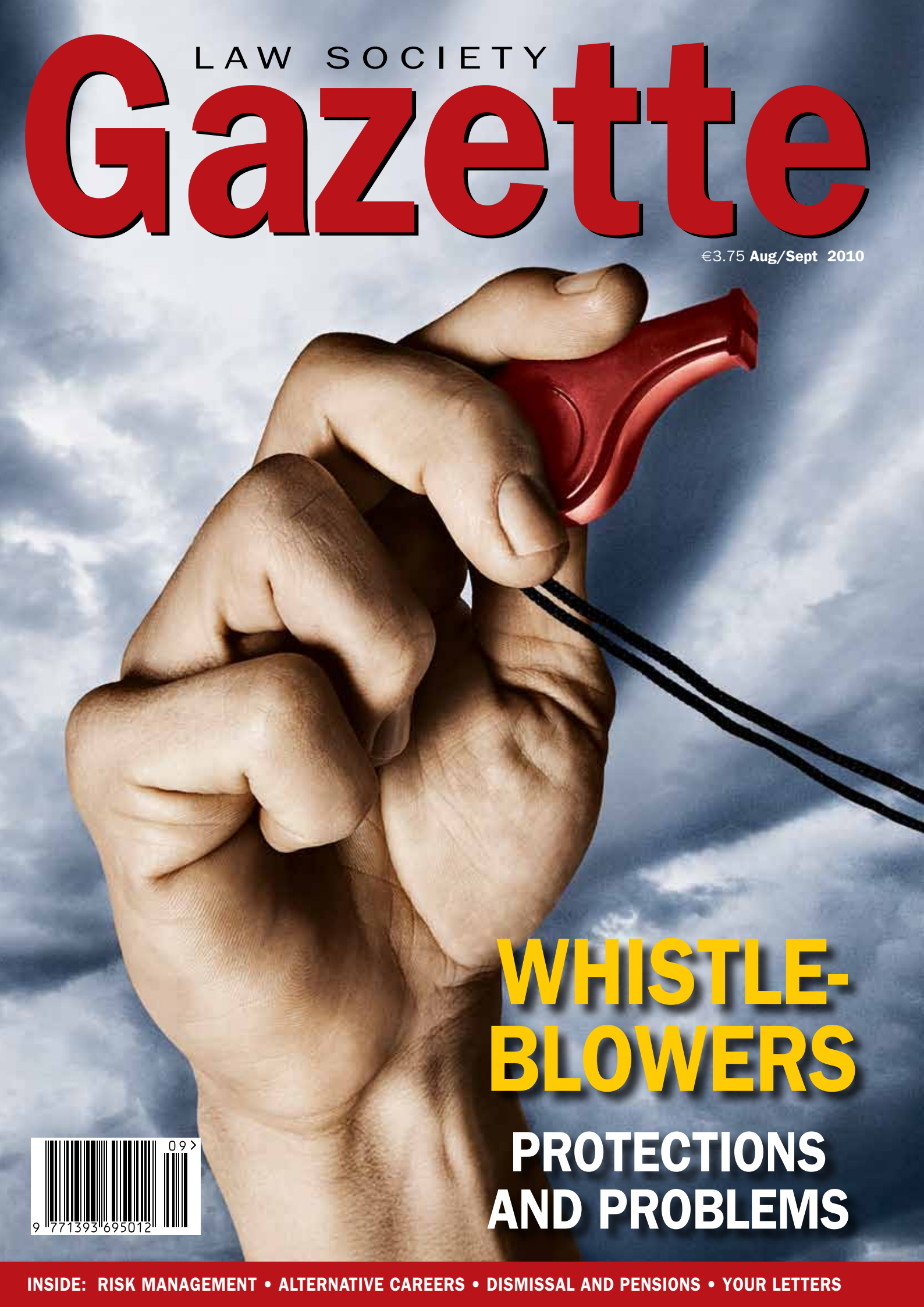
LAW SOCIETY
Gazette

€3.75 Aug/Sept 2010



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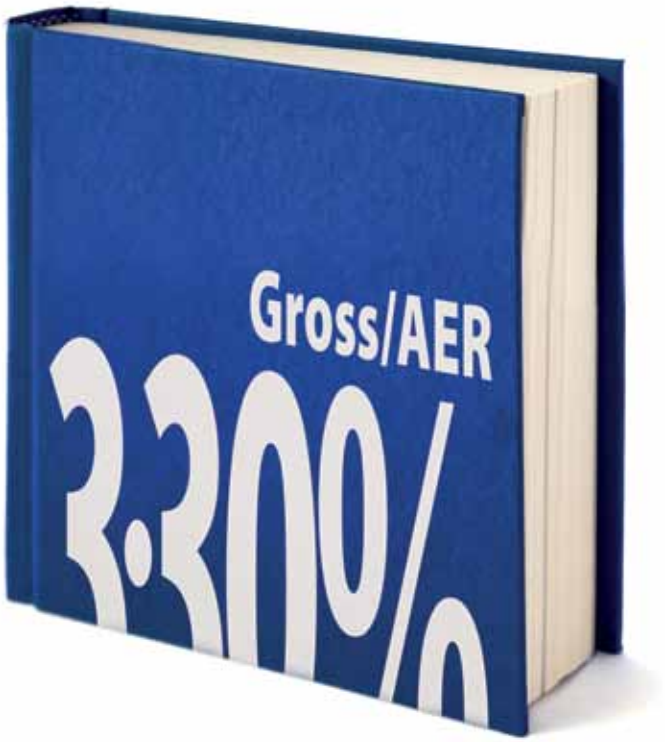

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Commercial undertakings

You have received many eBulletins from me, beginning in December 2009, in relation to the risks created by solicitors giving undertakings in commercial property transactions. The Society has consulted very widely with the profession and with interested parties outside the profession in relation to this matter. I refer, in particular, to my eBulletins to you of 1 April and 27 May 2010. No less than 184 separate submissions were received from members of the profession in response to the Society's consultation process. The submissions were overwhelmingly supportive of the proposed prohibition on commercial undertakings.

At its meeting on 16 July 2010, the Council of the Law Society made new regulations to prohibit the giving of such undertakings. The new regulations, Statutory Instrument No 366 of 2010, will come into effect on the commencement of the next professional indemnity insurance year, namely on 1 December 2010.

Although the giving of commercial undertakings will not be legally prohibited until 1 December 2010, in the meantime the Society's strong advice (as set out in previous eBulletins as far back as 14 December 2009) is that solicitors should *not* give commercial undertakings.

Reasons

The Council's reasons for making these new regulations are summed up in previous correspondence to you. In particular, I would refer you to the memorandum of 31 March 2010, written by the Society's immediate past-president and Chairman of the Commercial Undertakings Task Force, John D Shaw. In summary, the experience of the Society's regulatory committees in recent years, in particular the Professional Indemnity Insurance Committee, is that the banks' *ad hoc* 'system' (with no agreed basis or consistent usage), under which solicitors gave certain types of undertakings in order to complete commercial property transactions, exposed the public interest to an unacceptable level of risk. It was essentially flawed and beyond regulatory control, with a range of damaging consequences for the public interest, as experience has demonstrated.

The frailties of the commercial undertakings 'system' have been the subject of critical comment by members of the judiciary, and have been reviewed by the Society. This is in light of these undertakings' capacity to facilitate reckless lending and fraud – with massive losses to lenders, as in the Lynn and Byrne cases. The conflict of interest in which solicitors can find themselves, acting for both the borrower and the lender in the same transaction, is at the heart of the problem.

"New regulations that prohibit the giving of commercial undertakings will come into effect on the commencement of the next PII year, namely on 1 December 2010"

Proper security

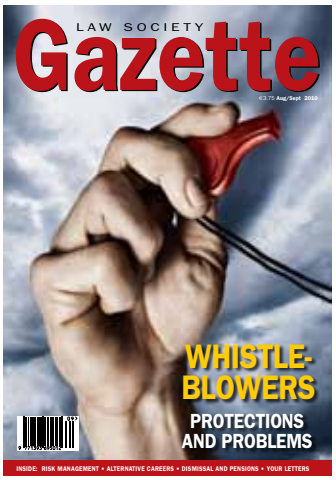
During the boom years, solicitors were pressurised, both by borrowers and by lenders, to give letters of undertaking to lenders in commercial property transactions. This frequently led to situations where the undertakings were not complied with, and many substantial loans were not properly secured.

An essential part of any banking system is to ensure that proper security is in place where loans, particularly of a substantial nature, are advanced. The risk of failure in this regard is greatly reduced if lenders retain their own solicitors to take responsibility for ensuring the security is put in place.

A detailed analysis of the new regulations and explanation of their practical effects will appear shortly in the Society's *Gazette*. Precedent documentation, to assist solicitors to comply with the regulations, will be supplied.

I wish to thank the members of the Society's Commercial Undertakings Task Force for their assistance, together with all of the solicitors and other interested parties, who very helpfully responded to the consultation process. In both policy and drafting terms, the regulations are much the better for the direct contributions made by so many people, through the Society's unprecedentedly extensive consultation on this important issue. G

Gerard Doherty
President



On the cover

When Little Boy Blue blows his horn, the wind in the willows changes. But where do Ratty, Mole and Toad stand in all of this?

PIC: THINKSTOCK

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Aug/Sept 2010

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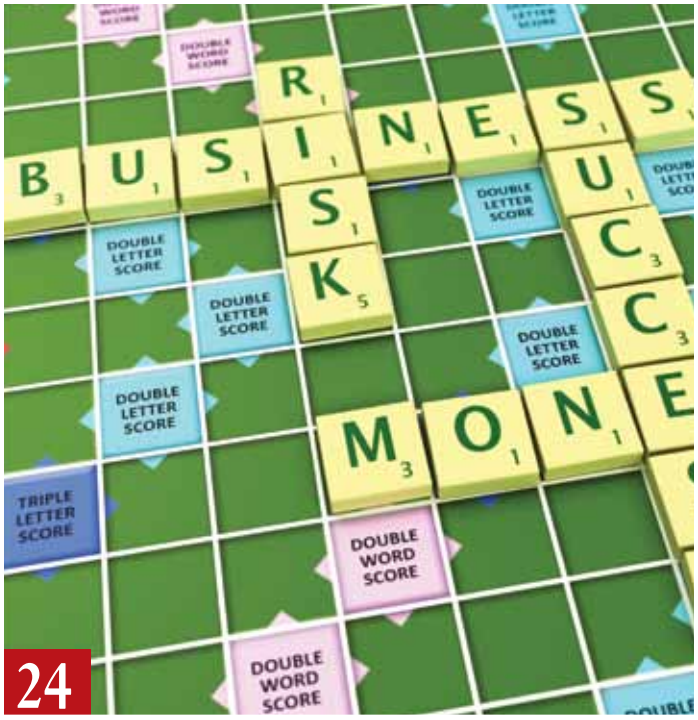
FEATURES



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Legalwise

PEOPLE.PROCESS.PERFORMANCE.

PII RENEWAL
risk management workshops

- **FACT:** PII rates are expected to increase this year, and availability of cover may again be limited
- **FACT:** It is NOT a requirement of the qualified insurers for solicitors to have achieved or registered for a risk management "standard" or "quality mark" in order to get cover.
- **FACT:** It is NOT a requirement of the qualified insurers for solicitors to have undergone a voluntary "risk assessment" by an independent consultant either.

It is however, vital that solicitors can assist insurers in evaluating the likely level of risk in the practice and to provide evidence as to how that risk is being formally managed.

Legalwise is therefore running a series of nationwide ONE-DAY WORKSHOPS to help solicitors prepare their own Risk Management Plan in time for PII renewal.

OBJECTIVES:

- Develop a better understanding of legal practice risk management
- Create a framework for identifying, managing and controlling risk
- Learn how to draft a template Risk Management Plan
- Understand how best to set up office procedures and systems so as to manage risk going forward

WORKSHOP DETAILS

One day classroom style, with a max class size of 30 and delivering 7 hours CPD accreditation

Facilitators: Legalwise Directors, Caroline Murphy and Pauline Doohan (both former practising solicitors specialising in insurance and commercial lending respectively)

Timing: 9am – 5pm. **Cost:** €350 per delegate, covers course materials, refreshments, lunch

LOCATION	VENUE	DATE
Dublin	Radisson Golden Lane, Dublin 8	Tues 7 September
Dublin	Royal Marine Hotel Dunlaoghaire	Thurs 9 September
Sligo	Radisson Hotel	Mon 13 September
Cavan (x 2)	Slieve Russell	Tues 14 and Wed 15 September
Athlone	Radisson Hotel	Tues 14 September
Galway	Ardilaun Hotel	Wed 15 September
Limerick	Radisson Hotel	Thurs 16 September
Drogheda	D Hotel	Mon 20 September
Kilkenny	Ormonde Hotel	Wed 22 September
Cork	Radisson Hotel, Little Island	Thurs 23 September

Reservations: 01-234 2683; info@legalwise.ie; Legalwise Ltd., 28-32 Upper Pembroke St., Dublin 2
Download full workshop brochure from **www.legalwise.ie**

Legalwise (www.legalwise.ie) is a niche management consultancy dedicated to improving performance, quality and efficiency in legal services. Legalwise is one of the five consultants appointed to the Law Society's Panel of Risk Management Experts established to help solicitors manage risk in their practices and to help support professional indemnity insurance issues.

Society refutes minister's 'rising fees' claim

Representatives of the Law Society recently met with Minister for Enterprise, Trade and Innovation Batt O'Keeffe to address his concerns about a report, prepared by Forfás for the National Competitiveness Council, which suggested that legal costs to business were 18.5% higher in 2009 than in 2006. At the meeting, the Society set out in detail why it considered the conclusion of the Forfás report, in the words of the director general, "has no proper evidential basis, is incredible and is simply wrong".

The meeting with Minister O'Keeffe took place in his departmental office on 27 July 2010. The minister was accompanied by departmental officials and representatives of Forfás.

The Society was represented by the president, Gerard Doherty, director general Ken Murphy, the deputy director general Mary Keane, and the vice-chair of the Society's Arbitration and Mediation Committee Roddy Bourke.

Representatives of the Bar Council were also present at the meeting.

The minister began by expressing the government's concern that all costs be reduced in the Irish economy, so that our international competitiveness could be restored (an objective for which the Society's representatives expressed full support). In this regard, he was specifically concerned that legal costs to business appeared to have actually risen, rather than declined, as most other costs had done in the course of the recession. He then invited a Forfás representative to make a presentation based on their report of July 2010, which contained the conclusion that "the cost of legal services has declined slowly and in Q4 2009, they were 18.5% above the average 2006 price".

O'Keeffe: 'fees have risen rather than declined in the recession'

Murphy: 'no proper evidential basis, incredible, simply wrong'

When the Society representatives were given an opportunity to respond, they moved quickly to demonstrate that such a conclusion was completely unreliable.

The Forfás report itself, they pointed out, in a note on page 44, acknowledged that the data for this conclusion "is based on a relatively small sample size and caution should be exercised when analysing the results". The Central Statistics Office has now confirmed to the Law Society that the basis of research in relation to legal fees is "experimental, under development and may be subject to methodological improvement". In particular, it is acknowledged that the very small sample size of 18 solicitors' firms (there are no less than 2,230 solicitors' firms in practice) is a completely inadequate basis for conclusions.

In addition, of the five headings under which responses were given to the CSO questionnaire, two of them related to 'patent work' and 'notarial work', in respect of which the income for the solicitors' profession in Ireland is infinitesimal. However, the Law Society has offered to work with the CSO to devise a much-improved basis for the collection of data on levels of legal fees in Ireland – one from which reliable conclusions could be drawn.

In fact, an already intensely competitive marketplace has become even more competitive as a result of the recession. With ever more solicitors, and solicitors' firms, scrambling for work of any kind, it is impossible to believe that fees are not falling substantially. The Society knows anecdotally that fees *are* falling.

When, subsequent to the meeting, the minister commented on this issue in the media, director general Ken Murphy responded forcefully in both print and broadcast interviews. He referred to the fact that, on the Society's best estimate, the number of solicitors currently unemployed is 1,200.

"In fact, the profession has suffered a collapse in income over the last three years. One of the mainstays, conveyancing, has almost completely disappeared."

In summary, Murphy said, "An ever-increasing number of solicitors is chasing a dramatically reduced volume of work and experiencing intense downward pressure on legal fees."

COUNCIL ELECTION DATES 2010

As required by the bye-laws, the Council approved Monday 13 September 2010 as the final date for receipt of nominations for the Council election, and Thursday 28 October 2010 as the close-of-poll date.

HEALTH & SAFETY MORNING

The 'Health and Safety Compliance in Challenging Times' conference will take place on 6 October 2010 at the Hilton Dublin Hotel, Charlemont Place, Dublin 2. Organised by the Health and Safety Lawyers Association of Ireland (HSLAI), it starts at 7.30am (breakfast provided) and concludes at 11.30am. Talks will be given by HSLAI committee members Aisling Butler (William Fry), Alison Fanagan (A&L Goodbody), Siobhra Rush (Matheson Ormsby Prentice), David Phelan (Hayes) and Niav O'Higgins (Arthur Cox). Visit www.hslai.com for details.

CANADIAN-IRISH CONFERENCE

A Canadian-Irish family law conference will take place on 8 and 9 October at Carton House Hotel, Maynooth, Co Kildare. The conference is aimed at jurists and professionals operating in the family law system. Its purpose is to exchange ideas and discuss issues of mutual concern in the jurisdictions of Canada and Ireland. Family law judges and experts from Canada, New Zealand, America and Australia will attend. Topics will include mediation, case management, lay litigants, a unified family-law model, child representation, spousal and child maintenance guidelines, and high-conflict cases. Registration and information is available at: www.familylaw2010.com, or email Róisín at: info@roisinoshea.ie.

ESB GOES GREEN

ESB has set up an email address for use by the legal profession: correspondence@esb.ie. Rather than getting bills by post, it's done by email, saving you time, money – and it's the greener alternative. Members of the profession can pay all accounts – including client accounts – by laser card. Register at www.esb.ie or tel: 1850 372 372.

New anti-money-laundering guidance notes launched

The Society has launched guidance notes for solicitors on their anti-money-laundering obligations under the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*, *writes Emma-Jane Williams*.

Commenting on the launch of the *Guidance Notes* on 8 July 2010, President of the Law Society Gerard Doherty said: "The *Guidance Notes* are a unique online resource that will allow solicitors to access up-to-date best practice in tandem with corresponding legislative provisions through the hyperlinks provided. This feature greatly enhances functionality and usability."

To access the *Guidance Notes*, simply log in to the members' area of the Society's website with your solicitor number, select 'Best practice and guidance' from the navigation pane on the left-hand side, then select 'AML obligations'. The new AML (anti-money-laundering) section also contains additional resources such as legislation, statutory instruments, contact details, checklists and the standard garda report form, among others.

The *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* was signed into law on 10 May 2010, and commenced on 15 July 2010. The commencement date of the legislation previously indicated to the Society had been September, but, in June, the Society was informed of a government decision to implement the substantially earlier commencement date of 15 July. The president commented: "Notwithstanding the short period available for their preparation, the Society's Working Group on Money-Laundering Legislation has produced these comprehensive *Guidance Notes* to assist practitioners to comply with their AML obligations."

Over the coming months, the Society will provide web-based learning, which will be delivered through online 'webinars' (web seminars). Supplementary tools, AML practice advice, questions and answers, summary sheets and client care leaflets will be added to the AML area of the website as they are developed.

Please contact the Society for assistance when interpreting your AML obligations. The Society welcomes your questions, as they may provide us with scenarios that may not have been envisaged at the time the *Notes* were prepared – thereby allowing an opportunity to prepare best-practice advice for such situations and inform other members of the profession accordingly. While the Society cannot provide practitioners with legal advice, it will endeavour to help you navigate your way through best-practice principles. Contact Emma-Jane Williams at e.williams@lawsociety.ie.

Insight to tribunal

'The Solicitors Disciplinary Tribunal' was the topic for this year's annual workshop for members of the panel of solicitors that assists solicitors in difficulty with the Law Society. The workshop was held at Bow Street in the tribunal room. Many of those attending had never been to the tribunal before.

