by the several parties above mentioned and subject to their existing tenancies therein and as the same are more fully delineated and described in the said map or terchart in the margin hereof excepting nevertheless all mines and minerals in upon or under the lands and premises hereby demised".

Take notice that Pairc an Chrocaigh Teoranta intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest and any intermediate interests in the

aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties or any of them is called upon to furnish evidence of title to the aforementioned properties to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Pairc an Chrocaigh Teoranta, 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 the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 6 February 2009

*Signed: Reddy, Charlton & McKnight,
12 Fitzwilliam Place, Dublin 2*

RECRUITMENT

Part-time locum solicitor required to cover office in Longford for four months commencing in April 2009 – 30 hours per week approximately. General practice experience essential. All applications to **box no 0109/04**

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Law Society of Ireland

FREE EMPLOYMENT RECRUITMENT REGISTER

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Law Society of Ireland



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member of the temporary staff with Irish legal education to work as an

ADMINISTRATOR (Grade AD 5) in its research and documentation service

Administrators in the service are responsible for the following tasks: • creating tools for research on the basis of the case-law of the Court of Justice, the Court of First Instance and the Civil Service Tribunal • initial analysis of new cases brought before the Court of Justice and the other courts • drawing up research notes on national, Community and international law • analysis of national case-law in the area of Community law and relating to certain international conventions.

Applicants must have a full education in Irish law attested by an LL.B. (Hons) or a BCL (Hons), or by qualification as a barrister or solicitor. They must have a thorough knowledge of English and good knowledge of another official language of the European Communities. In the interest of the service, a good knowledge of French is required.

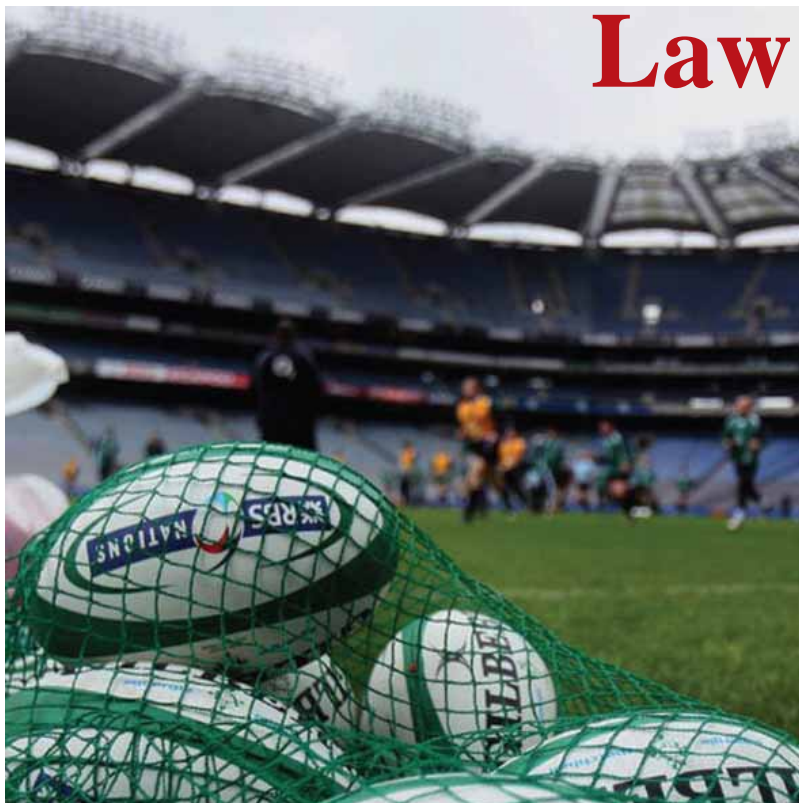
Applicants must provide evidence of very good knowledge of Community law and of professional experience of at least two years acquired either in a job entailing the actual practice of legal research both in Community law and national law, or in another activity connected with the post to be filled.

The successful applicant will be recruited as a member of the temporary staff under a one year renewable contract.

SUBMISSION OF APPLICATIONS: Applications, accompanied by a full curriculum vitae, must be sent to the **Human Resources Unit of the Court of Justice, rue Edouard Steichen 22-24, L-2925 Luxembourg, by 16 February at the latest.**



Rugby lunch at the Law Society



Members are invited to a buffet lunch at the Law Society, Blackhall Place, on 28 February 2009 on the occasion of the home Six Nations rugby match against England.