The group was addressed by a panel of speakers who, between them, have many decades of experience of tribunal hearings. The speakers were Mary Fenelon, one of the Law Society's prosecuting solicitors; John O'Dwyer, solicitor, Ballyhaunis, who regularly defends solicitors appearing before the tribunal; and Ian Scott, a chairman of the tribunal (now retired). They each gave an insider's perspective, as experienced from their own particular role.

The importance of the role of the lay members of the tribunal was also emphasised. Panel members were given practical advice, to assist them when representing colleagues before the Solicitors Disciplinary Tribunal.

The workshop was chaired by the chairman of the Guidance and Ethics Committee, Brendan J Twomey. The committee facilitates the work of the panel.

Society confers first human rights certs

The first students to receive the inaugural Certificate in Human Rights from the Law Society were conferred on 19 May 2010. A total of 19 students, the majority of whom were solicitors, were presented with their certificates by US civil rights lawyer, Maurice Dees. Other suitably-qualified, non-legal professionals, including NGO non-lawyers with a human rights background, also took part. The certificate will be offered again, starting on 3 November 2010. If interested, contact the diploma team at Blackhall Place, Dublin 7

'SMOKE GETS IN YOUR EYES'

Regarding the 'Smoke gets in your eyes' article, published in the *Law Society Gazette* (see July issue, p18), please note that the decision of Mr Justice Charleton in *HSE v Brookshore Ltd* ([2010] IEHC 165), referred to in that article, is being appealed to the Supreme Court.

Learning from each other's experience

Professional indemnity insurance, reciprocal admission and conflict of interest rules (particularly in relation to firms acting for more than one party in the same property transaction) were just three of a lengthy list of issues on which information and experience was shared between the leaders of four law societies in Blackhall Place recently.

The presidents, vice-presidents and chief executives of the law societies of Ireland, Northern Ireland, Scotland, and England & Wales meet twice a year. Once every two years, the meeting is held in Dublin. This year's gathering in the Council Chamber in Blackhall Place on 29 June 2010 was chaired by the President of the Law Society of Ireland, Gerard Doherty.

The single biggest issue facing solicitors in all four jurisdictions is the continuing effect of the profound and persistent economic recession. Ideas were compared on the measures being taken by all four societies to assist their members to survive until the benefits of economic recovery begin to be seen – which all agreed has not begun yet.

The four English-speaking, common law jurisdictions in the EU have much more in common with each other than with other jurisdictions – whether in the EU or beyond. Accordingly, keeping close tabs on all changes affecting the 140,000 solicitors that, collectively, are on the roll between the four different jurisdictions, including the manner in which solicitors in each jurisdiction are regulated, is invariably informative and beneficial.

PIC: LENSMEN

At the meeting of leaders of four law societies in Blackhall Place on 29 June 2010 were *(front, l to r)*: Linda Lee (president, Law Society of England & Wales), Gerard Doherty (president, Law Society of Ireland), Norville Connolly (president, Law Society of Northern Ireland) and Jamie Millar (president, Law Society of Scotland). *(Back, l to r)*: John Costello (vice-president, Ireland), Des Hudson (CEO, England & Wales), Mary Keane (deputy director general, Ireland), Brian Speers (vice-president, Northern Ireland), Henry Robson (deputy CEO, Scotland), Ken Murphy (director general, Ireland) and Alan Hunter (CEO, Northern Ireland)

PIC: SUSAN KENNEDY, LENSMEN

Immigration lawyer Anne O'Donoghue of the Law Council of Australia addressed Irish solicitors and PPCII students on the subject of opportunities in Australia for Irish solicitors. Anne provided information on working and qualifying in Australia at the seminar on 14 July 2010, which took place at the Law Society's Education Centre. *(From l to r)*: Ken Murphy (director general), Anne O'Donoghue (Law Council of Australia), President of the Law Society Gerard Doherty, Mary Keane (deputy director general) and Keith O'Malley (career development advisor)

HLJ 2010 launched

The 2010 edition of the *Hibernian Law Journal* (HLJ) was launched on 6 July in the Blue Room in Blackhall Place, *writes Peter McKeown Walley*. The keynote speech was given by Mr Justice Bryan McMahon.

The 2010 edition comprises articles examining a variety of legal issues, ranging from orthodox and topical subject matters, such as the *Lisbon Treaty*, media pluralism, bid rigging and choice of law under the *Rome Convention*, to less-considered issues like the treatment of Mass cards under the *Charities Act 2009*. In his speech, Mr Justice McMahon correctly praised the diversity of topics and the quality of articles in this 11th edition of the journal.

The launch also saw the conclusion of Julia Emikh's year as editor-in-chief. The editorial committee expresses it thanks to Julia for her dedication, diligent organisation and the production of an excellent edition of the journal.

The committee is now accepting articles for inclusion in the next edition. For more information, visit www.hibernianlawjournal.com.

Give your job-seeking skills a boost!

The Society's career support service has organised a busy schedule of training during September and October, including both seminars and shorter workshops. All members are welcome to attend these events – subject to availability.

'Strategies for success' seminars – full day

These one-day seminars are structured to bring participants through the whole business of job seeking and to introduce strategies and tactics that increase a person's effectiveness at identifying work opportunities and putting oneself forward for consideration. Matters covered will be relevant to all solicitors – regardless of career stage and whether the member of the profession is employed, in practice, or currently not working.

'Strategies for Success' seminars will go ahead at the following locations on the dates scheduled:

- *Dublin:* Tuesday, 7 September
- *Cork:* Tuesday, 14 September

- *Galway:* Tuesday, 21 September
- *Dublin:* Thursday, 7 October
- *Cork:* Tuesday, 12 October.

'Effective CV preparation' workshops – half-day

The preparation of an effective CV and other aspects of self-marketing, such as writing covering letters, will be addressed in detail in workshops at the following locations on the dates scheduled:

- *Dublin:* Wednesday, 15 September
- *Cork:* Wednesday, 22 September
- *Galway:* Wednesday, 29 September
- *Dublin:* Wednesday, 13 October
- *Cork:* Wednesday, 20 October.

'Interviewing and negotiation' workshops – half-day

Training for successful interviewing performance and negotiation will be available in this workshop, where people are given the opportunity to role-play and work through all the questions and other challenges that tend to cause people difficulty at interview. These workshops will take place as follows:

- *Dublin:* Wednesday, 23 September
- *Cork:* Thursday, 30 September
- *Galway:* Thursday, 7 October
- *Dublin:* Thursday, 14 October
- *Cork:* Thursday, 21 October.

Trainees about to finish training contracts

Trainees who have completed PPCII and who are finishing their training contracts in late 2010/early 2011 will be invited to attend the seminars and workshops that are scheduled to take place in October. However, all the September events will be open to solicitors only.

Workshops are half-day in duration – from 1.30pm to 5.30pm. All qualify for CPD group-study credits. Capacity is limited at most venues and those who want to attend any event are asked to book their place by emailing: careers@lawsociety.ie.

More details on these events are available on the society's website at www.lawsociety.ie/en/pages/careersupport.

Career Support is a Law Society initiative, established to assist solicitors faced with career challenges such as unemployment, underemployment and uncertainty about what to do next, careerwise. A wide range of supports are provided, including telephone and email support and one-to-one consultations.

IoIC welcomes four new fellows

The editor of the *Law Society Gazette*, Mark McDermott, has been awarded a fellowship of the Institute of Internal Communication (IoIC). The IoIC is Britain's professional body for internal communicators. The award was made in London on 30 June 2010, where Mark was one of four members to receive their fellowships.

Mark started his career in journalism at the College of Commerce, Rathmines, from 1987-89. He was appointed assistant editor of internal communications at Aer Rianta (now DAA) in 1989 and subsequently deputy editor, before becoming editor in 2000. With then editor Brian McCabe, they won awards in Britain and Ireland, among them 'Best In-house Magazine', 'Best Editorial Team', and finalist in the European FEIEA Grand Prix.

PIC: BILLYPIX.COM

Jolly good fellows – of the IoIC! *(From l to r)*: Jos Harrison, John Davies, Mark McDermott and Rani King (MBE)

In 2005, he moved to the Law Society, taking the helm as editor of the *Gazette*. The magazine was a finalist in the PPA Ireland Awards in 2006 and 2007. In his role as secretary to the Society's PR Committee, Mark manages the annual Justice Media Awards.

Working in internal communications for the past 21 years, he holds a Masters in Communications & Cultural Studies (Hons) from Dublin City University and has been a member of the IoIC (formerly Communicators in Business) since 1994.

From Kilkenny, he is married to Mary, who he describes as "finer than any fellowship!" They have three children, Miriam (7), Kenneth (5) and Paul (2).

Thinking outside

Given the recession, it's not surprising that some solicitors are looking at alternative careers to law. Keith O'Malley spotlights a number of those who have made waves outside the profession

Only a few professions have had one of their own serve as Taoiseach – and Brian Cowen is not the only solicitor serving the affairs of the state. The Fine Gael front bench includes both Charlie Flanagan TD and Alan Shatter TD. Solicitors continue to get involved in politics, and solicitors that were newly elected as councillors in the recent local elections include Catherine Noone and Rioghnagh Bracken.

Solicitors also feature prominently in business. Three out of a total of eight directors at Bord Gáis are solicitors. Their chairperson, Rose Hudson, practised as a solicitor and was part of the core management team in GPA before progressing to several directorships with organisations such as Bank of Ireland, Aer Lingus and Total Produce plc.

Tony O'Reilly has been one of Ireland's leading businessmen for decades, but other solicitors successful in business over the long term include Ciarán Feighery (chairman of SIAC Construction), and Muiris Ó Céidigh (CEO of the National Milk Agency). Another Ó Ceidigh, Pádraig ran his legal practice in Galway for several years before deciding to buy Aer Arann in 1994 and developing it into one of Europe's most successful airlines, with annual revenues of over €100 million.

Sporting greats

In the world of sport and sport management, qualified solicitor Sarah O'Connor is CEO of the Irish Sports Federation, while Sarah O'Shea is head of legal and disciplinary affairs at the Football Association of Ireland (FAI). Brendan Dillon, also a solicitor, is former chairman of the FAI National League and officer of the FAI.

Blue-sky thinking outside the box

Other solicitors participate in sports management within their jobs in practice. Larry Fenelon and John Hogan of Leman Solicitors are active in sports arbitration and dispute resolution, and firms such as A&L Goodbody and Beauchamps have teams specialising in sports law.

RTÉ broadcaster Miriam O'Callaghan has achieved great prominence in media and entertainment, but other solicitors are also distinguishing themselves in this arena. Cork solicitor Michael Mee is a regular on the international comedy circuit and was described by *The Sunday Times* last year as "the brightest Irish comedy talent in recent years".

Geraldine McAlinden enjoys significant success as an actress, starring in films, on TV, and on the stage, while still managing to practise as a solicitor. Criminal lawyer Ronan O'Brien recently had his novel *Confessions of a Fallen Angel* published, for which he won the 2009 Irish Book Awards 'Newcomer of the Year'. He is currently working on his second novel.

Solicitors play important roles in the public sector, in non-governmental organisations and in the not-for-profit sector. There has been international acknowledgement for what Michael Farrell has achieved in the Irish Council for Civil Liberties (ICCL) and FLAC. Des Hogan has played a pivotal role in the Irish Human Rights Commission – as has Mary Forde in Amnesty International.

Blinkered mentality

There are benefits for solicitors individually, and for the profession generally, if members look more expansively at what they can do work-wise – and avoid being blinkered in what they can achieve.

In order to facilitate solicitors to consider their full array of career options, the Law Society's career support team is organising a series of events

ALTERNATIVE AREAS TO THINK ABOUT

Mediation, arbitration, politics, information officer, financial regulator, human rights, procurement, European Commission, company secretarial, Equality Authority, entrepreneurial, Courts Service, journalism, Legal Aid Board, tax consultant, broadcasting, HR management, compliance and regulation, patent attorney, sustainable development, alternative energy, social enterprise, political advisor, academia, legal recruitment, trademark attorney, Office of the Attorney General, management consultant, insurance claims, ombudsman, penal services, governance, law reform, commission of inquiry.

the career box

that will take place over the coming weeks.

Information evenings on how to break into new areas of work and into sectors going through growth and development, such as financial services, will run weekly throughout September. A range of informational leaflets and guidelines on working in non-traditional practice areas will be published, and these will be made available to members. Online discussion groups will be initiated also.

These events will culminate in a 'President's Evening for Members' on 14 October 2010. There, solicitors who have had particular success outside the traditional practice of law will be invited to relate their experiences to colleagues and to impart what they have learned. G

Keith O'Malley is the Law Society's career development advisor.

PASTURES NEW – SOLICITORS WORKING IN OTHER FIELDS

Hannah Carney – coach and skills trainer

Having trained as a solicitor in Dublin, Hannah also qualified and worked in Australia before joining McCann FitzGerald's commercial litigation group.

Appointed partner in 2001, she then became director of professional development – building and implementing a strategy that raised the bar for talent, leadership and team development in the firm.

She established herself as an independent consultant in 2007 and has built a reputation for enabling improvement through different approaches to individual, team and skills development. She brings a passionate and personal approach to her work as a coach/mentor, facilitator and trainer.

Hannah is acknowledged as an expert in the team and business development of professional services firms. Her clients include law firms in both Ireland and Northern Ireland, together with organisations in the aviation, healthcare, accountancy and not-for-profit sectors.

She is also an accredited and practising mediator and is a member of One-Resolve.

Peter Oakes – regulation and compliance

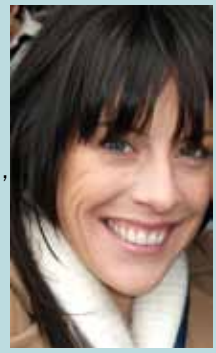
Peter is an Australian national and is qualified as a solicitor in Australia, Ireland and Britain. He met an Irish woman in Sydney and found himself moving first to London and then to Ireland.

Peter initially joined a company in the Irish Financial Services Centre. Then, having explored opportunities, he decided to establish his own business. Drawing upon earlier expertise he had gained in regulation, he formed Compliance Ireland in 2004.

Compliance Ireland has gone on to develop impressively, providing advice and training to banks and other financial sector organisations on corporate governance, regulatory compliance and financial crime issues.

Peter is moving on. In October, he takes up the newly-created position of assistant director general (enforcement) at the Central Bank. In this role, he will report to the head of financial regulation, Matthew Elderfield, and will lead the organisation's investigative and enforcement functions.

He believes that Ireland offers solicitors diverse and sustainable business opportunities.



Jennifer Carroll-MacNeill – policy advisor

From Dublin, Jennifer did her training contract in Cork in Ronan Daly Jermyn, as well as a secondment in Pearts to better appreciate the court process. She qualified in 2007 and moved to UCD to complete a PhD on the judiciary.

When Fine Gael advertised the position of legal advisor in the office of the leader, she saw this as her ideal job – being a lawyer and a political science graduate.

In this role, Jennifer is responsible for reviewing government legislation on behalf of Fine Gael, and drafting amendments for debate in Oireachtas committees.

She also drafts Fine Gael's private members' bills, advises the party leader on legal matters as they arise and liaises closely with the party's press office. In addition, she manages the party's justice policy portfolio.

She maintains an academic role in UCD as a lecturer and course co-ordinator for the undergraduate law and politics degree, and also teaches legislative drafting in the Public Affairs Institute. She is in the process of completing her PhD.

David Bell – entrepreneur

David qualified as a solicitor in 1993 and worked primarily as an in-house solicitor for companies ranging from start-ups to major food companies listed on the Irish and London stock exchanges.

In his work as an in-house solicitor, he provided advice to boards, chief executives, other business managers and staff across a wide range of areas, including compliance with statutory requirements – particularly advising on employment law. Over time, he became more involved in personnel issues, gradually developing as a specialist in human resources (HR) matters.

Aware that most employers cannot afford a full-time HR function, David decided to establish The HR Department as a service that employers can outsource or call in, as required. The company supplies employers with up-to-date online staff handbooks and employment contracts. It helps employers stay compliant and supports them through HR challenges. It provides a HR audit service and assists employers to develop a strategic approach to HR issues.

The profession's best-

The LRC's *Legislation Directory* and its statute law restatement are among the profession's best-kept secrets, writes Heather Mahon

Practitioners who have previously experienced difficulties in accessing up-to-date information on Irish legislation may be interested in recent work carried out by the Law Reform Commission (LRC) on the *Legislation Directory* and on statute law restatement.

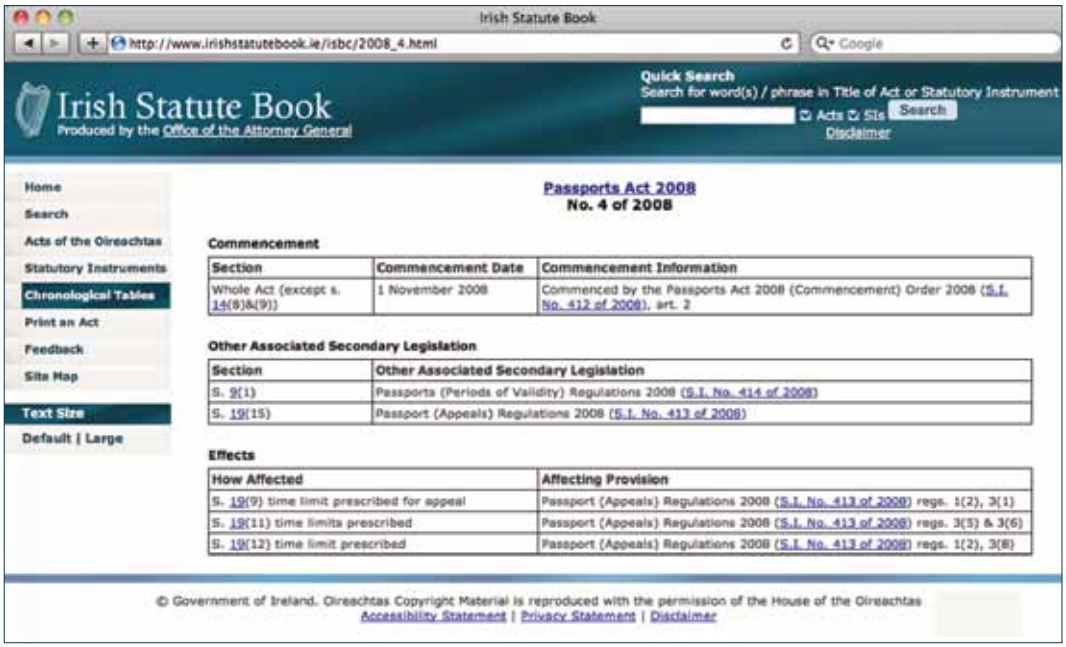
Many practitioners will be familiar with the electronic *Irish Statute Book* (eISB). This database is produced by the Office of the Attorney General and can be accessed at www.irishstatutebook.ie.

However, anecdotal evidence would suggest that many users are unaware of the existence of the *Legislation Directory* database, which is also hosted on that site. The main purpose of the directory is to document modifications made to primary legislation by subsequent legislation since 1922. It also contains some information on secondary legislation. The homepage of the *Legislation Directory* can be accessed at www.irishstatutebook.ie/chronological.html.

Users wishing to view information on modifications to primary legislation should access the *second* listing on the homepage. This is entitled 'A chronological list of the Public General Acts enacted from 6 December 1922 to 3 April 2010 (No 4 of 2010)'. It can be accessed directly at www.irishstatutebook.ie/isbc/chrontables.html.

Monthly updates

The LRC has recently completed an upload of new information to this listing, updating it from 1 January 2006 to 4 April 2010. It is envisaged that this listing will now be updated monthly.



The LRC has also expanded the range of information available for users in respect of legislation enacted since 1 January 2006. Comprehensive information is now available in relation to commencement and other associated secondary legislation. The illustration (above) of the information currently available for the *Passports Act 2008* reveals the depth of information available.

Pre-1922 information

The LRC has also introduced some pre-1922 (before independence) information to the database. Currently, there are in excess of 1,000 pre-independence public general statutes remaining on the *Irish Statute Book*. Until now, there has been no information in relation to pre-1922 amendments to this body of legislation. This means that users viewing pre-1922 legislation will only have seen post-1922 amendments. The fact that an act may have been amended before independence will not have been apparent to users.

The LRC has begun entering this pre-1922 information in relation to legislation that remained in force as of 8 May 2007. (This date was chosen as it is the date that the *Statute Law Revision Act 2007* came into force. The principal purpose of that act was to repeal all public general statutes enacted before 6 December 1922, with the exception of a 'white list' of acts that were specifically preserved. This act thus provides a definitive statement of the status of pre-1922 legislation on that date.)

The LRC will be inputting pre-1922 information in respect of this 'white list' of acts. This work will be completed in stages. At the time of writing, information for acts enacted between 1900 and 1922 had been indexed. An illustration of some of the information now available for the *Finance Act*

"Anecdotal evidence would suggest that many users are unaware of the existence of the* Legislation Directory *database ... the main purpose of which is to document modifications made to primary legislation by subsequent legislation since 1922"

kept secrets

1900 can be seen to the right.

The entries highlighted in yellow are new to the database. Pre-1922 information on public general statutes is currently contained in four separate listings. These are:

- Pre-Union Irish statutes (1169-1800),
- Statutes of England (1066-1706),
- Statutes of Great Britain (1707-1800),
- Statutes of the United Kingdom of Great Britain and Ireland (1801-1922).

These are divided according to the parliament responsible for enacting the legislation. These listings can be accessed from the *Legislation Directory* homepage. Users should also note that it is currently not possible to provide hyperlinks to pre-1922 legislation, as these documents are not available to the LRC in electronic format. The LRC will continue to update the *Legislation Directory* and to make additional improvements as resources permit.

Statute law restatement

A 'statute law restatement' is an administrative consolidation of an act, with its subsequent amendments, to allow both to be read seamlessly in one document. Once a restatement is certified by the Attorney General, it can be relied upon in court as evidence of the law, although the original legislation takes precedence if there is a conflict.

Restatements can save practitioners a considerable amount of time, which would otherwise be spent in researching the up-to-date position of the law.

Finance Act 1900
1900 (63 & 64 Vict) c7

Retained	28/2007, s. 2 and Schedule 1, Part 4
Saver	46/2009, s. 2(2)(b)
Preamble rep.	1908 (8 Edw. 7) c. 49
S. 1 (1) supers.	1918 (8 & 9 Geo. 5) c. 15, ss. 5, 9, sch. 3
S. 1 rep.	1908 (8 Edw. 7) c. 49
S. 2 rep.	1910 (10 Edw. 7 & 1 Geo. 5) c. 8, s. 96 (1), sch. 6
S. 5 rep. in part.	1910 (10 Edw. 7 & 1 Geo. 5) c. 8, s. 96 (1), sch. 6
Ss. 3 - 7 rep.	1918 (8 & 9 Geo. 5) c. 15, s. 45, sch. 4
S. 8 rep.	1901 (1 Edw. 7) c. 7, s. 10 (4)
S. 9 (in pt.) rep.	7/2001, ss. 149-152, sch. 3
S. 9 restrct.	14/1952, s. 16 (5)
S. 9 am.	1911 (1 & 2 Geo. 5) c. 48, s. 3
S. 10 rep.	31/1999, ss. 160, 163, sch. 3
S. 11 rep., exc. as to persons dying before 8 May, 1941.	14/1941, s. 52, sch. 4
S. 11 restrct.	1914 (4 & 5 Geo. 5) c. 10, s. 14 (c)
S. 11 am.	1910 (10 Edw. 7 & 1 Geo. 5) c. 8, s. 59 (1)

The LRC is currently completing its First Programme of Restatement. This includes restatements of the following legislation:

- The *Freedom of Information Act 1997*, *Data Protection Acts 1988* and *2003*, *Prevention of Corruption Acts 1889 to 2005*, and the *Criminal Procedure Act 1967*,
- Eight suites of related legislation: ethics in public office; firearms; civil liability and *Statute of Limitations*; employment leave; proceeds of crime; equality; road transport; and road traffic,
- Updates to four existing restatements carried out by the Office of the Attorney General: the *Sale of Goods Act 1893* and *Sale of Goods and Supply of Services Act 1980*, *Defence Acts 1954 to 1998* and court martial appeals, the *Tourist Traffic Acts 1939 to 2003*, and the *Succession Act 1965*.

When these restatements are certified, they will also be uploaded to the eISB for public use.

The LRC is also now reviewing candidate legislation for its Second Programme of Restatement, which will commence later this year. If practitioners have any views on what should be included in the second programme of restatement, they are invited to send suggestions to the LRC at info@lawreform.ie before 30 September 2010. G

Heather Mahon is project manager for the Legislation Directory *at the LRC.*

The EU & International Affairs Committee announces its Exchange Programmes for 2010 and invites Irish firms to host a visiting lawyer

The Committee, in its liaison with other European Bars, is developing two Exchange Programmes for lawyers in 2010: a Programme with the Madrid Bar and a Programme with GILBA (German-Irish Lawyers and Business Association).

These programmes allow lawyers to acquire work experience in a different jurisdiction for a short period of time, attending classes in relevant areas of law and gaining work experience in a legal firm.

Hosting a visiting lawyer in your firm does not entail any cost at all and your firm can benefit from the participant's background and knowledge of a different jurisdiction; from his/her language skills; as well as constituting a fantastic opportunity to establish links with the lawyer and his/her home Bar for future transactions.

At the same time, your firm would be offering a unique experience to the visiting lawyer, increasing his/her chances of employment. It would also encourage European mobility, as Irish lawyers may participate in a similar programme organised by the Madrid Bar and GILBA.

If your firm wishes to host a German lawyer for a two-month period (September - November 2010) or a Spanish lawyer for a three-month period (January-March 2011), please contact us and we will be happy to provide you with all the details on the programme: e.massa@lawsociety.ie

Hate speech and hate

Ireland must transpose the EU's framework decision on combating racism and xenophobia by 28 November 2010. Siobhán Cummiskey examines the shortcomings of Irish law in this context

The proliferation of racism and xenophobia through hate speech has historically had a disastrous effect on democratic society. On 6 December 2008, the European Union's Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law entered into force. The framework decision strives to further approximate the criminal laws of member states in order to ensure "effective implementation of comprehensive and clear legislation to combat racism and xenophobia".

The deadline for transposition of this framework decision is 28 November 2010. The Irish government must, therefore, consider and rectify the efficacy and clarity of its own criminal law in relation to racism and xenophobia before this deadline. This article will consider the shortcomings of Irish law in the context of the framework decision.

"*Effective implementation of comprehensive and clear legislation to combat racism and xenophobia*": The main statute that addresses racism and xenophobia in Irish law is the *Prohibition of Incitement to Hatred Act 1989*. This act has been the subject of much criticism from the legal and NGO communities and has been under review by the Department of Justice for over a decade. Its lack of efficacy is evidenced by the prosecution of just 18 cases and the securing of just seven convictions from December 1989 to May 2004 (this is according to the Irish government's *First Report to the UN Committee on the Elimination of Racial Discrimination*). Examples of cases taken under the act include the failed prosecution of a Fine Gael councillor in Mayo, who accused Travellers of "lying around in the sun like dogs" instead of participating in FÁS schemes (the comment was considered offensive but not incitement) and the overturning of the conviction of a Dundalk bus driver who called a young child a "black bastard" and told him to "go back to Africa".

> **"There is also a dearth of any legal interpretation of terms such as 'stirring up' hatred and 'threatening, abusive or insulting' words or behaviour"**

The act is widely believed to lack clarity. For example, the word "incitement" is used in the title of the act, but does not appear in the body of the act. There is also a dearth of any legal interpretation of terms such as "stirring up" hatred and "threatening, abusive or insulting" words or behaviour. This, coupled with the nebulous nature of such terms, seems to contribute to the reticence of prosecutors to pursue prosecutions of these crimes, and makes convictions more difficult to secure.

"*Member states shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance or, alternatively, that such motivation may be taken into consideration by the courts in the determination of the penalties*": Currently, under Irish law, whether or not racist motivation is considered by the court is entirely at the discretion of the trial judge. The law in relation to racist motivation is therefore somewhat *ad hoc*. This contrasts with our neighbouring jurisdiction of

ONE TO WATCH: NEW LEGISLATION

Planning and Development (Amendment) Act 2010

The *Planning and Development (Amendment) Act 2010* was signed into law by the President on 26 July 2010.

The act makes a number of significant changes that will have implications for those applying for planning permission, developers, those funding development, and other interested third parties. The aim and purpose of the new act is to support economic renewal and to promote sustainable development. It is intended to achieve this goal by ensuring that the planning system supports targeted investment on infrastructure by the state, and also by further modernising land zoning.

Core strategy requirement

The 2010 act requires that every development plan prepared by local authorities must set out a "core strategy". Prior to this act, planning authorities had merely a duty to "have regard to" national and regional strategies and guidelines. With the introduction of the 2010 act, the 'core strategy' provision will require that the development plan and housing strategy show that the objectives laid out are consistent with national and regional development objectives set out in the National Spatial Strategy, and in regional planning guidelines. Core strategies will also be required to take account of ministerial policies in relation to national and regional population targets.

Alterations to draft development plans

The 2010 act provides that, in the event of amending a draft development plan, it will be required that any such changes be minor in nature and be subject to further public consultation. Any amendments must not relate to an increase in the area of land zoned, or an addition to,

human rights watch

crimes in Ireland

England and Wales, where racist motivation is considered at the outset by the arresting officers and its inclusion as an aggravating circumstance is laid before the prosecutor and the court. Furthermore, Ireland does not have a specific statute dealing with 'hate crimes', that is, crimes motivated in whole or in part by prejudice, such as England's *Crime and Disorder Act 1998* (as amended).

"*Each member state shall take the necessary measures to ensure that the conduct referred to in article 1 is punishable by criminal penalties of a maximum of at least between one and three years of imprisonment*": The framework decision requires that such penalties be "effective, proportionate and dissuasive". Under the *Prohibition of Incitement to Hatred Act 1989*, a person is liable on summary conviction to a maximum fine of IR£1,000 or to imprisonment of a maximum of six months, or to both, and, on indictment, to a maximum fine of IR£10,000 or to imprisonment for a maximum term of two years, or to both.

EU member states must ensure effective legislation to combat racism and xenophobia

or deletion from, the record of protected structures.

Extension of planning permission

According to the new act, applications can be made for an extension of a particular permission by an additional period not exceeding five years, subject to the following conditions. Either:

- The development was commenced before the expiration of the appropriate period sought to be extended,
- Substantial works were carried out pursuant to the permission during that period,
- The development will be completed within a reasonable time.

Or the development could not go ahead because of "commercial, economic or technical" issues that were beyond the control of the applicant.

Strategic approach to zoning

The act provides that the 'core strategy' shall provide the policy framework for 'local area plans' (LAPs), particularly in relation to zoning at LAP level. The core strategy shall provide details of the location, the size of the area, the phasing of proposed development, the projected population growth, as well as details of retail and transport plans and rural development. There is a focus on sustainable rural housing, with a requirement to provide details of rural areas that are subject to planning guidelines relating to sustainable rural housing issued by the minister.

Default planning permission

The time limits in relation to default planning permissions have been extended. There is an allowance of a further 12 weeks for local authorities to remedy any failure to make a decision. This extension will not be applicable to developments that

While Ireland's penalties are in line with most other European jurisdictions (except Germany, where penalties are harsher), the penalty for the offence on summary conviction is clearly below the minimum threshold of 12 months outlined in the framework decision. Furthermore, the limited penalties under the act take the offence outside the definition of a 'serious offence' under Irish law, affecting both powers of arrest and bail conditions.

"Each member state shall take the necessary measures to ensure that investigations into or prosecution of the conduct referred to in articles 1 and 2 shall not be dependent on a report or an accusation made by a victim of the conduct": The National Consultative Committee on Racism and Interculturalism, in its 2001 report *Prohibition of Incitement to Hatred Act 1989: A Review*, first suggested that an intermediary body be set up to assist the public in using the act.

It is clear that the lack of clarity in relation to the offences and few prosecutions have resulted in a public and NGO sector that are largely ill-informed of how to use the act. The Garda Racial and Intercultural Office has stated that it is currently developing a reporting mechanism for racially motivated incidents, and the office intends to report

these incidents to local garda stations to investigate further. If used correctly, it appears that this would bring Ireland into line with article 8 of the framework decision.

"Each member state shall take the necessary measures to establish its jurisdiction with regard to the conduct referred to in articles 1 and 2, where the conduct has been committed: (a) in whole or in part within its territory, (b) by one of its nationals, or (c) for the benefit of a legal person, that has its head office in the territory of that member state": This section of the framework decision deals with the relatively new and very real threat of racism on the internet. The Irish government, in its 2009 report to the UN Committee on the Elimination of Racial Discrimination, indicated that the term 'publish' in the 1989 act could include publishing on the internet. It is clear, however, that more detail than this is required, including clarity on jurisdiction to include those Irish nationals who publish racist and xenophobic material on sites that are hosted in another jurisdiction, but whose threats and fear are felt here. For example, specific threats and insults against members of the Traveller community living in Ireland may be published on social networking sites hosted in the US by Irish citizens living in Ireland or abroad. Such acts must fall within the jurisdiction of this state according to the framework decision; however, our law is silent on the matter.

There is no question that much improvement to Irish law in the area of racism and xenophobia was needed before the framework decision was introduced. The only question that remains, therefore, is whether Ireland will use this opportunity to bring its laws up to the European standard in order to protect against the deleterious effect of racism and xenophobia on Irish society. G

Siobhán Cummiskey is managing solicitor at the Irish Traveller Movement Independent Law Centre.

LOOK IT UP

- Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law
- NCCRI, *Prohibition of Incitement to Hatred Act 1989 – A Review*, 2001
- *Prohibition of Incitement to Hatred Act 1989*

require an environmental impact assessment.

Enforcement

The enforcement mechanism has been strengthened under the new act. The act will introduce an increase in fines for carrying out unauthorised development. In addition, the seven-year immunity rule with respect to quarrying and peat extraction will no longer apply. The act also contains a mandatory requirement on local authorities to take enforcement action against cases of non-compliant development.

Refusal of planning permission

Planning authorities will have the power to refuse planning permission where the applicant has previously carried out a substantial unauthorised development (which could be a development with no permission whatsoever), or has been convicted of an offence under the *Planning Acts*. If the planning authority intends to refuse planning permission on these grounds, it will be required to serve a notice in writing on the applicant to that effect and that notice shall:

- Specify the non-compliance with a previous permission or condition of a previous permission, substantial unauthorised development, or conviction for an offence under this act, as the case may be, that the authority intends to take into consideration with regard to the proposed exercise of that power, and
- Invite the applicant to make submissions to the authority within a period specified in the notice as to why the applicant considers that the authority should not exercise its power to refuse planning permission. G

Joyce Mortimer is the Law Society's human rights executive.

letters

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

Property Registration Authority 'cannot be serious'

From: Patricia McHugh, Richard H McDonnell Solicitors, Ardee

I note from a conveyancing practice note in the spring 2010 edition of the Dublin Solicitors' Bar Association publication *The Parchment* that, since the coming into force of the *Family Law Act 1995*, the Property Registration Authority (PRA) will not require lodgement of a family home declaration in order to register a title. This being the case, the position is that the practice of the PRA in registering titles without the necessity to lodge a family home declaration puts the registry of deeds titles and land registry titles on the same footing – that is, as solicitors, we do not need family home declarations for registration purposes, but we do need them for the purposes of investigating the title. Not to put too fine a point on it – this is ridiculous.

I can understand the position in relation to registry of deeds titles, where you have a bundle of title documents from which every single disposition/event on title is apparent from the title deeds furnished and, therefore, there is no difficulty satisfying oneself as to compliance with the provisions of the *Family Law Acts* with regard to the various dispositions on title since 1995. However, with Land Registry titles, the only title document furnished is an up-to-date, sealed and certified copy folio and filed plan.

If it is the case, for example, that the current registered owner became registered, say, in 2007, how is any solicitor supposed to know or find out what events on title occurred between the coming into force

"You cannot be serious!"

of the 1995 act and the date the current registered owner became registered? If it is the case that, since 1995, registration was effected without the necessity of lodging a family home declaration then, in this situation, a solicitor will have to trace every Land Registry dealing on that folio back to 1995 to ensure that there are no voidable deeds under the provisions of the *Family Law Act 1995*. This is hugely onerous, time consuming and, consequently, costly because, on the face of any given folio, there is no way of knowing what the history of that title was without physically trawling back through all dealings on that folio going back to 1995.

This simply cannot be, and surely the Property Registration Authority should not be registering any title without an appropriate family home declaration being lodged, particularly when the whole purpose of the property register is to provide a register that is conclusive evidence of the owner's title as appearing thereon, and to do away with the requirement of holding large bundles of title documents to vouch titles. In fact, section 31(1) of the *Registration of Title Act 1964* specifies that a purchaser for value who becomes registered as the new owner is not affected by anything that does not appear on the register (other than the burdens mentioned in section 72 of that act). Surely there is a conflict between the provisions of section 31(1) and the fact that it now appears that the Property Registration Authority is entitled to register a title without the requirement of having to lodge an appropriate family home declaration?

If this is the position, then the register cannot be conclusive evidence of the owner's title as appearing thereon, because if registration is effected without an appropriate family home declaration being lodged, there is no way for a subsequent purchaser to be sure that any prior deed of transfer is not voidable under the *Family Law Acts* without his/her solicitor inspecting all dealings on a folio from 1995 to the date upon which the current vendor became registered to ensure that either:

1) A family home declaration was lodged with the Property Registration Authority, or
2) Tracing the solicitors acting for all previous owners in an attempt to procure appropriate family home declarations from all previous owners.

In the famous words of Mr John McEnroe, "You *cannot* be serious!"

Issues with risk management

Sonia McEntee (on behalf of the Sole Practitioner Network), c/o McEntee Solicitors, Dublin

With insurance renewal time looming, a new risk-management industry has sprouted, selling consultancy services to aid in reducing the cost of cover. From discussions with colleagues, a number of matters have become clear.

We are told this is 'new'. It is not. We have all implemented risk-management procedures since we started in practice. There may well be room for improvement, but at least one insurer has confirmed it will not penalise practices that have not engaged external advisors.

'Engaging advisors will reduce your premium'. It will not. Only where a practice is considered to have implemented good standards in risk management consistently over a period of years is there a *possibility* that premia would be reduced as a result.

The attaining of 'quality marks' will enhance our practices. It will not. The availability of multiple 'standards' will only cause confusion.

There is much that we can do to help ourselves. Assess your practice objectively. Identify the issues. Do you need professional assistance? Can you afford it? Advice paid for is of no benefit unless it is put into practice – which takes time. This is the minimum investment necessary.

Can't get you out

The government has sent a clear message to head-shop proprietors, but Majella Twomey wonders whether the new legislation is merely putting a band-aid on a broken leg

The *Criminal Justice (Psychoactive Substances) Act 2010* was drafted as a response to the numerous 'head shops' that have become ubiquitous in Irish towns and cities in recent years.

Instead of using the controversy surrounding these shops to engage in a serious debate based on empirical data about how best to deal with drug problems in Ireland, the government introduced hard-hitting legislation in an endeavour to rid the country of psychoactive substances – and, ultimately, head shops.

The act makes it an offence for one to sell a psychoactive substance while knowing or being reckless as to whether it is being acquired for human consumption. Section 3 is potentially controversial, as it provides a rebuttable presumption that the accused knew, or was reckless in this regard, where there is a presence of drugs paraphernalia at the place to which the proceedings for the offence relate. A court can take the presence of this paraphernalia into account in deciding whether or not a person falls within section 3. This may well cause problems for the many premises that sell such paraphernalia without, in fact, selling psychoactive substances.