Tickets at €25 each, in aid of the Solicitors Benevolent Fund, can be obtained from Maria Hoey and can be ordered by post or by email to m.hoey@lawsociety.ie. Tickets will entitle members to a buffet lunch, glass of wine and shuttle bus to Croke Park. Numbers are limited to 100 and will be provided on a 'first come, first served' basis.



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Commercial Litigation Partner

Our Client is a leading law firm renowned for high calibre work. The firm is particularly recognised for their expertise in the litigation field. An opportunity has arisen for a high calibre Solicitor to join the firm as partner, heading up the litigation practice.

The successful applicant will be a proven expert in the field of commercial litigation and more specifically in professional negligence. Alternative Dispute Resolution experience is absolutely essential. You will have represented a wide range of professional clients to include Insurers, Accountants, Solicitors, Directors, Estate Agents, Architects, Financial Advisors and Brokers.

You will have worked successfully on numerous high value disputes but also ideally have had exposure to small scale matters. The ability to manage a growing team is essential.

Our Client is offering an exceptional remuneration package and terms to the successful applicant.

Interested applicants should contact Yvonne Kelly on 01 8415614 or 087 6824591. Alternatively email your CV to ykelly@keanemcdonald.com. Absolute discretion assured.

OPPORTUNITIES IN DUBLIN

INSOLVENCY

150k+Benefits

Are you a senior litigator with proven insolvency experience looking for a new challenge? An opportunity has recently arisen to join our client's esteemed insolvency and reconstruction team. The team of insolvency specialists include experienced commercial litigators who regularly act in complex or multi-jurisdictional insolvencies. You will work with liquidators, administrators, receivers, banks and other lenders and will be involved in many of the country's insolvencies and corporate collapses. This is a premier opportunity enabling you to join a leading firm and progress your career in a structured and transparent environment. Excellent terms on offer. **Ref S1194**

FUNDS

130k+Bonus+Benefits

Our client is a leading firm and is now actively seeking to recruit a funds senior associate. Joining a core group of specialists and drawing on the expertise of other practices, you will provide comprehensive multi-jurisdictional advice on a wide variety of onshore and offshore funds and related incentive schemes, from initial structuring through to closing and winding-up. Our client is looking for someone who has an awareness of legal, regulatory, tax and commercial issues. You will have excellent academics and must have trained in a leading firm in the UK or Ireland. **Ref S1196**

CORPORATE PARTNER

140k+Bonus

Are you looking for a leading firm that is going places? This firm is prudently ambitious and is well placed to buck the current market trend by growing and further developing over the next few years. The firm is offering an outstanding career development opportunity - the chance to develop and manage their corporate practice. As an experienced corporate lawyer with a proven skill for client management and business development you will be given full autonomy to develop your own reputation in the market alongside securing the reputation of the team as a whole. **Ref S1195**

IN-HOUSE AVIATION

130k+Bonus+Benefits

Our client, a leading commercial aircraft leasing company is now seeking to recruit a senior lawyer. You will be responsible for legal transactional documentation and will negotiate operating leases and aircraft finance transactions. You will work closely with a team of motivated professionals across various departments including sales, marketing and technical services. You will provide sound pragmatic advice when dealing with legal issues which arise and your primary goal will be to close transactions within the time constraints given, ensuring the highest level of professionalism and expertise. In-depth knowledge of the aviation industry is essential. **Ref S1198**

DEBT RECOVERY

90k+Bonus+Benefits

Our client is seeking a lawyer with excellent debt recovery experience. This role involves running your own caseload of litigated matters from the taking of initial instructions, issuing and running court proceedings, through to the enforcement of judgements, in particular bankruptcy and winding up petitions. You will also assist the partners within the insolvency department while promoting the business. This is an ideal position for a lawyer with previous debt recovery experience looking to take their career to the next stage. Excellent terms and benefits on offer with this position. **Ref S1199**

IN-HOUSE CAPITAL MARKETS

Negotiable

You will identify and analyse legal structures and documentation issues relating to treasury products. You will negotiate and draft individual deal confirmations and structured hedging arrangements with GT counterparties for a wide range of structured products including inflation derivatives, structured FX options, exotic options, cancellable swaps, NDF transactions and structured notes etc. The ideal candidate will come from a banking/regulatory background, have become a specialist in the legal derivatives market and have very strong academics. **Ref S1197**

HAVE YOU CONSIDERED OPPORTUNITIES IN THE MIDDLE EAST?