Section 4 of the act is extremely broad, in the sense that it creates an offence of selling an object knowing that it will be used to cultivate, by hydroponic means, any plant in contravention of section 17 of the *Misuse of Drugs Act 1977*. Hydroponic cultivation is the growing of plants in liquid containing nutrients, without soil, and under controlled conditions. The section does not define what an 'object' is and, therefore, makes it quite ambiguous as to what exactly comes within this offence. Again, the vagueness of this section may well create problems for the courts when they are trying to decide what exactly falls within the ambit of an 'object'.

... boy, it's more than I dare to think about

The act intends to also make advertising or promoting the consumption of a psychoactive substance for sale an offence. Further, the giving of information on how or where such a substance may be obtained will also be an offence. This section is, again, quite uncompromising, as it does not require the actual selling of one of these substances, but merely the promotion or advertising of them for sale. In theory, in order to be charged under this section, it would appear that all one has to do is possess one poster promoting the said substances for sale.

The drugs don't work

The act proposes to give powers of prohibition to a garda superintendent. Such a garda may serve a prohibition notice on any person whom they believe is selling, importing or exporting psychoactive substances or advertising such substances. The prohibition order is based purely on the garda's belief. The prohibition order must set out the reasons for the garda's belief. This section gives broad powers to garda superintendents, and it remains to be seen what facts or evidence a garda can use in order to issue such a prohibition order. The act does not set out the circumstances as to how or why a garda might form such an opinion, and the absence of guidelines is something that may cause confusion for the courts in the future.

Section 8 goes onto state that a garda superintendent may go to the District Court if he is of the opinion that a person has not complied with a direction contained in a prohibition notice. The court may then make an order prohibiting that person from engaging in the activities concerned. The court can take a number of matters into account when making the order, such as the presence of drugs paraphernalia and the cost and quantity of the substance being sold or exported. It is important to note that the court can make an order despite the fact that the defendant states that the substance is not a psychoactive substance or that it was not intended or fit for human consumption. In the circumstances, a defendant will find it extremely difficult to mount a defence to this, despite the fact that there may not have been an intention on his or her

viewpoint

# of my head...

part to sell the substances for human consumption.

High society

It is interesting to note that the making of a prohibition order is a civil matter. These will not be made in a criminal context. As a result, the garda superintendent has a low threshold to cross in order to prove his case. If a person fails or refuses to comply with a prohibition order, he shall be guilty of an offence. There is, however, a right of appeal to the Circuit Court, and one can apply to the District Court to vary the order.

If a person is convicted of an offence of selling, exporting, importing, cultivating, promoting the sale of the said substances, or breaching a prohibition order, the court may also, or as an alternative to another penalty, make a closure order. This would effectively mean the closure of a so-called head shop. In addition, failure to comply with a closure order shall be an offence. Again, this section has far-reaching consequences, as the proprietor of such a shop could potentially have the entire shop closed down in circumstances where a superintendent forms an opinion based on what he believes to be a breach of the law. This section may cause potential problems for proprietors who only sell drug paraphernalia and not the outlawed substances themselves. Section 11 of the act does, however, propose that a person who is the subject of a closure order may apply to the District Court to vary or discharge such an order.

The act is designed to give broader powers to the gardaí.

Throwing the baby out with the bath salts?

Sections 12 and 13 allow for members of the gardaí to enter, search and seize places and vehicles and to search suspects. Obstructing a garda or a customs officer in this regard will be an offence.

Magic carpet ride

The penalties for being convicted of an offence under this law are set out in section 20. On summary conviction, a defendant is liable to a fine of up to €5,000 and 12 months' imprisonment, or both. On conviction on indictment, a defendant is liable to a fine or imprisonment not exceeding five years, or both.

It is clear from a cursory glance at this legislation that the government is taking a zero tolerance approach to head shops and psychoactive substances. The act is general in nature in order to circumvent the problem of new psychoactive substances emerging. It was rushed through the Oireachtas at breakneck speed and it is clear that the ultimate aim of the new law is to rid the country of head shops altogether.

"One cannot help wondering if, perhaps, more time should have been spent on researching the reasons why these head shops exist in the first place and endeavouring to tackle the problem at source"

By introducing this legislation, the government is sending a clear message to the proprietors of head shops. However, one cannot help wondering if, perhaps, more time should have been spent on researching the reasons why these shops exist in the first place and endeavouring to tackle the problem at source.

It must be remembered that head shops are a by-product of the drug problem in Ireland and exist because there is a demand for drugs. It is hoped that this new legislation is not merely akin to putting a band-aid on a broken leg. G

Majella Twomey is a Dublin-based barrister.

Blowing the whist

Whistle-blower provisions are slowly becoming a standard feature of new employment legislation. Legal practitioners would do well to familiarise themselves with whistle-blower protection – and its problems. Andrew Sheridan takes us on a whistle-stop tour

Whistle-blowing is the disclosure by organisation members of illegal, immoral or illegitimate practices under the control of their employers to persons or organisations that might be able to effect action. Whistle-blowing is *not* the disclosure of personal employment grievances, nor does it properly include the numerous mandatory reporting requirements affecting solicitors, auditors and charity trustees, for example.

Noted examples of whistle-blowing in this jurisdiction include the disclosure to the Financial Regulator by now former head of Group Internal Audit, Eugene McErlean, of allegations of overcharging and questionable share dealings in AIB, and the disclosures by nurses bringing to light certain well-publicised medical scandals.

Whistle-blower protection provisions arise from a recognition that those who 'blow the whistle' that exposes the serious wrongdoing of others take a laudable risk in doing so and are frequently the victims of reprisal – and so deserve explicit protection. The first in Irish law (in 1998) protected disclosures of suspected child abuse, and the dozen enacted since then have been either (like the first) a response to a perceived acute problem, or they have been created to correspond with reports to new regulatory bodies and are now increasingly being prescribed by international conventions related to corruption and financial crime. Considerable lacunae in coverage persist.

Protection generally takes the form of three related provisions:

1) A shield, protecting those who report a wrongdoing from any liability that would otherwise accrue should the suspicion prove unfounded,
2) A sword, establishing whistle-blower reprisal as a ground for an action, and,
3) As a balance to false reporting, and as a proportionate response to the fear of potential for abuse, it is a criminal offence to make such a disclosure, knowing it to be false.

The shield

The main provision is that those who *report reasonably and in good faith* a suspicion of a qualifying wrongdoing will not be "liable in damages or any other form of relief". Several alternative wordings are also used, though all preclude *any* legal action against the whistle-blower arising from an honest disclosure.

This is typically allied with an extra protection against workplace reprisal, and the wordings of these exhibit substantial material differences. The earlier acts prohibit "disciplinary action" against and "penalisation" of the employee. These are drawn narrowly and appear, on their face, to be limited to formal disciplinary action, and so fail to capture commonly reported harassment, such as 'white-walling' (giving no work to the employee) and the denial of previously available overtime, for example. The Standards in Public Office Commission has stated publicly that such narrow wording provides ineffective protection, and has dissuaded potential disclosures to them.

Later acts provide preferable wider definitions such as "any act or omission by an employer that affects, to his or her detriment, an employee with respect to any condition of his or her employment", and in some instances even include a non-exhaustive list of such actions.

MAIN POINTS

- Whistle-blowing protection provisions
- Protection and the form it takes
- The balance to false reporting
- Ineffective government proposals?

le

These provisions recognise whistle-blower reprisal as a specific wrong sufficient to ground an action allowing the employee to take a case to the Rights Commissioner, seeking an award of up to 104 weeks' pay. The *Communications Regulation Act*, however, declares simply that the person has a right of action in tort and so *quantum* is not limited.

The *Safety, Health, and Welfare at Work Act* and the *Employment Permits Act* provide for compensation of such amount as is just and equitable in the circumstances. This ought, perhaps, to be regarded as the model provision for any further legislation in the area, as examples exist in this jurisdiction of employees who have had their employment terminated after blowing the whistle and have never again found employment at an equivalent level.

The majority of whistle-blower protection provisions include the creation of the criminal offence of *knowingly* making a false disclosure. This is in addition to the loss of the protections afforded to good faith disclosures (which could be expected to leave the false discloser open to a wide variety of civil and, perhaps, criminal sanctions). Some acts, including the *Safety, Health, and Welfare at Work Act*, omit

GOVERNMENT PROPOSALS ON WHITE-COLLAR CRIME

Minister for Justice Dermot Ahern delivered a keynote speech at the Law Society's Annual Dinner on 12 May last, announcing "a series of moves to update and strengthen" the laws against white-collar crime.

The minister revealed measures to effect this "rigorous focus on white-collar crime" comprising a number of requests for consultation documents, a stated intention to shortly propose to begin preparation of a consolidated *Prevention of Corruption Bill*, and the introduction of whistle-blower protections for those who report suspected offences under the *Prevention of Corruption Acts*. This final measure was greeted with positive media coverage as a 'whistle-blowers' charter', surely all the more gratifying given that it was a reiteration of a provision of the *Prevention of Corruption (Amendment) Bill 2008* (presented to the Oireachtas by the minister more than two years before the date of his speech); and one mandated by the UN *Convention on Corruption*, which the state signed in 2003 and remains unable to ratify.

The minister's speech is to be welcomed for focusing the attention of both practitioners and the public on whistle-blower protections and, in particular, on the notion of a whistle-blowers' charter. It might also, unfortunately, be seen as another instance of ardent rhetorical support of whistle-blower protections, masking their slow and patchy substantive enactment.

The government adopted onto the programme for government in 2000 a bill modelled on Britain's *Public Interest Disclosure Act* (PIDA) and one worthy of the term 'whistle-blowers' charter'. It would have protected all those who disclose, in good faith, misgivings of serious wrongdoing to an appropriate authority. The bill enjoyed regular positive ministerial reference, before being dropped in 2006 – stated to be on foot of legal advice, asserting that such a generic provision would be unworkable in this jurisdiction. The details of this advice remain unclear, and it is in interesting contrast to the position in Britain, where PIDA has operated without legal mishap for the past 12 years.

'Sectoral' implementation

The government then adopted formally what had, in the interim, emerged as a *de facto* policy of 'sectoral' implementation of whistle-blower protections. That is, the provision of a patchwork of whistle-blower protections covering the disclosure of specified types of wrongdoing by limited classes of people/employees in certain situations.

The dominant model of coverage has been to append whistle-blower protections to the legislation creating new public oversight bodies, to cover those who disclose suspected offences under the respective acts to the bodies charged with enforcing them. Examples include the *Ethics Acts* (the Standards in Public Office Commission); the *Safety, Health, and Welfare at Work Act 2005* (Health and Safety Authority); and the *Health Act 2007* (Health, Information and Quality Authority), among others.

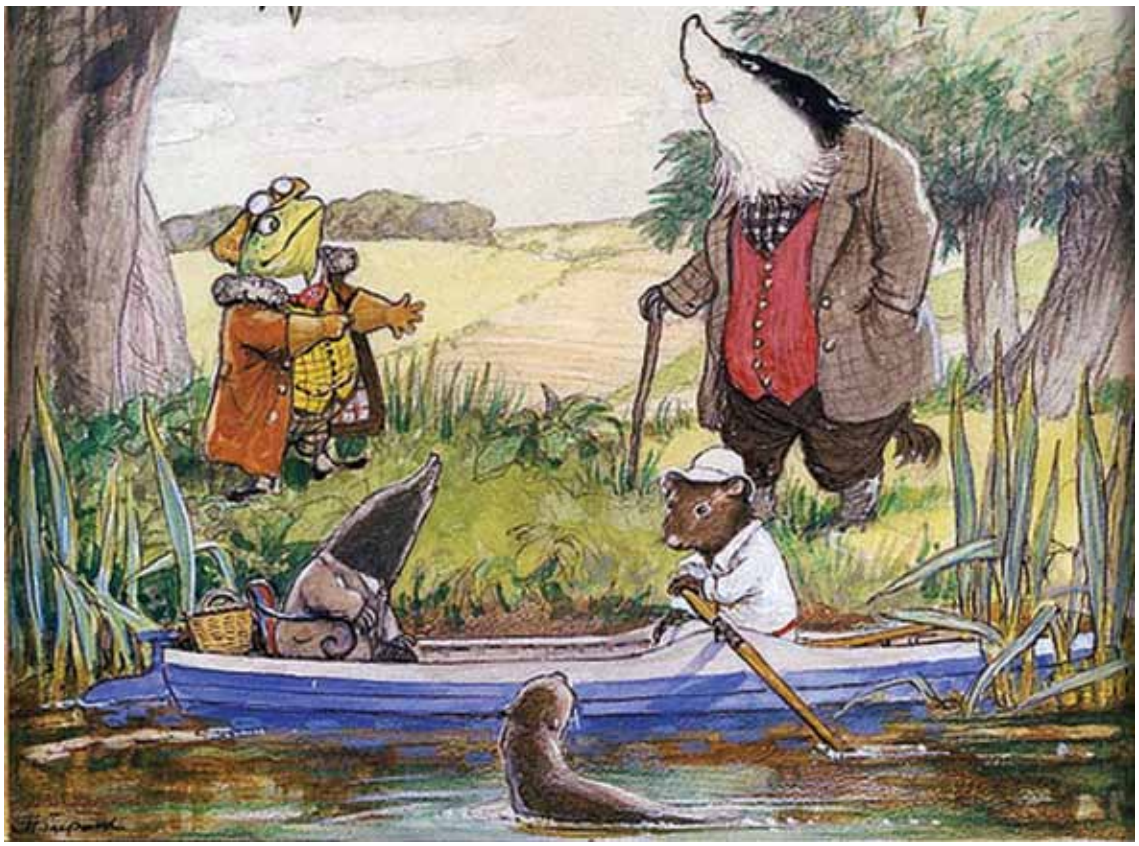
It is instructive to note that no whistle-blower protections were included the legislation creating the Financial Regulator in 2003, which is anomalous in the context. Nor have any such protections been afforded to those who disclose suspicions of the commission of any of the circa 200 indictable offences under the *Companies Acts* – despite comprehensive and emphatic submissions in their favour by the Director of Corporate Enforcement. In light of this, it is disappointing that the minister's speech, promising a regime of "strong laws and regulations to ensure that it is just not possible to play fast and loose with the economic and financial system", did not encompass the remedying of these past failures in their provision.

"No whistle-blower protections were included in the legislation creating the Financial Regulator in 2003. Nor have any such protections been afforded to those who disclose suspicions of the commission of any of the indictable offences under the Companies Acts"

Endemic failure?

The Company Law Review Group, in its annual report of 2007, addressed the advisability of protecting disclosures of suspected offences under the *Companies Acts* and found that "one cannot say that there is any evidence of endemic failure in relation to corporate governance or its enforcement in Ireland that negatively affects the investment climate and which requires enhanced 'whistle-blowing provisions" (chapter 6.4.6.2). This is a statement the CLRG might find difficult to make today, but perhaps the minister remains convinced.

The minister's prioritisation of white-collar crime is welcome, but its effectiveness would be enhanced immeasurably by widening the promised provision of further whistle-blower protections beyond the narrow scope of the *Prevention of Corruption Acts* (under which there were, on average, only four prosecutions per year in the period 2005-2008). It might go even further than white-collar crimes under company law, and those related to the provision of financial services, to include *all serious wrongdoing*, as operates successfully at present in our nearest and most similar neighbouring jurisdiction. *That* would be a whistle-blowers' charter.



The Badger never knew which of his friends had dobbed him in – was it the Rat, the Mole, or the Toady?

penalisation of false reporting.

The penalties for false reporting vary widely and the most severe are provided for by the *Health Act 2007* (up to three years' imprisonment). The penalty under that act is also distinguished by its making criminal any disclosures that a person "reasonably *ought to know* is false" – an objective standard found nowhere else in Irish whistle-blower law, which otherwise uses only a subjective test. This is an unwelcome anomaly.

Despite their profusion, there appears to be a very low incidence of the use of whistle-blower protection provisions in this jurisdiction. This low utilisation may be a function of a lack of awareness of these provisions as a result of their diffusion across the statute book, their absence in places where truly needed, the limited incidence of whistle-blowing and its reprisal – or a combination of all of the above.

Whistle-blower provisions are slowly becoming a standard feature of relevant new legislation (and none more so than with the *Employment Law Compliance Bill*), and practitioners are advised to examine employment conflict situations and other problems presented by clients for the relevance of whistle-blower protections. G

Andrew Sheridan is a practising solicitor and was one of the authors of the Transparency Ireland report An Alternative to Silence – Whistleblower Protection in Ireland *(January 2010). He would welcome hearing of the experiences of any practitioners who have used whistle-blower protections in proceedings. He can be contacted at andrew@sheridansolicitors.ie.*

LOOK IT UP

Protection provisions limited to 'employees' are found in:

- *Competition Act 2002* (certain provisions)
- *Employment Permits Act 2006*
- *Garda Síochána Regulations 2007*
- *Health Act 2007* (certain provisions)
- *National Asset Management Agency Act 2009*
- *Safety, Health and Welfare at Work Act 2005*
-

Provisions applying to 'persons' are found in:

- *Charities Act 2009*
- *Chemicals Act 2008*
- *Communications Regulation (Amendment) Act 2007*
- *Competition Act 2002* (certain provisions)
- *Consumer Protection Act 2007*
- *Health Act 2007* (certain provisions)
- *Labour Services (Amendment) Act 2009*
- *Protections for Persons Reporting Child Abuse Act 1998*
- *Standards in Public Office Act 2001*

Provisions are contained in bills on the order paper:

- *Employment Agency Regulation Bill 2009*
- *Employment Law Compliance Bill 2008*
- *Prevention of Corruption (Amendment) Bill 2008*
- *Property Services (Regulation) Bill 2009*

RISKY BUSINESS

With the PII deadline looming, premiums are unlikely to come down until negligence claims follow suit. A key solution to the insurance crisis is to implement formal risk and quality management strategies, says Caroline Murphy

MAIN POINTS

- PII renewal
- Implementing formal risk and quality management strategies
- How to do it – and why

Managing the ordeal of last year's renewal season for professional indemnity insurance (PII) was a significant challenge for most solicitors. Unfortunately, 2010 will not be much better, with premiums unlikely to come down unless – and until – negligence claims head in the same direction. Implementing formal risk and quality management strategies has now become a key solution to the insurance crisis, and in this article we hope to address how you might do this – and why.

The significant rise in the level of solicitors' negligence claims has left the PII business unstable and unprofitable. If insurers do not take in enough premium to meet the cost of claims, this threatens their solvency and regulatory requirements, and in turn their survival.

As a result, insurers are engaging in their own 'risk management' strategies by tightening control over the nature of solicitors' practices they insure – taking the view that if solicitors can demonstrate the right professional and quality management standards in their practices, there is less of a risk that further claims will occur.

'Claims made'

Because PII cover is provided on a 'claims made' basis, it is the insurer on cover when the claim is notified who has to answer the claim – not the one on cover when the alleged negligent act or omission leading to the claim occurred. This creates a significant problem for insurers who have no way of knowing when accepting a solicitor on cover whether they will have to pay out on expensive claims notified against that solicitor during their period of cover. If in turn they cannot predict and set aside appropriate 'reserves' for claims payments, then it creates a solvency risk. Insurers, therefore, do not want to insure solicitors who might be the subject of negligence claims during their period of cover.

If the level of premium taken in is not sufficient to meet the payment of claims, therefore, an insurer is likely to set higher premiums the following year to make up for any losses.

Cause of claims and complaints

The majority of claims do not, in fact, arise as a consequence of poor technical legal knowledge, but rather as a result of the failure of simple systems and processes, such as failing to supervise staff, failing to check documents properly before they are sent out, and failing to monitor key dates, among others. In fact, the most common denominator in most solicitors' negligence claims over the past 18 months was due to an unfortunate failure in professional standards generally, when solicitors became 'too busy' to check the basics. As banks complete their preparation for NAMA, it is likely that more claims will be uncovered. Insurers will fear that the level of claims they are currently dealing with will be only the tip of the iceberg.

Solutions

The key to resolving these issues involves a 'back-to-basics' approach, requiring better day-to-day supervision and accountability among all legal staff and improving professional standards through the implementation of sound risk and quality-management strategies.

Managing complaints and insurance claims is only one aspect of risk management, however. Proper, thorough and meaningful risk management should

deliver a value to your business over and above the price of insurance: increasing profitability, improving service delivery and competitive advantage, and providing for the long-term sustainability of your business.

In Ireland, many commercial companies, legal aid boards, government bodies and local authorities now require their solicitors to demonstrate strong levels of risk management and quality standards, in addition to technical competence, as a condition of their retainer.

Risk and quality management strategies feature as key performance indicators for most companies, and are a measure of success, profitability and reputational value. There is no reason, therefore, why such strategies should not apply equally to solicitors.

Where to start

In deciding to implement a formal risk and quality management strategy, it is important to ask the following:

- Why are you doing it?
- What are the risks relevant to your business?
- What will risk management mean for you?

WHAT IS RISK MANAGEMENT?

A 'risk' is an actual or perceived threat likely to give rise to a loss to the business if not properly controlled. 'Risk management' involves identifying those risks or threats, and putting effective controls (or safeguards) in place around them so as to minimise the likelihood of their escalating into a loss.

'Risk assessments' are exercises designed to measure and evaluate risk levels and any controls in place, and usually follow an industry-specific and objective audit procedure.

In insurance terms, 'risk' is used to describe the person or property insured, but also the likelihood that claims might be made against that person or property. In general, the higher the likelihood of claims occurring, the higher the 'risk' – and the higher the premium.

Insurers will often engage in 'risk assessments' or 'risk appetite' exercises to make sure that the insurance they are providing does not attract excessive claims, which in turn threaten solvency and profitability. For example, an insurer might despatch a surveyor to carry out a risk assessment of a building to make sure it complies with building regulations, and health and safety legislation, so as to measure the risk of potential injury, loss or damage to third parties that might result in claims.

Where solicitors are concerned, however, insurers are stymied. There is no objective and independent means by which to measure and assess risk in a legal practice, meaning that it is very difficult to differentiate a 'safe' practice – that is, one that is likely to be claims-free – from one that is not.

The self-declaration nature of the proposal form has proved unreliable to insurers as a means to test risk, as we have seen from the recent litigation arising out of the Lynn affair, such that they are now looking for other means to test the 'real life' situation of a practice, rather than relying solely on proposal forms.

What does this mean for you?

To differentiate your practice and seek favourable renewal terms, solicitors will need to show that they have appropriate systems, policies, plans, procedures and processes in place, designed to limit the incidence of complaints and claims.

They will also need to be able to objectively demonstrate how they manage quality, risk and professional standards generally. Demonstrating how staff are supervised and how accountability is managed within your practice is vital.

New editions of old favourites...

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- What value will your risk management strategy deliver at renewal?
- How will you go about implementing risk management?
- How will you differentiate your practice from others if you don't? In other words, what's your back-up strategy?
- How will you link risk management to claims management?
- Who will do all of this for you? You? A project team? How long will it take?
- How much will it cost?

Time to change

If solicitors are only motivated to honestly and objectively critically evaluate their practices, procedures and management styles as a driver for individual insurance requirements, they will fail to understand their collective responsibilities to themselves, their profession and the next generation of solicitors and trainees.

Each solicitor has to take personal responsibility for his or her own role in the task, support fellow colleagues and employees, and actively look for ways to assist. For some practices, this may require some behavioural and cultural changes. For others, risk may already be well managed within the practice, but the challenge will be how to present this in an objective way to insurers.

When engaging in any risk management exercise, you will need to:

- Stand back and take a hard look at how you have been running your business,
- Park any cynicism or pride and be prepared for shocks,
- Be open to change and improvements,
- Accept personal responsibility for the future of your business and that of your people,
- Involve your junior people as well as senior people in creating solutions, and
- Create an open and consultative environment capable of encouraging accountability.

If you can do this, and remain positive, you are halfway there!

Things to avoid

- Short-term solutions, implemented only in response to an unwanted obligation – insurers will see through that and may not reward your efforts,
- Grabbing onto the nearest solution out of a sense of panic, without testing it for value,
- Paying for outside help without understanding the process and what it will do for you.

Check in particular with your broker or insurer as to whether they will recognise your efforts, or any particular strategy you adopt, and regard these favourably at renewal. Not all insurers and brokers operate the same strategies and will view some solutions differently to others.

Highest standards

The issues facing the solicitors' profession today are much bigger than 'risk assessments' and 'risk management', and so the focus needs to move away from thinking about these terms solely in conjunction with insurance.

Rather, the objective should be to run a safe, sustainable and responsible practice capable of meeting the highest level of professional standards, regardless of who is seeking them. If solicitors happen to receive favourable insurance renewal terms, then so much the better.

As managers, and partners, by insisting on and achieving the highest level of professional, quality and risk management standards through how you manage your staff and your business, you will not only manage the cost of your insurance, but more importantly, help restore reputation, value and consumer confidence to a weary and anxious profession.

You will also help guide and develop your staff and create stronger leaders for your practice to help support you. This will take time, effort, resources and a genuine willingness to be open to change. Above all, the question should not be whether you are willing to do this at all, but rather, whether you can afford not to. G

Caroline Murphy is managing director of Legalwise, management consultants to the legal services industry. She is a former practising solicitor with 15 years' experience in insurance litigation.

LOOK IT UP

Literature:

- *Guide to Professional Conduct of Solicitors in Ireland* – available online at www.lawsociety.ie – is a reminder of the core values of the profession, which, if followed, would help to reduce risk. The Law Society's website is also a useful reference point for precedent documentation, such as client-care letters and information on money laundering.

RISK MANAGEMENT 'TO-DO' LIST

- Establish a project team or a key person in the practice, preferably at partner level, to oversee the design and implementation of any risk strategy.
- Research your options and make sure they are right for your practice. There is no point in engaging in a process that no one really wants to execute.
- Check with peers and colleagues to see what they are doing in case you can learn from their experience.
- Decide how you are going to communicate your risk management efforts to your insurer or broker on renewal – will you prepare your own evidence as to what you have done, or rely on the report of an independent expert?
- Invest in training for your people and help them understand what risk management means for them on a day-to-day basis.
- If you seek independent advice, ensure you get value for money.
- Where costs are a particular challenge, look to your own internal resources and see if you can pull a solution together based on the collective knowledge and input of your staff.
- Appoint a risk manager to manage and review your strategy into the future.

Consumer

The new *Consumer Credit Regulations* implement the *Consumer Credit Directive* into Irish law. Max Barrett considers some aspects of the regulations and the changes they make to previously-existing Irish consumer credit law

On 11 June 2010, the *European Communities (Consumer Credit Agreements) Regulations 2010* came into effect. The regulations implement the *Consumer Credit Directive* (Directive 2008/48/EC) into Irish law and represent the last legislative step in a process that began in September 2002 with the European Commission's initial proposal for a new consumer credit directive.

The regulations apply only to certain credit agreements with 'consumers'. The definition of the term 'consumer' in the regulations accords with that in the *Consumer Credit Act*, being "a natural person who is acting, in the course of a transaction to which these regulations apply, for purposes outside his or her trade, business or profession".

This definition is quite different from that which pertains under the *Consumer Protection Code*, the pre-eminent regulatory code applicable to entities regulated by the Irish Financial Regulator. This difference of definition between the regulations and the *Consumer Credit Act* on the one hand, and the code on the other, has the effect that an array of persons excluded from the protections of the regulations and the act as non-consumers are afforded a (different and separate) suite of protections as consumers – including some protections specifically related to loans – under the *Consumer Protection Code*.

MAIN POINTS

- ***European Communities (Consumer Credit Agreements) Regulations 2010***
- **The new regulations apply only to certain credit agreements with 'consumers'**
- **Difference of definition between the regulations, the *Consumer Credit Act* and the *Consumer Protection Code***

Credit agreements

Not all credit agreements come within the scope of the regulations. Among the more significant forms of credit agreement excepted from their scope are credit agreements secured on property, credit agreements whose purpose is to acquire or retain property rights in land or in an existing or projected building, and credit agreements involving a "total amount of credit" of less than €200 or more than €75,000.

As regards the cash thresholds below/above which the provisions of the regulations apply, a couple of comments may be made. First, there are no such thresholds in the *Consumer Credit Act* or the *Consumer Protection Code*. Second, the thresholds when set in legislation seem almost cast in stone, but, during the EU legislative process, the figures of €50,000 and €100,000 were alternatively suggested as the upper threshold of agreements to which consumer credit legislation should apply. Even the lower threshold was the subject of some comment, the more expansive 'less than €200' threshold being preferred over a €500 threshold that was suggested in the European Parliament.

Advertising

Regulation 7 requires that any advertising concerning credit agreements governed by the regulations that indicates "an interest rate or any figures relating to the cost of the credit to the consumer" must include certain standard information. The regulations are entirely consistent with article 4(2) of the directive in this regard. By way of justification for the provisions in the directive concerning advertising, the recitals thereto state that: "Consumers should be protected against unfair or misleading practices, in particular with respect to the disclosure of information by the creditor, in line with [the *Unfair Commercial Practices Directive*] … However, this directive should contain specific provisions on advertising concerning certain agreements as well as certain items of standard information to be provided to consumers in order to enable them, in particular, to compare different offers."

Clearly, consumers should be protected against unfair or misleading practices. However, as consumers are, under the directive/regulations, required to be provided with an abundance of information "in good time before a consumer is [or becomes] bound by a credit agreement", it could perhaps be queried whether there is undue duplication between the advertising and the general information provisions of the directive/regulations in this regard.

Existing agreements

The regulations are of limited application to credit agreements that were already in existence on 11 June 2010. Of such credit agreements, only 'open-end' credit agreements are caught in part by the

choice

regulations; otherwise they do not apply. The term 'open-end' is not defined in the regulations (or in the directive). However, the term presumably is intended to capture credit agreements that are ongoing and do not anticipate a final repayment date on which a last payment will be made and the agreement terminated.

Pre-contractual information

Regulations 8 and 9 require the provision of certain pre-contractual information concerning, for example, the identity of the creditor and certain information regarding the proposed credit agreement. In the case of regulation 8, the requisite information must be provided by means of a 'Standard European Consumer Credit Information Form' (a SECCI). In the case of regulation 9, the requisite information "may" be provided by means of a 'European Consumer Credit Information Form' (an ECCI). In fact, there seems every prospect that ECCIs will come typically to be provided in instances where regulation 9 applies, if only because there seems little point for creditors to reinvent the wheel and devise alternative means of supplying the requisite information under regulation 9, when providing an ECCI offers a ready and simple means of doing so.

The intention behind the provision of all this information is to enable a consumer to compare different offers in order to take an informed decision on whether to conclude a credit agreement. In the case of information required under regulations 8(1) and 9(1) respectively, such information must be provided "in good time before a consumer is bound by a credit agreement or an offer of credit" (regulation 8(1)) or "in good time before a consumer becomes bound by a credit agreement or an offer concerning a credit agreement" (regulation 9(1)).

What constitutes "in good time" is not defined in the regulations. As breach of either regulation by a creditor or credit intermediary constitutes an offence, creditors and credit intermediaries will clearly want to err on the side of caution when determining what constitutes "in good time".

This wording received some attention during the EU legislative process, it being suggested in the European Parliament that the words "in good time before" be replaced with "before". Such a change of wording would, of course, have significantly lowered the level of protection that the directive/regulations now afford consumers, in that the last-minute provision of information would satisfy an obligation that it be provided before (but would not satisfy the requirement now in regulations 8(1) and 9(1) that it be provided "in good time before") a consumer is bound.

Creditworthiness

Under regulation 11, before concluding a credit agreement with a consumer, a creditor must assess the consumer's "creditworthiness" on the basis of "sufficient information", "where appropriate[ly]" obtained from the consumer and "where necessary" on the basis of a consultation of the "relevant database". Where the total amount of credit is changed after a credit agreement is concluded, the creditor must update the financial information at its disposal concerning the customer and, before agreeing any "significant increase" in the total amount of credit, must reassess the consumer's creditworthiness.

None of the quoted terms are defined, and there is clearly some leeway inherent in certain of the phrases that may, perhaps, make it more difficult to establish a clear breach of regulation 11. Such a breach, whether by a creditor or a credit intermediary, is a criminal offence. The most obvious database to which an Irish creditor institution would seem likely to refer is that operated by the Irish Credit Bureau (ICB).

Regulation 12(1) requires that, where a consumer's credit application 'is rejected on the basis of the consultation of a database', the creditor must 'inform the consumer immediately and without charge of the result of the consultation and of the particulars of the database consulted'

Database access

Regulation 12(1) requires that, where a consumer's credit application "is rejected on the basis of the consultation of a database", the creditor must "inform the consumer immediately and without charge of the result of the consultation and of the particulars of the database consulted". The only exception to this requirement is where provision of such information is prohibited by another law or would be contrary to public policy/security objectives. Perhaps the most obvious example of such an objective would be where disclosure of such information is prohibited by anti-money-laundering or anti-terrorist-financing legislation.

It is not entirely clear from the wording of regulation 12(1) whether the information obligation established thereby applies only where the sole reason for the rejection is the information obtained from a particular database. That seems the most natural reading of regulation 12(1). However, given that a creditor or credit intermediary who contravenes a provision of regulation 12 is guilty of an offence, it may be that creditors/credit intermediaries will tend to err on the side of caution and perhaps invariably advise a consumer of the relevant details when a database has been consulted and such consultation has been a factor (even if not the sole factor) for rejecting a credit application.

Mandatory information

Regulations 13, 15 and 21 are concerned with certain information that must be included in credit agreements and that must be provided in respect of overdraft facilities. Regulation 14(1) requires that

LOOK IT UP

Legislation:

- *Consumer Credit Act 1995*
- *Consumer Credit Directive* (Directive 2008/48/EC)
- *Consumer Protection Code 2006*
- *European Communities (Consumer Credit Agreements) Regulations 2010*
- *European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004*
- *Unfair Commercial Practices Directive* (Directive 2005/29/EC)

consumers be advised by creditors of changes in the borrowing rate before the change enters into force.

Although regulation 14(1) does not expressly prohibit the giving of such advice by way of advertisement, it would be a courageous creditor who elected to issue advice in such a way given that the requirement in regulation 14(1) is that a creditor be pre-advised of borrowing rate changes, a breach of regulation 14(1) by a creditor is a criminal offence, and there is no assurance that a particular creditor will notice an advisory advertisement, even if published, for example, in a number of national newspapers.

In an age when consumers often live abroad for periods of time and/or change their place of residence from time to time, it is eminently possible that correspondence sent by a creditor to a particular consumer's last-known address may never, in fact, be received by that consumer. This being so, the *Consumer Credit Directive* (and hence the regulations) might perhaps have provided for advice to consumers to be effected through a combination of advertising and direct contact, so as to better ensure that the required information is provided in all instances.

Withdrawal

Under regulation 17, a consumer may, within 14 calendar days after the date on which the credit agreement is concluded – or (if later) the day on which the consumer receives contractual terms and conditions and information in accordance with regulation 13 of the regulations – withdraw from a credit agreement without giving any reason. This withdrawal period is akin to the 14-day cancellation period that pertains, for example, under the *Distance Marketing Regulations*. A similar but shorter 'cooling-off' period arises under section 50 of the *Consumer Credit Act*, which allows for a consumer to withdraw from certain forms of credit agreement by giving written notice of the withdrawal. Perhaps surprisingly, the right of withdrawal was harshly criticised during the EU legislative process by the rapporteur of the European Parliament's Committee on Legal Affairs and the Internal Market, who wrote: "Granting the right of withdrawal is almost tantamount to encouraging consumers to enter into obligations without due reflection. It sends the wrong message and is diametrically opposed to the principle of assuming responsibility for one's actions and the underlying principle of private law, namely that contracts must be honoured. All citizens must realise that legal transactions entail obligations as well as rights and that they should consider the possible consequences before issuing legal declarations. There is no objective justification for a right of withdrawal in respect of the contracting of credit agreements."

This criticism did not prevail, and the right of withdrawal is a feature of the directive/regulations, and is a right that, consistent with the directive and pursuant to the regulations, cannot be waived or otherwise circumvented.

Early repayment

Regulation 19(1) confers on consumers a right at any time to discharge fully or partially his or her obligations under a credit agreement. In such instances, the regulations provide that the consumer "is entitled to a reduction in the total cost of credit to the extent of the interest and the costs for the remaining duration of the agreement". Under regulation 19(2), as under the directive, and subject to various requirements, "the creditor is entitled to fair and objectively justified compensation for possible costs directly linked to the early repayment if the early repayment falls within a period for which the borrowing rate is fixed".

Given that these are possible and not actual costs, they could perhaps be contended to be notifiable "charges" within the meaning of section 149 of the *Consumer Credit Act*. Any compensation may not exceed certain amounts prescribed by regulation 19(3) and there are various prescribed instances in which no entitlement to compensation arises.

Offences

Under article 23 of the directive, member states are required to introduce "effective, proportionate and dissuasive" penalties for infringements of national provisions adopted pursuant to the directive. Under the regulations, breach of any of regulations 8, 9, 11, 13, 15, 21 or 23 constitutes a criminal offence. Regulation 25 prescribes the significant penalties for offences and continuing offences committed under the regulations.

The regulations represent a necessary updating of existing EU consumer credit law and contain many valuable protections for consumers. A welcome future development would be a reform of Irish consumer credit law that would see all relevant measures (including, where appropriate, such related requirements as presently arise under the *Consumer Protection Code*) being consolidated into a single act. G

Dr Max Barrett, solicitor, is group company secretary with Anglo Irish Bank. Any opinions expressed in this article are entirely personal.

Protecting

MAIN POINTS

- Unfair dismissal and pension loss
- The role of the Employment Appeals Tribunal in assessing claims
- Things to consider when assessing claims for pension loss

the nest egg

The present economic circumstances are causing greater numbers of employees to claim unfair dismissal before the Employment Appeals Tribunal. Paul Twomey argues that practitioners should always consider pension loss when advising their clients in such matters

"*Pension loss can be a significant factor in compensation levels … the value of the loss of the employer's contribution and the loss of future pension rights must be calculated*" (*from* Compensation in Dismissal: Employment Law and Practice).

As the world economy experiences the most challenging period in a lifetime, Irish businesses struggle to survive and the prospect of losing their jobs looms large in many people's minds. The *Unfair Dismissals Act* came into force during another period of economic instability and, with it, the legislature sought to regulate the terms under which dismissals may occur legally. It also provided redress for employees who suffered loss as a result of their employers' contravention of the law. Prior to the 1977 act, employees relied on the contractual liability of employers for wrongful dismissal, and could only recover limited damages for loss suffered as a consequence of such a dismissal. The act provided for redress, in claims for unfair dismissal, from a rights commissioner, the Employment Appeals Tribunal and/or the Circuit Court.

DID YOU KNOW?

There have been relatively few cases before the EAT that resulted in the maximum statutory compensation being awarded but, of those cases, several have involved claims for loss of pension rights.

Have your cake and EAT it

Section 7(1)c of the 1977 act (as amended in 1993 by the *Unfair Dismissals (Amendment) Act*) provides that the Employment Appeals Tribunal (EAT) is limited, in that it may award compensation subject to a maximum of 104 weeks' remuneration for financial loss attributable to the dismissal, as is just and equitable, having regard to all the circumstances.

Section 7(3) provides that "financial loss in relation to the dismissal of an employee includes any actual loss and any estimated prospective loss of income attributable to the dismissal and the value of any loss or diminution, attributable to the dismissal, of the rights of the employee under the *Redundancy Payments Acts 1967 to 2007*, or in relation to superannuation".

Clearly, the act allows for loss of pension rights to be included when calculating a claimant's overall loss. The inclusion of this head of loss in any claim before the EAT serves to increase the overall award that may be made by the EAT, however inadequate the statutory upper limit for compensation actually awarded may be.