MAKO Search is currently working with leading law firms and in-house organisations throughout the Middle East & Asia. Our clients urgently require lawyers for the following areas:

FUNDS – Abu Dhabi, Dubai & Riyadh
– Associate & Senior Associate

IP PATENT – Dubai
– Mid/ Senior level Associate

PROJECTS/ENERGY – Saudi Arabia
– Junior Lawyer

HEAD OF CONSTRUCTION – Dubai
– Contentious/Non Contentious

CORPORATE – Saudi Arabia
– Junior Lawyer

TECHNOLOGY & TELECOMS – Dubai
– Mid level Associate.

For opportunities in Ireland or overseas, please contact carolmcgrath@makosearch.ie
or sharonswan@makosearch.ie

True Pedigree



Top Opportunities

Commercial Lawyer - Senior Associate to Partner level

€Neg J00387

Our client is a well established and highly respected Dublin law firm. An excellent opportunity has arisen for an ambitious commercial lawyer to join the firm. The successful candidate will have a broad range of commercial/corporate experience and demonstrate strong business acumen.

Commercial Litigator - Associate to Senior Associate Level

€Neg J00398

A leading Dublin practice is searching for a first rate Litigation specialist with excellent post-qualification experience. The successful candidate will be dealing with a broad range of contentious matters and must exhibit sound commercial judgement coupled with strong technical and client facing skills.

Professional Indemnity - Senior Associate to Partner Level

€Neg J00399

A high calibre practice with an excellent client base is searching for a first class Litigation practitioner. Strong exposure to professional indemnity matters is essential and experience of auditor's liability disputes will be advantageous. This is a senior appointment and candidates will need to demonstrate the drive and enthusiasm to market and develop the firm's services with existing and prospective clients.

Is your ideal role here?

COMMERCIAL PARTNER

Dublin | €Negotiable | Ref: 21984

A growing mid-size firm require a Partner to grow and develop their Commercial Department. The successful candidate will have strong business development skills and have a proven background in Commercial law. You will be required to show a genuine business case, both in terms of your strong aptitude for business development and ideally a following of clients.

FINANCIAL REGULATION ASSOCIATE

London | €Negotiable | Ref: 20223

The financial regulation practice of this leading firm acts for a broad range of clients and handles a variety of types of work across the regulatory field. They advise on the supervision of investment banks, building societies, insurance companies, brokers, asset managers, exchanges, banks and clearing houses. They are closely involved with their clients and the continuing consultation process surrounding the UK and European regulatory regimes. Experience from a leading firm with excellent academics essential.

EMPLOYMENT LAWYER

London | Stg £80k plus | Ref: 20170

Leading firm seeks mid level Employment lawyer. Team: 5 partners / 15 associates. You will be most senior associate outside partnership so career advancement is real possibility. Work largely acting for corporate employers, will comprise mix of contentious/non contentious work with emphasis on latter.

PROJECTS/ENERGY LAWYERS

Dubai | \$200,000 USD+ | Ref: 16160

As a top US law firm with offices in both Dubai and Abu Dhabi, this client handles excellent quality projects, energy and infrastructure work for the best clients. They need mid level common law qualified lawyers from exceptional backgrounds to come and help bolster their impressive team. On top of premier work, tax free sunshine awaits!

INSOLVENCY & LITIGATION

Bermuda | \$ Competitive | Ref: 19692

Immediate opportunity for a mid-level lawyer to join one of the world's premier offshore firms in Bermuda. Handling a range of contentious work that includes trusts, employment and commercial disputes as well as corporate insolvency, you will enjoy the highest quality work in a beautiful low-tax location.

RESTRUCTURING LAWYER

Hong Kong | \$Competitive | Ref: 20155

This global US law firm, renowned for its expertise in advising financial institutions in relation to distressed and special situations investments is looking for an outstanding mid-level restructuring associate to join its innovative team in Hong Kong. You will have a strong interest in insolvency and restructuring and will have trained and worked with a top-tier firm.

SENIOR IN-HOUSE COMMERCIAL LAWYER

Maidenhead (near London) | Stg £75k plus | Ref: 19540

One of the world's premier healthcare companies is seeking a senior legal counsel to advise the UK& Irish consumer business. You will negotiate commercial contracts, advise on advertising and marketing issues and deal with litigation as well as working very closely with the UK Senior Management Team.

IN-HOUSE PENSIONS LAWYER

Dublin | €75k plus | Ref: 20311

Our client a leading life assurance provider based in Dublin, offering a full range of pensions, investments and protection products require an additional pensions lawyer to join its growing team. Experience in pensions law gained from either in-house or a leading firm is essential. This is an excellent opportunity to progress your career in a very stable organisation.



Interested candidates should e-mail an up to date CV quoting the relevant reference number.

Portia White

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