If the claimant has successfully gained employment following an unfair dismissal, he has satisfied the requirement that he mitigate his loss. The loss suffered, then, is the loss of income for the period since dismissal for which he was unemployed, together with the difference in remuneration if the new employment pays less than the original position.

In these cases, pension loss may be the most significant loss the claimant has suffered, but, nonetheless, it must be pooled together with the loss of other fringe benefits, such as a car allowance or payment of health insurance premium. If, however, the claimant has failed to regain employment after an unfair dismissal and has attempted to find alternative employment, then he has attempted to mitigate his loss. In such a case, the loss suffered is effectively all pecuniary loss suffered directly as a result of the unfair dismissal. This loss includes the value of the remuneration loss, opportunity loss attached, the value of future employer pension contributions, and all other associated fringe benefits. Pension loss is often overlooked.

There are, broadly speaking, two different types of pension scheme that an unfairly dismissed employee may have been a member of – the differing schemes mean that different types of loss are suffered by a claimant:

- *Defined contribution schemes* involve accumulating a sum of money through contributions from the employer, the employee, or both, and the final sum being used at retirement to purchase the pension. The sum that has accumulated at retirement remains invested for the benefit of the employee. If the employee is unfairly dismissed, the loss suffered amounts only to the contributions that the employer would have made to the scheme had the claimant remained employed until retirement age. If the claimant gained employment following dismissal, he has the option to finance further personal contributions from his new remuneration and to move the existing pension funds to another scheme with his new employer, or to leave the funds where they are. As a consequence, EAT compensation for the loss of future employer contributions would be adequate to make amends for his entire loss.
- *Defined benefit schemes* allow for pension income to be calculated as a portion of the employee's final salary. In cases of unfair dismissal, the employee will retain the value of the contributions, and this will be retained as a potential deferred benefit until retirement. The value of the pension the claimant was due to collect at retirement can be difficult to calculate. The loss that must be claimed before the EAT will, however, be the difference in the value of the deferred benefit and the value of the pension that would have been collected at retirement. If the tribunal is asked to consider loss of future employer contributions to a defined benefit scheme, then the tribunal must attempt to predict the final salary of the claimant had he stayed in employment until retirement. Actuarial reports typically include variables such as the claimant leaving the job voluntarily or for legitimate involuntary reasons, such as a wind-up.

"There are, broadly speaking, two different types of pension scheme that an unfairly dismissed employee may have been a member of – the differing schemes mean that different types of loss are suffered by a claimant"

On the menu

Practitioners advising either employers or employees in such circumstances should, in relation to pension loss, consider the following:

- Is this an unfair dismissal?
- Is there a pension loss claim?
- If so, what is the nature of the pension scheme of which the claimant was a member?
- Has the claimant gained new employment?
- If so, what kind of pension, if any, is in place in the new employment?

These questions will lay the groundwork for assessing the claimant's financial loss arising from the unfair dismissal. Precise calculations are always helpful when establishing a claim before the EAT and will help attempts to settle – but with one caveat. The use of this sort of support data does not mean the tribunal will defer in all cases to the statistical analysis of the claimant, and independent reports may be

THE GREAT BRITISH BANGER

Recent jurisprudence in Britain has recognised the difficulty in assessing accurately future pension loss.

The recent case of *Aegon* is instructive of the current British position regarding pension loss compensation. The claimant had been unfairly dismissed and had undertaken new employment immediately after her dismissal. The new package in total was actually more beneficial than the original employment, but she had been forced to move from a very attractive pension arrangement to a less beneficial pension arrangement as a result of the dismissal.

Unfortunately, inside six months of commencing the new employment, the claimant resigned in circumstances where she claimed constructive dismissal. The English Court of Appeal was asked to consider the tribunal's award and their method of calculation of same and, more specifically, the liability of the first employer for the losses suffered by the claimant after her second position terminated.

The tribunal had found that the respondent was liable for the continuing pension loss, but not liable for loss of earnings. Ultimately, the court found that the tribunal had erred in considering that the new employment had broken the chain of causation with regard to loss of earnings, while refusing to apply the same logic to the pension loss. The court found that there should be no difference in the principles applied to both kinds of loss.

Overall, there was no loss of earnings suffered, as the new package was actually more beneficial than the old package, and to differentiate the pension simply as a second category of loss deserving of different methods of calculation was fundamentally incorrect. In those circumstances, the claimant's loss was practically zero.

LOOK IT UP

Cases:

- *Aegon UK Corp Services Ltd v Roberts* [2009] WECA Civ 93
- *Fox v Ashling Hotel Ltd* UD 108/1978
- *Leggett v Barry's Tea Ltd* UD 207/1989
- *Maguire v Ofrex Group (Ireland) Ltd* UD 90/1980
- *O'Neill and O'Connor v PMPA* UD 124 and 130/1980

Legislation:

- *Unfair Dismissals Act 1977 to 2007*

Literature:

- *Compensation in Dismissal: Employment Law and Practice*, Ercus Stewart and Nicola Dunleavy (FirstLaw 2007)

requested. The tribunal may be better able to consider accurate forecasting to a greater degree with the aid of independent actuarial advice, as in the cases of *O'Neill and O'Connor* and *Fox*. In addition, independent actuarial advice may be requested by the tribunal where the claimant's own actuarial calculations have been called into question by the respondent, as in the case of *Maguire*.

To avoid the difficulty, delay and expense of actuarial disagreement, the parties may agree to the appointment of a particular professional at the outset, which proved successful in *Leggett*. In that case, the tribunal allowed the agreed calculation of the claimant's past pension contributions, in addition to "contributions for a period in which the tribunal considers the claimant will be unemployed".

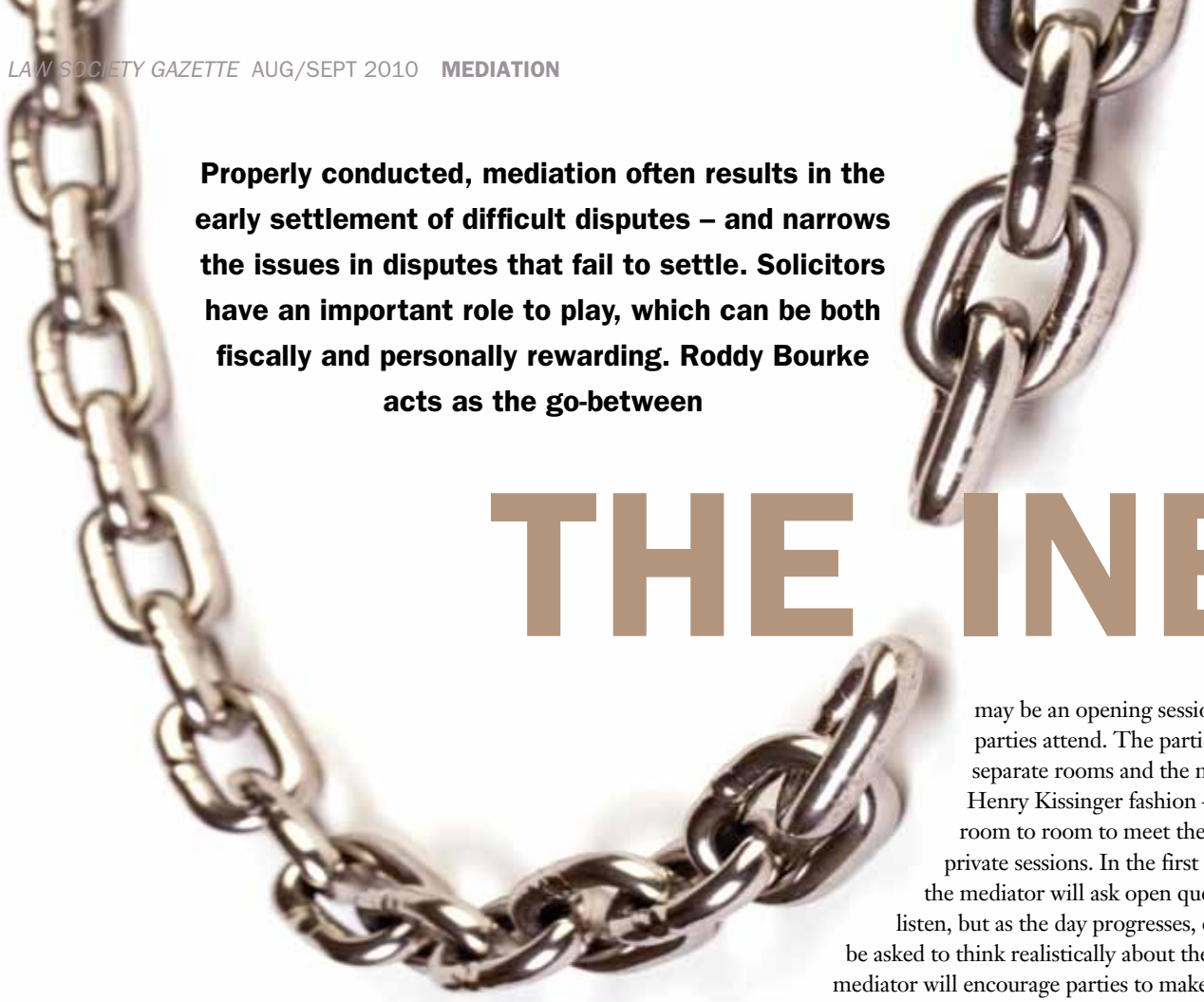
The latter period was arrived at by the tribunal choosing not to rely rigidly on empirical evidence. The practitioner must be satisfied that the expense involved in using actuarial evidence is of overall benefit to the claimant in terms of the amount he stands to gain in pension-loss compensation. It may be more beneficial to argue the case before the EAT, without the use of actuarial evidence, and to invite the tribunal to use a more common-sense approach.

The present economic circumstances will, no doubt, cause greater numbers of clients to claim unfair dismissal before the EAT. Practitioners should always consider pension loss as a potential head of loss in any such claim. Ultimately, it will be for the tribunal to decide whether the position before and after the dismissal warrants compensation for pension loss, but initially pleading the loss is the obvious first step in seeking such an award of compensation. G

DID YOU KNOW?

Many employers are currently investing only in schemes where the employee is willing to contribute themselves. The employer contributions will then be calculated in ratio to the employee's own personal contributions.

Paul Twomey is a barrister with a special interest in employment law matters. (The author wishes to thank Ercus Stewart SC and Niall Beirne BL for their kind input and assistance.)



Properly conducted, mediation often results in the early settlement of difficult disputes – and narrows the issues in disputes that fail to settle. Solicitors have an important role to play, which can be both fiscally and personally rewarding. Roddy Bourke acts as the go-between

THE INB

MAIN POINTS

- **Mediation – structured negotiation**
- **Choosing the right mediator**
- **Important duties of the mediator**

Mediation is not a wishy-washy process, nor a distraction in litigation or arbitration. Properly conducted, mediation often results in the early settlement of difficult disputes. Even where the case does not settle, mediation usually narrows the issues in dispute. Further good news is that solicitors have a very important role in mediation. They can earn good fees too, and get considerable personal satisfaction from the process.

Mediation is structured negotiation, where a neutral, trained person helps parties to settle difficult disputes, typically in the course of a day's meetings. It is private and without prejudice. There is no judge or adjudicator or hearings. If, during the mediation, it becomes clear that the parties do not wish to settle, the mediation will be abandoned.

The mediator does not give judgment on the case. His or her role is to listen to each side's case (in the absence of the other party) and to encourage the parties to be realistic. Where it seems that settlement may be possible, the mediator will encourage the parties in the direction of settlement, but the power to settle is in the hands of the parties only. Importantly, the mediator cannot tell one party what the other side has told him or her without the other side's permission.

Shuttle diplomacy

Before the mediation takes place, the parties exchange short written statements of the key points in their case. At the mediation, in a hotel or other facility, there may be an opening session that all parties attend. The parties then occupy separate rooms and the mediator – in Henry Kissinger fashion – goes from room to room to meet the parties in private sessions. In the first half of the day, the mediator will ask open questions and listen, but as the day progresses, each party will be asked to think realistically about their case. The mediator will encourage parties to make proposals and will remind everyone of the uncertainties, stresses and costs of litigation and the value of settlement. If the parties decide to settle, the mediator will help finalise a written settlement agreement.

Grey hairs may help

Picking the right mediator is crucial and asking colleagues for the name of a good mediator is often a good way of finding the right mediator for the case.

The mediator should be accredited (trained), but the role involves more than that. Mediation requires human judgement, tact and communication skills. The mediator must work and concentrate intently throughout the mediation, so the job requires much energy and patience. Grey hairs and a reassuring manner can help, too!

Mediators often start off, after their training, by taking the role of assistant mediator with an experienced mediator in order to build up experience, which in turn may lead to justified confidence in their ability to undertake this difficult role. Being a lawyer is a good background for a mediator, as lawyers are trained to deal with confidentiality and dispute resolution. Lawyer mediators should remind themselves, however, that legal issues may be only part of a dispute. Commercial and personal issues may be more important.

When selected, the mediator will usually write to the parties' lawyers, setting out details of the appointment and requiring the signing of a confidentiality agreement by all.

The mediator's fees are usually split among the

ETWEENERS

parties, and are often based on what the mediator normally charges for his or her professional time. The mediator in a significant dispute will usually spend a day in preparation, and a day at the mediation. The parties generally split the costs of mediation, and these costs are not treated as costs in the cause.

An ethical duty

In my opinion, solicitors acting for a client in a difficult dispute have an ethical obligation to advise their clients about whether mediation might help solve their case. Many clients may decide not to mediate, and will prefer to tough things out at trial to win, or try to get a better settlement at the door of the court. Others may cynically go through the motions at mediation, without trying to resolve the case and hoping to get insights into their opponent's case.

But clients should be told what mediation may achieve, including the possibility that the parties may be able to do business again in the future by avoiding the blood-letting of trial. The strongest litigation cases can go wrong, too, and even 'successful' litigants may find that trial can carry a high price by way of distraction, damage to reputation and irrecoverable costs. The spectre of company insolvency adds to the uncertainties of litigation in the current recession.

Also, the judiciary encourages mediation, as it helps avoid unnecessary trials. Mediation, too, is in tune with the spirit of the times in litigation. There is usually less to be gained by letting a case go to trial in the era of case management than there was in the past, where 'trial by ambush' was the norm.

What does the solicitor do?

It is a good idea to do a short mediation training course, even if a solicitor never intends to become a mediator, as training will help the solicitor in acting for his or her clients in mediation. The solicitor has several important duties once the client decides to try to have the case mediated.

First, the solicitor will raise the subject with the other side, and seek to get their agreement to proceed to mediation. Picking a suitable mediator and preparing for the mediation, including drafting a statement of the facts and points in issue, requires careful work. The solicitor should reach consensus with the other side to an agreed book of relevant documents for the assistance of the mediator.

The solicitor should make sure, too, that if the client is a company or organisation, that its representative at the mediation has sufficient authority to agree settlement of the case. The solicitor and the client will attend the mediation, and, with the client, the solicitor will take part in discussions with the mediator. The solicitor will help the client assess what he or she truly wants in the dispute and what concessions might sensibly be made to settle the dispute. Lastly, if settlement is achieved, the completion of a written settlement agreement is an essential task.

All this work can be done perfectly well by an experienced solicitor, without assistance from counsel, as in a mediation there is no judge or traditional, counsel-orientated, advocacy. (In larger cases, though, working with a counsel may spread the burden.) The solicitor's thorough knowledge of the facts of the case and of what his or her client wants will be essential to the success of mediation.

The economics of mediation

Given that the solicitor has to do the spadework in investigating and putting together the client's case, a solicitor can make good money in acting in a case that settles at mediation. It is true that sometimes a lengthy trial will produce greater returns for a solicitor, but weighed against that are the benefits of early payment of fees where the case settles well before trial and the inestimable glow from having done a good job in the client's interest. G

Roddy Bourke is vice-chairman of the Law Society's Arbitration and Mediation Committee and a partner in McCann FitzGerald Solicitors, Dublin.

LAW SOCIETY PROFESSIONAL Training

Law Society Professional Training Programme • September – November 2010

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
21 Sept	An introduction to energy and environmental law (Dublin)	€105	€140	**2.5** General by group study
22 Sept	*Civil Partnership Bill 2009* – Implications for family, conveyancing and taxation practitioners (Dublin and via video-link to Cork)	€210	€280	**5** General by group study
30 Sept	New probate and trust essentials – legislation and practice update 2010 (collaboration with STEP Ireland) (Dublin)	€147	€196	**3.5** General by group study
1 Oct	Proofing your practice: documents and files (Cork)	€50	€86	**1.5** Management and professional development skills
1 Oct	*Adoption Bill 2009* – implications for child law practitioners (Dublin)	€126	€168	**3** General by group study
7 Oct	Time mastery for lawyers – world-renowned time master shares his tips (Dublin)	€168	€224	**3** Management and professional development skills by group study PLUS **1** regulatory matters**
8 Oct	Criminal litigation update 2010 (collaboration with the DSBA) (Dublin)	€136	€168	**3** General by group study
11 Oct	Undertakings – tips and traps (Cork)	€99	€165	**2** General by group study PLUS **1** regulatory matters**
14 Oct	Annual property law conference (Dublin and via video-link to Cork)	€126	€168	**3** General by group study
4 Nov	Contract law update 2010 (Dublin)	€126	€168	**3** General by group study
11 Nov	Undertakings – tips and traps (Ennis)	€99	€165	**2** General by group study PLUS **1** regulatory matters**
25 Nov	Annual family law conference 2010 (Dublin and via video-link to Cork)	€231	€308	**5.5** General by group study
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Law Society Professional Training Programme • September – October 2010

DATE	EVENT (INCLUDING SPEAKERS FEE*)	DISCOUNTED FEE	FULL	CPD HOURS
19 Oct	Innovation, entrepreneurship and corporate governance (collaboration with CIMA Ireland) Speakers: • Paul Appeleby – Director of Corporate Enforcement • Padraig O'Ceidigh – solicitor, founder and executive chairman, Aer Arann • Dr Chris Horn – founder, IONA Technologies • Andrew Harding – CIMA executive director • Eileen Roddy – head of CIMA Business School	€185	€220	**6** Management and professional development by group study
18 Sept	International financial services law – capital regulation of credit institutions – *Basel* and EC requirements	€298	€397	**2** General by group study
25 Sept	International financial services law – international funds – legal and regulatory issues	€298	€397	**2** General by group study
2 Oct	International financial services law – alternative investment funds and the AIFM directive	€298	€397	**2** General by group study
9 Oct	International financial services law – international loan facilities	€298	€397	**2** General by group study
16 Oct	International financial services law – syndicated lending	€298	€397	**2** General by group study

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Gone fishing!

Among the more interesting solicitor social outings in recent years have been events organised by the Lawyers' Fishing Club of Ireland – a unique alliance of enthusiastic fishing 'legal eagles', drawn from both the bar and members of the Law Society, *writes John Geary*.

The annual weekend away is usually held in May every year, with the odd excursion out of the office throughout the summer. This year's trip saw the gathering heading for Co Kerry to fish Lough Currane, near Waterville. Some excellent catches of sea trout were reported.

In more recent years, a growing number of British lawyers are crossing the water to join the Irish contingent, which adds to the spice and gives a slight competitive edge to proceedings!

Nonetheless, camaraderie and friendship are the number one goal, and new members are always welcome. The next one-day outing is scheduled for the autumn, when the emphasis will be on new members and in teaching lawyers how to fly fish. It will be held on a Saturday – venue and full details can be obtained from John Geary at jvgeary@gmail.com.

Marc Bairead of Nevin O'Shaughnessy Solicitors, Edenderry, Co Offaly, enjoying the day out on Lough Currane in Kerry

The Lawyers' Fishing Club celebrate their catch

John Purcell presenting Padraic Coughlan with his prize for a top catch

Cyril Kelly, John Purcell and Paddy Molloy

Peadar Ó Maoláin BL, Marc Bairead and John Geary

Sligo celebrates in style

ALL PICS: JAMES CONNOLLY, PICSELL8 LTD

Tom MacSharry (president, Sligo Bar Association), Kieran McDermott and Caroline McLaughlin (secretary, Sligo Bar Association)

Retiring Sligo county registrar Kieran McDermott pictured with his son Garrett, wife Nuala and daughter Niamh

Circuit Court staff Anne Finn, Paraic O'Grady and Lorretta Kearins with retiring Sligo county registrar Kieran McDermott

PIC: JOE HANLEY, TRALEE

Kerry's gold

At a meeting of the Kerry Law Society in the Grand Hotel, Tralee, on 22 June 2010, the special guest was President of the Law Society Gerard Doherty. *(Front, l to r)*: Orla Dennison, Patrick Mann (Kerry Law Society president), Gerard Doherty (Law Society president), John Galvin (Kerry Law Society chairman), Nuala Liston and Carmel Sreenan. *(Middle, l to r)*: Emer Guiney, Pat Sheehan, Padraig Foley, Matthew Breslin, Michael Moore, Donal Browne, Stephen Kennedy, Noreen Broderick, Catherine O'Connor and Liam Crowley. *(Back, l to r)*: James Morris, Gearóid Ryall, Canice Walsh, Fiona Lally, Niall Lucey and Joe Mannix

PIC: GERARD O'LOUGHLIN

103 years not out!

Cricket scores seemed totally apt when describing the long service of two Roscommon solicitors, which was marked at a special presentation on 1 July 2010. The Roscommon Bar Association celebrated the remarkable service of guests of honour, Henry (Harry) Wynne and Gerard Gannon – each of whom celebrated more than 50 years of service in the profession. Harry qualified in 1958, while Gerard qualified in 1959 – a total of 103 years between them. Both are still active in practice in their family firms and received their presentations from President of the Law Society Gerard Doherty and director general Ken Murphy; *(from l to r)*: Brian O'Connor (secretary, Roscommon Bar Association), Ken Murphy (director general), Harry Wynne, Gerard Doherty (Law Society president), Gerard Gannon and Christopher Callan (vice-chair, Roscommon Bar Association)

PIC: GERARD O'LOUGHLIN

In July, the Roscommon Bar Association held a meeting to update members about current issues relating to the profession, including professional indemnity insurance, where a wide-ranging discussion took place. After the meeting, an enjoyable meal was hosted by the bar association for those attending, which included *(back, l to r)*: Dara Callaghan, Ivan Moran, Sean Mahon, William Henry, Paul Wynne, Michael O'Dowd, Kenneth McDonald, Declan O'Callaghan, Derry MacDermot and Terry O'Keeffe. *(Middle, l to r)*: John McNulty, Karina Carty, Ailish Lowe, Ailbhe Hanmore, Mary Francis Fahy, Marie Conroy, Rebecca Finnerty, Natasha Dunne, Mary Mullarkey, Brid Miller, Corinna Harlow and Con Harlow. *(Front, l to r)*: Joanne Leetch, Claire Higgins, Orlagh Sharkey, Chris Callan, Harry Wynne, Gerard Doherty, Gerard Gannon, Ken Murphy, Brian O'Connor, Padraig Kelly and John V Kelly

Limerick hosts lively session

The Limerick Solicitors' Bar Association (LSBA) hosted Law Society President Gerard Doherty and director general Ken Murphy on 21 June 2010 at a well-attended meeting at the Strand Hotel, Limerick.

Topical issues on the agenda included PII, risk management, commercial undertakings, SMDF and limited liability partnerships for solicitors' firms.

The meeting opened with Elizabeth Walsh (president) welcoming the guests to the midwest, and was addressed by the Society's president and director general. A very informative and lively Q&A session followed. The general consensus among members was that commercial undertakings should be prohibited entirely. Members were also practically unanimously in favour of prohibiting solicitors acting on both sides of the conveyancing transaction, where one party is deemed vulnerable.

There was a large turnout at the LSBA meeting on 21 June, including *(front, l to r)*: Frances Twomey, Ted McCarthy, Patrick J D'Alton, Ken Murphy (director general), Verena Tarpey, Elizabeth Walsh (LBA president), Gerard Doherty (Law Society president), Bernadette Greene and Margaret O'Connell. *(Back, l to r)*: Stephen Keogh, Brian Malone (LSBA secretary), Edward Leahy (treasurer), Rob Laffan, Melvyn Hanley, Mark Murphy, Gerard Meehan, Cathal Minihane and Darach McCarthy

Law Society President Gerard Doherty and director general Ken Murphy met with the committee of the LSBA at its 21 June meeting, *(l to r)*: Edward Leahy (treasurer), Rob Laffan (committee member), Ken Murphy (director general), Elizabeth Walsh (LSBA president), Gerard Doherty (Law Society president), Mark Murphy (committee member), Brian Malone (secretary) and Cathal Minihane (committee member)

Members were encouraged to embrace the risk management/risk assessment strategy and to engage fully with the process. It would seem imperative that offices should engage in risk management on an ongoing basis. Some members felt that more could be done in the way of run-off cover for solicitors who intend to retire or leave the profession, but felt that current circumstances made this very difficult.

PIC: JAMES CONNOLLY, PIGSELL 8 LTD

President of the Law Society Gerard Doherty and director general Ken Murphy met with members of the Sligo Bar Association on 1 July 2010, at the Glasshouse Hotel. Matters discussed included the Law Society's draft regulations to prohibit solicitors giving commercial undertakings, the position regarding professional indemnity insurance and the work carried out by the PII Task Force, limited liability partnerships, the Society's guarantee to the SMDF, the Society's radio campaign to promote the profession, the implementation of the *Haran Report* on civil litigation costs, and the Society's support services. Attending were *(front, l to r)*: Aine Kilfeather, Lorraine Murphy, Michael Monaghan, Gerard Doherty (Law Society president), Ken Murphy (director general), Tom MacSharry (president, Sligo Bar Association), Caroline McLaughlin (secretary), Michele O'Boyle and Dervilla O'Boyle. *(Middle, l to r)*: Ita Lyster, Marie Cullen, Niamh McDermott, Sinead Maguire, Leonie Hogge, Elaine Coghill, Hugh Sheridan and Noelle Galvan. *(Back, l to r)*: Trevor Collins, Shane McDermott, Joe Keyes, Seamus Monaghan, Maurice Galvin and Carol Ballantyne

student spotlight

A trench too deep for Blackhall

On a blustery February afternoon, a convoy of cars made the short trip from Blackhall Place to Glasnevin – Trench Cup 2010 was underway, *writes Niall Kiernan*, in timely fashion. With Blackhall electing to play against the wind, the game started off at championship pace and it was the underdog who exerted all of the early pressure. The half-back line comprising Carroll, Cocoman and Kiernan proved the springboard for attack.

However, our failure to register a score during the early purple patch proved decisive. Trinity took its turn to exert some pressure and went several points to the good, being aided by a strong breeze. A number of fine saves by the ever-agile David O'Mahony in the Blackhall goal saved our blushes, but as halftime beckoned, we were six points in arrears.

PIC: MARK DEVANE

The Blackhall GAA team *(back, l to r)*: Rob Barrett, Tommy Canavan, Neil O'Gorman, Dave O'Mahony, Colm Ó hÚigin, Paddy Rath, Padraig Twomey, Joe Marranin, Neil Farragher, Dave Pierce, Will Claffey, Mark Devane and Kevin McKeon. *(Front, l to r)*: Brian Doherty, Eric Walsh, Ciarán O'Herlihy, Niall Flynn, Niall Kiernan (Capt) Shane Carroll, Brochan Cocoman, Pierce O'Driscoll, Pete Murphy, Don Collins and Brendan Wallace

After the break, the ability of midfielders O'Gorman and Canavan to win primary possession enabled us to hit the front again. The boots of Pierce O'Driscoll and Neil Farragher registered some wonderful points. Trinity struggled to get out of its own half in the early stages of the second half, thanks to the endeavours of Collins and Marranin in the full-forward line and Murphy and McKeon at half-forward. The opposition kept in touch, though, with a well-taken point from play and another from close range.

Blackhall proved resilient, due to the efforts of Twomey, Devane and Flynn (a welcome addition from our King's Inns neighbours) who displayed tigerish tenacity in defence, allowing Canavan to register a point.

A dubious penalty to Trinity dented Blackhall's morale, however, but despite a well-struck effort, the ball rebounded off the crossbar and into the secure grasp of the Blackhall defence. Not to be outdone, the penalty-taker redeemed himself in the very next play, powering an unstoppable shot into the roof of the net. The goal knocked the wind out of Blackhall's sails. The final score: Trinity 1-9, Blackhall 0-6. Trinity eventually progressed to the final, with IT Tralee winning out.

Frank Ryan's was the venue for the post-match rock shandies and sparkling water. The ever-reliable Tommy 'Shnackbox' Canavan got the crowd going with his very own rendition of Oasis's 'Don't look back in anger' – a special treat for any female followers there might have been.

The team expresses its gratitude to all who contributed to its success.

Blackhall team: David O'Mahony, Mark Devane, Padraig Twomey, Niall Flynn, Shane Carroll, Brochan Cocoman, Niall Kiernan, Tommy Canavan (0-1), Neil O'Gorman, Peter Murphy, Neil Farragher (0-3), Kevin McKeon, Don Collins, Joseph Marranin, Pierce O' Driscoll; (0-2). *Subs:* Will Claffey, Eric Walsh, Brian Doherty, Paddy Rath, Brendan Wallace, Rob Barrett, Colm Ó hUigin, Dave Pierce and Ciarán Ó Herlihy.

Cork to host global competition

One of the world's most prestigious client consulting competitions for students of law will be hosted by Ireland in two years' time. The Law Society of Ireland in Cork has just announced that it will play host to the Louis M Brown and Forrest S Mosten International Client Consulting Competition from 12-16 April 2012.

The annual global competition pits winners of national competitions against each other, who compete for the prize of the international trophy. It has previously taken place in Hong Kong 2010, Las Vegas 2009, India 2008 and Sydney 2007. The 2011 competition will take place in the Netherlands.

Ireland has had a keen interest in the event for the past ten years, with Michelle Cronin and Melanie Evans bringing home the international trophy in 2007.

The competition provides an exciting opportunity for law students to learn and practise first-hand the planning, analytical, interviewing and advisory skills they need when dealing directly with clients. It also provides the opportunity for a valuable educational and cultural interchange between students, law teachers and legal practitioners.

Teams are expected to travel from Australia, Cambodia, Canada, China, England and Wales, Finland, India, Indonesia, Malaysia, Netherlands, New Zealand, Nigeria, Russia, Scotland, Sri Lanka, Ukraine and USA, among others.

Planning has already started for the five-day event, which will include:

- Registration and master class,
- Welcome reception,
- Competition rounds,
- Final competition, and a
- Gala award dinner.

Fundraising events will be organised and sponsorship sought over the coming months. If you or your firm would like to sponsor this prestigious competition, please contact the Law Society of Ireland in Cork by emailing j.moffatt @lawsociety.ie, or tel: 021 422 6206.

Newly qualified solicitors at the presentation of their parchments on 10 December 2009

ALL PICS: JASON CLARKE PHOTOGRAPHY

Mr Justice Nicholas Kearns (president of the High Court), Gerard Doherty (president of the Law Society), and Ken Murphy (director general) were guests of honour at the 10 December 2009 parchment ceremony for newly-qualified solicitors: Tadgh Boyle, Lyn Brennan, Emma Brogan, Louise Byrne, Feargal Byrne, Rachel Canny, Clare Carroll, Cathriona Cody, Martin Cooney, Barry Culliton, Anne Marie Delany, Fiona Donaghy, Suzanne Dowling, Martin Fallon, Ivan Feran, Jane Fitzgerald, Pamela Fraher, Bernice Garrett, David Gilmore, Erika Hayes, Mark Hennelly, John Henry, Samantha Holton, Joanna Jordan, Orla Joyce, Michael Keaveney, Eoin Kiely, Kevin Lavin, Paul Lynch, Claire McAvinchey, Elaine McCaffrey, Peter McCaffrey, Rowena McCormack, Sean McDermott, Leah McKenna, Marion Meehan, Brid Moloney, Hayley Morrissey, Colm Mullen, Karl Murphy, Deirdre NiChearbhaill, Ronan O'Brien, Michelle O'Byrne, Sean O'Conaill, Assumpta O'Connell, Ellen O'Connor, Cathal O'Grady, Erika O'Leary, Stephen O'Mahony, Suzanne Power, John Redmond, Karen Reynolds, Michelle Ridge, Sara Ryan, Ciara Ryan, Michael Salley, Kim Scanlan, Susie Shine, Anthony Smith, Kara Spratt, Malachy Steenson and Robert White

Newly qualified solicitors at the presentation of their parchments on 25 February 2010

Mr Justice Nicholas Kearns (president of the High Court), Gerard Doherty (president of the Law Society), Dr Garret FitzGerald (president of the Institute of International and European Affairs, and former Taoiseach) and Ken Murphy (director general) were guests of honour at the 25 February 2010 parchment ceremony for newly-qualified solicitors: Joanne Bane, Daniel Coady, Damien Conroy, Róisín Courtney, Shane Coveney, Joan Doyle, Morgan Fullam, Áine Kelly, Róisín Kennedy, Kieran Lawlor, Edward Lyons, Eleanor Mannion, Kate Marquis, Bryan McDonnell, Lousie McDonnell, Ruth McKeon, Gráinne McMonagle, Michelle McVeigh, Brenda Molloy, Colin Morrissey, Claire Murray, Lyndsey Noonan, Aidan O'Reilly, Lisa O'Brien, Maria O'Donovan, Mark O'Sullivan, Niamh Pender, Claire Quinlan, Shane Riordan, Shane Sheridan, Fiona Walsh, Katherina White and Sally Winters

Newly qualified solicitors at the presentation of their parchments on 29 April 2010

Mr Justice Nicholas Kearns (president of the High Court), John Costello (senior vice-president of the Law Society), Miriam O'Callaghan (RTÉ *Prime Time* presenter) and Ken Murphy (director general) were guests of honour at the 29 April 2010 parchment ceremony for newly-qualified solicitors: Grainne Adams, Elaine Bannerton, Evelyn Barrett O'Donnell, Karen Brennan, Eoin Brereton, Mairead Britton, Elaine Browne, Úna Burns, Mary Byrne, Niall Campbell, Michelle Casey, Paul Clifford, Aimée Collins, Angela Cooney, Stefane Corbett, Michael Corcoran, Tess Crean, Sandra Davey, Ciara Deasy, Aine Duggan, Aisling Dunne, Laura FitzGerald, Donna Flaherty, Deborah Flood, Sergei Gordienok, Kevin Greaney, Rachel Halligan, Kate Hedigan, Lisa Joyce, Yvonne Joyce, Helen Kehoe, Deirdre Ann Kelly, Deirdre M Kelly, Maria Kennedy, Neil Kidd, Padraic Kinsella, Claire Lehane, Camilla Leigh, Peig Lenehan, Damian Lohan, Sarah Mansfield, Elizabeth Mara, Dermot McCole, Ciara McLoughlin, Claire McLoughlin, Aoife Mellett, Yvonne Moloney, Michelle Moriarty, Helen Murphy, Aoife Murray, Mark Murray, Tara Nestor, Máire Ní Mhaoldhomnaigh, Aoife Nic Lochainn, Ronan Ó Briain, Amy O'Brien, Tauna O'Connell, Caroline O'Flanagan, Claire O'Mahony, David O'Mahony, Katherine O'Mahony, Niamh O'Shea, Jean Orr, Sarah Power, Orla Quinn, Rebecca Reilly, Lorraine Scanlon, Neasa Seoighe, Siobhán Shanahan, Sarah Sheehy, Patricia Smyth, Paul Stein, Aoife Travers, Jennifer Walker Butler, Rachel Ward and Siobhan Whelan

Newly qualified solicitors at the presentation of their parchments on 6 May 2010

Mr Justice Joseph Finnegan (Supreme Court), Gerard Doherty (president of the Law Society), Norville J Connolly (president of the Law Society of Northern Ireland), and Ken Murphy (director general) were guests of honour at the 6 May 2010 parchment ceremony for newly-qualified solicitors: Ciara Bannon, Laura Bolger, Liam Browne, Alan Burns, Amy Clifford, John Colleran, Laura Corrigan, John Coughlan, Jennifer Devereux, Diana Diamond, Richard Dingley, Adrian Dobbyn, Sharon Dolan, Michael Doyle, Michelle Drury, Therese FitzGerald, James Fox, Eimear Gray, Olwen Griffith, Sheena Hayes, Jerry Healy, Rebecca Hearst, Ronan Hopkins, Clare Hyland, Elaine Kelly, Thomas Kennedy, Herbert Kilcline, Emma Kinsella, David Lawless, Brian Lee, Joanne Leetch, Joanne Lynch, Deirdre Madden, Clodagh MacNamara, Ian Martin, Aisling McCarthy, Katie McDermott, Robert McDermott, James McGuinness, Rachel McKeon, Glenda McMenamin, Zoe Mollaghan, Olga Molloy, Maeve Moran, Majella Mulroy, James Murphy, Úna Ní Mhurchú, Louise O'Byrne, Brendan O'Connor, Enda O'Connor, Liam O'Donoghue, Catriona O'Dwyer, Emma Jane O'Halloran, Charleen O'Keeffe, Warren Parkes, Siun Rogers, Claire Ryan, Patrick Shee, Bryan Sheehan, Jennifer Smith, Sarah Woods, Laura Wycherley and Paul Wynne

Newly qualified solicitors at the presentation of their parchments on 10 June 2010

Mr Justice Nicholas Kearns (president of the High Court), Gerard Doherty (president of the Law Society), Fachtna Murphy (garda commissioner) and Ken Murphy (director general) were guests of honour at the 10 June 2010 parchment ceremony for newly-qualified solicitors: Lucy Alley, Sarah Berkery, Eadaoin Bohan, Alison Bowe, Ciara Breslin, Caitriona Breslin, Louise Butler, Eimear Caffrey, Siobhan Cassidy, Annie Corcoran, Ruth Creane, Stephen D'Ardis, Orlaith Daly, Matthew DeCourcy, Alan Doyle, Niamh Dunne, Kieran Durcan, Carol Eager, Gráinne Fahy, Jane Farrell, Aisling Finn, Rory Flanagan, Deirdre Nora Flynn, Claire Forde, Anna Maria Gallagher, Rachel Gilroy, Susan Gray, Ross Griffin, Kirsty Kavanagh, Aoife Kelly, Orla Kennedy-Garrigan, Anna Keohane, Aisling Lernihan, Sarah Lynam, Tristan Lynas, Claire Madden, Shane Maguire, Elizabeth Mahony, Elizabeth McCann, Cathal McDermott, Marie McGinley, Caroline McHugh, Oisín McLoughlin, Edel McNamara, Neil Megannety, Edel Mullan, Laura Murphy, Niamh Murray, Alison Murray, Jennifer Noone, Leonora Nyhan, Alan O'Beirne, Marion O'Donnell, Aisling O'Regan, Nicola O'Sullivan, Orla Riddell, Judith Roche, Emily Sheary, Katy Smyth, Fiona Smyth, Jean St John, Ruth Stephenson, Marion Sweeney, Eimear Torpey, Grainne Varian, Amanda Walsh and Niall Ward

Newly qualified solicitors at the presentation of their parchments on 24 June 2010

Mr Justice Michael Peart (High Court), Gerard Doherty (president of the Law Society), Enda Kenny TD (leader of Fine Gael) and Ken Murphy (director general) were guests of honour at the 24 June 2010 parchment ceremony for newly-qualified solicitors: Deirdre Boyle, Finola Boyle, Dominic Burke, Louise Carley, Bryan Casey, Elaine Caulfield, Fionnualla Cleary, Emma Colleran, Sarah Conway, Michael Coonan, Owen Costine, Barbara Cronin, Gillian Davy, Paul Dillon, Emma Jane Doherty, Marguerite Dooley, Laurence Doyle, Eleanor Dunne, Lorena Dunne, Amanda Glancy, Donna Hallinan, Graham Haynes, Annick Hedderman, Susan Hennigan, Michaela Herron, Jack Hickey, Emma Hickey, Laura Horan, Aoibheann Hughes, Fionnuala Hynes, Graham Jenkinson, Joanne Joyce, Damien Joyce, Eavanne Joyce, Anthony Kelly, Ken Kennedy, Rebecca Kenny, Conor Lavelle, Fred Logue, Andrew Lynch, Jessica Lyons, Michael Madden, Kevin Mangan, Iain McDonald, Deirdre McMahon, Ailish McSweeney, Justin Meagher, Claire Molloy, Lynsey Mulvihill, Lucy Neligan, Iseult Ní Ghallchóir, Shane O'Brien, Judith O'Connell, Sharon O'Connor, Darragh O'Dea, Mary O'Doherty, Blake O'Donnell, Lucy O'Reilly, Ronan O'Reilly, Elaine O'Sullivan, Kevin Phelan, Philomena Phelan, John Ryan, Orlagh Sharkey, Karl J Smith, Aoife Stapleton, Emma Storan, Claire Walsh, Emer Walsh, Richard Whelehan and Elizabeth White

books

Employment Law in Ireland

Neville Cox, Val Corbett, Desmond Ryan. Clarus Press (2009), www.claruspress.ie. ISBN: 978-1-905536-26-9. Price: €185.

The authors, in compiling and presenting this work, have dealt with the key areas in employment law, and the structure follows the chronology of the employment relationship from inception to termination. This work is clear, current, practical and relevant for any individual advising in the ever-developing area of employment law.

This book examines the multiplicity of different fora in which employment claims can be brought – an issue of growing importance, particularly in these recessionary times. A succinct background and analysis is provided in all areas, ranging from the rights commissioner, Employment Appeals Tribunal and Labour Court to the new emerging fora such as the Health and Safety Authority and NERA. This is of particular use for employment law solicitors when deciding how best to strategically place your litigation for your client and, indeed, in defending such claims.

A chapter is devoted to the area of industrial relations, focusing mainly on trade disputes, registered employment agreements, and joint labour committees. I found the analysis on trade disputes and the *Ryanair v IMPACT* decision particularly comprehensive and instructive.

Attention is also given to the relatively recent development in Irish employment law of information and consultation entitlements. As the authors note, this area has the potential to be of real significance with respect to the role of employees within the decision-making processes of Irish businesses.

Other substantive areas dealt with are transfers of undertakings, health and safety, and the much litigated and commented upon topic of workplace stress and bullying. The authors also consider the topic of privacy, which is of particular importance due the rapid growth of social networking sites and the need for employers to have in place proper polices to protect themselves with respect to employees' actions.

There is an extensive section dedicated to the area of equality, which reflects the ever-growing specialist sub-headings that now come in under the umbrella of 'employment law'.

A significant section of the book is reserved for a discussion

of when the employment relationship breaks down. The authors, in a clear and comprehensive manner, guide readers through the initial stages of procedural fairness and disciplinary action, through to the termination of employment, concluding when matters end up before courts and/or tribunals. They consider in detail, with up-to-date legislative and case references, the areas of unfair dismissal and, of course, the current hot topic of redundancy-related dismissals. The authors conclude their work by considering in detail employment injunctions. I particularly liked their analysis of emerging principles in this area, which provides a summary of points to consider before seeking interlocutory relief. In this regard, they consider the impact of the recent decision of Judge Laffoy in the High Court case of *Nolan v EMO Oil Services*, where the High Court sent a clear message that it does not consider the employment injunction an appropriate mechanism for dealing with complaints arising from the redundancy process.

Throughout this book, the authors provide generously up-to-date case references, not just from the Irish courts and tribunals, but also from common law and European courts. In addition, they provide useful referrals to texts and articles.

This book is a well-structured, clear, concise and practical guide on the ever-growing and developing area of employment law, and it would be of great use not only to lawyers with limited experience in the area, but also to well-versed and seasoned employment lawyers and HR advisors. G

Sandra Moloney is a solicitor with Terence J O'Sullivan Solicitors, Cork.

council report

Law Society Council meeting, 16 July 2010

Motion: prohibition on commercial undertakings

'That this Council approves the Solicitors (Professional Practice, Conduct and Discipline – Prohibition on Commercial Undertakings) Regulations 2010.'

Proposed: John D Shaw

Seconded: Michael Quinlan

In the absence of John D Shaw, Niall Farrell outlined the background to the draft regulations. He noted that the substance of the regulations had been discussed at previous Council meetings, following a detailed consultation process with the profession. In the course of the insurance crisis of the previous year, it had become clear that a significant part of the problem was claims arising from undertakings to banks in commercial cases. As a result, the Council had amended the *PII Regulations* in order that the minimum terms and conditions would not cover undertakings in commercial transactions. Notwithstanding this, many insurers subsequently provided cover for commercial transactions.

It had then been proposed that the Council should prohibit the giving of undertakings in commercial transactions, regardless of whether insurance cover was available or not. It was argued that the certificate of title and undertaking system had been designed purely for residential loans and had been extended, without proper consideration, to commercial transactions. The Society's Council, supported by the vast majority of the profession, had approved the proposal to prohibit the giving of undertakings in commercial transactions.

An additional element had arisen in the course of the consultation process, which would prevent any firm from acting for both the lender and the borrower in a commercial loan transaction. This prohibition had also been included in the draft regulations, on the basis that:

- It was entirely consistent with the thrust of the regulations,
- Financial institutions should obtain their own legal advice,
- Clients should obtain fully-independent legal advice from a solicitor who was not acting also for the bank, and
- The profession should be protected from the obvious conflicts of interest that arose.

Mr Farrell noted that there had been some opposition to the proposed additional prohibition on the basis that:

- There was no demand for the measure,
- Generally, it was the client who wanted to use the same firm and most clients were well-informed and sophisticated,
- With proper 'ethical barriers', it was safe for a firm to act for both borrower and lender,
- The measure was a 'step too far' and was being introduced in haste, and
- The proposed measure was not replicated in other jurisdictions and would damage the capacity of Irish firms to compete with overseas firms, particularly in London.

It had been suggested that, as an alternative to a prohibition, the regulations should provide for proper 'ethical barriers', in which circumstances the same firm could act for both borrower and lender.

Mr Farrell noted that the task force continued to support the proposed prohibition for a number of reasons:

1) It was accepted by the courts, by the Society and by the profession that, in general, each party to a transaction should have their own independent legal advice. In the current, very difficult, lending environment, even large, sophisticated clients were vulnerable and were not in an equal bargaining position when dealing with the banks. Now more than ever, clients needed strong, independent legal advice.
2) While genuine 'ethical barriers' might be available to some firms, it was the duty of the Society to regulate the entire profession – from the smallest firm to the largest. In addition, the proposed 'ethical barriers' would not be sufficiently robust to resist claims that would arise against solicitors where they had acted for both parties.
3) The task force was conscious of the existence of judicial pronouncements that expressed deep concern about solicitors acting for both parties. The task force was also aware of successful claims made against firms where they had acted for both parties.
4) The Society was aware of financial institutions that were seeking to 'steer' clients to those solicitors who, despite the recommendation of the Society, were still providing undertakings in commercial transactions. The task force believed that it could not be legitimately argued that a client was independently represented when steered by a financial institution to a particular solicitor who received significant amounts of work from that financial institution.
5) The key to the residential conveyancing system was that solicitors did not act for the bank. If the proposed new measure was not introduced, it would be open to the banks to simply instruct their client's solicitors in the loan transaction, without seeking an undertaking at all. In this way, the prohibition on the giving of undertakings could be completely circumvented.
6) If solicitors acted for banks, those banks could benefit from a claim on the compensation fund. It was in the public interest that the Society should maintain a solvent compensation fund for the benefit of the public and not of the banks.
7) Previous lending practices had set the country back many years, and it was important that the Society would play its part in establishing solid, prudent procedures for dealing with secured lending for the future.

Kevin O'Higgins referred to a recent judgment of Mr Justice Frank Clarke in *ACC Bank plc v Brian Johnston*, in which he had commented that: "there can be no doubt but that a three-way closing provides a greater degree of security for a lending institution who has chosen to give itself that exact security by going to the trouble of instructing and paying its own solicitor" and "even though the extent of the likelihood of solicitors failing to comply with undertakings may not have been at all as apparent

at the relevant time as is, now, unfortunately, clear, the practice of closing in that manner involves an inherent increase in the risk to the solicitor's financial institution client…"

A number of Council members spoke in opposition to the proposed prohibition on solicitors acting for both borrower and lender, arguing that the measure was disproportionate, impractical and unnecessary and that, if 'ethical barriers' were properly adhered to, clients would be adequately protected. A majority of Council members spoke in support of the regulations. Following a lengthy debate, the Council overwhelmingly approved the regulations as drafted.

The cost of doing business

The director general referred the Council to an article that had been published in *The Sunday Times* entitled 'What economic crisis? Lawyers still charge Celtic Tiger fees'. The article stated that a report prepared for the Department of Enterprise, Trade and Innovation by Forfás and the National Competitiveness Council had found that the cost of consultancy fees in the legal, accounting, PR and business management professions had increased by 2.4% between 2007 and 2009. The article had gone on to say that "when these professions were examined separately, it emerged that lawyers were the highest chargers. Legal fees were 18.5% higher at the end of last year than their average in 2006. The cost of a legal consultation peaked in the first half of 2009, the height of the recession."

The director general said that this statement appeared to be extraordinary and incredible and did not accord with any of the anecdotal information available to the Society, which indicated that legal fees had reduced considerably since the economic downturn. Obviously, the Society needed to examine the data upon which the pronouncements were based and had requested a copy of the Forfás report. Nevertheless, the Society and the Bar Council had been invited to meet with the Minister for Enterprise, Trade and Innovation, Batt O'Keeffe, during the following week.

Liam Kennedy noted that the *Report of the Business Disputes Resolution Task Force* had identified a variety of ways in which litigation costs might be reduced for businesses.

Solicitors' advocacy

James MacGuill outlined the content of two recent court rulings that had implications for solicitors' advocacy. He noted that, as a result of the *Carmody* case, the Legal Aid Scheme had been amended so that, in "complex cases", the scheme would provide for both solicitor and counsel. In a more recent case, the High Court had held that a barrister could appear in the District Court unattended by a solicitor.

Mr MacGuill cautioned that a combination of the *Carmody* case and the judgment of Hedigan J could encourage solicitors to consider using counsel in the District Court, without attending the court themselves. As a consequence, there was a danger that newly-qualified solicitors would not receive exposure to District Court work. He believed that it was imperative that the Society would ensure that the solicitors' profession did not lose its long-standing tradition of advocacy in the courts.

Radio ad campaign

Niall Farrell noted that the first tranche of advertisements, comprising four individual scenarios, had already been broadcast on national radio. The campaign would be repeated in the autumn. The feedback to the PR Committee from the profession indicated that the advertisements struck the right tone and were well received. G

practice notes

RELEASE OF LOAN FUNDS DIRECTLY TO BORROWER

In light of:

1) The recent decision of the Council of the Law Society to introduce a ban on solicitors giving undertakings to lending institutions in commercial mortgage lending, such ban to become effective on 1 December 2010, and
2) The strong advice from the Society that solicitors should not between now and 1 December 2010 give such 'commercial undertakings' even if insured to do so,

it is anticipated that a very limited number of commercial undertakings will be given between now and the introduction of the ban.

After 1 December 2010, undertakings in relation to small commercial loans up to the *de minimis* limit set out in the regulation dealing with the ban referred to above will still be allowed. A new form of undertaking, recommended by the Law Society for use in such cases, is to be drafted shortly by the Conveyancing Committee and will be published on the Society's website.

The committee would like to remind practitioners giving undertakings in commercial loan cases between now and 1 December 2010 that some banks may pay loan funds directly to borrowers, for example, where the loan is provided by way of overdraft for working capital facilities, stocking facilities etc.

The documentation provided by some banks in commercial loan cases may specifically provide that the mortgage security documentation must be in place before the solicitor lodges the undertaking with the bank, and it may require the solicitor to confirm that he/she is in funds for stamping and registration fees before lodging the undertaking. Solicitors should carefully check the wording of undertakings and covering letters from banks in relation to all commercial loans. As there are no agreed procedures or agreed documentation for commercial loans, solicitors should not assume that the procedures or documentation are similar to, or the same as, those used in residential mortgage lending.

Conveyancing Committee

DEVELOPMENT CONTRIBUTIONS AND PART V AGREEMENTS

Since the introduction of the *Planning and Development (Amendment) Act 2002*, Part V (social/affordable housing) obligations to local authorities can, by agreement with the local authority in an appropriate case, be satisfied wholly or partially by payment of monies. The question arises as to whether in those circumstances the Part V condition of the planning permission should be treated as a financial condition for conveyancing purposes.

An agreement entered into by the developer with the planning authority pursuant to a Part V condition is not a financial condition, even if the agreement requires the payment of monies. The Part V condition is satisfied when the developer enters into the agreement with the planning authority. If there is subsequently non-compliance with the terms of the Part V agreement, then this is a matter between the planning authority and the developer and does not constitute a breach of the Part V condition of the planning permission.

As the Part V condition is not a financial condition, it does not come within the exclusion of matters of financial contributions or bonds in the standard architect's opinion on compliance with planning.

Conveyancing Committee

AMENDED PRECEDENT BUILDING ESTATE TRANSFER AND CONVEYANCE

The committee has recently amended its recommended forms of transfer and conveyance for building estates. The amended precedents are now available in the members' area of the Society's website: follow the links for either 'best practice and guidance/precedents' or 'committees/conveyancing/precedent conveyancing documentation'.

Conveyancing Committee

UPDATED PRECEDENT CERTIFICATES OF COMPLIANCE ON WEBSITE

The committee has updated its precedent certificates of compliance so as to reference the *Building Control Acts* and the *Planning Acts* currently in force and adjust references to the building regulations made thereunder. The updated precedents are now available in the members' area of the Law Society's website: follow the links for either 'best practice and guidance/precedents' or 'committees/conveyancing/precedent conveyancing documentation'.

Conveyancing Committee

UPDATE ON IMPORTANT CHANGES IN BUILDING REGULATIONS

Commencement notices and seven-day notices, fire safety certificates and revised fire safety certificates, regularisation certificates and disability access certificates under the *Building Control Acts* and regulations thereunder: an outline and guidance for conveyancers.

Summary for conveyancers

1) Solicitors will continue to seek to have compliance verified in the same manner as heretofore in relation to building control or planning by getting a certificate of compliance to the effect that a building a client is buying or leasing complies with the building regulations.
2) The Conveyancing Committee is of the view that solicitors should not be unduly concerned in relation to whether a commencement notice or a seven-day notice had been given to the building control authority. If none is available, refer to the practice note below.
3) Fire safety certificates (FSCs) and disability access certificates (DACs) are clearly very important and must be obtained whether acting for a purchaser, tenant or other occupier. SI no 351 of 2009 imposes a prohibition on opening, operating or occupying buildings unless an FSC (and also a DAC) has been granted by the building control authority in respect of the building. A breach of this prohibition will be an offence and render a person in breach liable to prosecution under the *Building Control Act 1990* as amended.

Detailed outline

The *Building Control Acts* and the regulations thereunder provide for certain standards to be met in relation to new buildings, buildings that are materially altered by extension or change of use, and also provide through the building control regulations for various procedures in relation to the control of such works.

The regulations have evolved considerably since 1992 and the ones currently in force are listed in the appendix hereto.

Exemptions from the building regulations

The transitional arrangements under the first regulations exempted buildings commenced before 1 June 1992 and buildings commenced after 1 June 1992 for which an application for building bye-law approval was lodged and/or granted before 1 June 1992.

There are certain exemptions, such as buildings constructed by a building control authority (BCA) in its functional area and buildings constructed by the state, such as garda stations, courthouses, etc.

Exemptions from having to lodge a commencement notice

i) Carrying out work that is exempted development under the *Planning Acts*, except where a FSC is required,
ii) Constructions of certain single-storey buildings for a domestic house, such as a detached garage, tool-shed, conservatory, glass house, hen house etc. There are limits on the size of these.

Exemptions from having to apply for and obtain a FSC

a) Building works (which have obtained or applied for building bye-law approval prior to 1 June 1992) commenced before 1 August 1992,
b) All of the works exempted as listed in paragraphs (i) and (ii) above,
c) Single dwellings (not flats),
d) Certain buildings used exclusively for agricultural purposes,
e) Works carried out in compliance with a notice under section 20 of the *Fire Services Act 1981*,
f) Minor works. This is defined as works consisting of the installation, alteration or removal of a fixture or fitting or works of a decorative nature.

Technical guidance documents

The building regulations provide for the publication of technical guidance documents that set out technical building methods for use in the construction of buildings.

The guidance documents refer to several hundred codes of practice, standards or other technical references, which set out the required technical standards.

A building constructed or altered in compliance with the technical guidance documents *prima facie* complies with the building regulations.

There is no legal obligation to comply with the standards set out in the technical guidance documents.

Certificates of compliance

There is power in the 1990 act to make regulations providing for certificates of compliance, but this matter has been left to the construction and the property sector to sort out for themselves.

Multi-storey buildings

The provisions of the *Local Government (Multi-Storey Buildings) Act 1988* ceased to have effect on 1 June 1992 except for cases coming within the transitional provisions of section 22(2) of the *Building Control Act 1990*. Multi-storey buildings that have applied for and/or received building bye-law approval started after 1 June 1992 will require the usual certificate and must comply with the 1988 act. In the event that only planning permission has been granted and that no application has been made or granted for building bye-law approval prior to 1 June 1992, the provisions of the *Multi-Storey Buildings Act* will not apply and the building must be erected in accordance with the building regulations. If work is commenced on a multi-storey building post 1 June 1992 and before 1 August 1992, no FSC is required under the building regulations.

Notices

The building control regulations provide for certain notices to be given to the BCA and for an FSC to be obtained before any work was commenced on a building that required an FSC.

Since the original regulations came into force in 1992, a person has been obliged to give a notice called a commencement notice to the BCA before the commencement of the construction of any building. The *Building Control (Amendment) Regulations 2009* (SI no 351 of 2009), the entire of which is in force since 1 January 2010, provide as an alternative for an extra type of notice called a 'seven-day notice' to be served where an FSC is required but has not yet been obtained.

While BCAs keep a register of commencement notices for their own use, neither the acts nor any of the regulations give the public a right of access to it and, after a lapse of time, there may be difficulty, and indeed it may often prove impossible, to establish whether a commencement notice was or was not served in relation to any particular development. It is clearly very important for the maintenance of good standards of building that BCAs monitor building standards. The service of a commencement notice or a seven-day notice in every case will be an important ingredient in this process. However, the maintenance of such standards, and taking a tough line with persons who fail to serve a commencement notice or a seven-day notice, or breach the act or regulations, is a matter for the BCAs.

Background to the need for seven-day notices

A problem for developers in relation to developments that required an FSC has been that the form of commencement notice required the person submitting it to put in the FSC number. Developers frequently deferred authorising the preparation of an application for an FSC until planning permission had been obtained and a decision is made to proceed with the construction. Developers are then faced with a delay while the application for the FSC is prepared, which could take a few months for a large development. A further few months' delay would then ensue while the BCA processed the application. Developers tended to want to start work on site works, basements, car parks etc without waiting for an FSC. The result was that developers got their architects or engineers to submit commencement notices without the FSC number (which of course did not yet exist) and usually these were returned rejected by the BCA. Some developers tried to get around this by issuing a commencement notice in relation to site works only, and some local authorities allowed this device, but others refused to countenance it and returned the commencement notices duly rejected.

As mentioned above, SI no 351 of 2009 introduced a new form of notice, called a seven-day notice. This could be given to the BCA instead of a commencement notice. A seven-day notice has to be accompanied by a valid application for an FSC and a statutory declaration from the applicant saying that he will comply fully with the building regulations and, within such a period as may be specified by the BCA, will carry out any modifications to the works that may be required under the FSC or required under any conditions attached to the FSC when granted. This should largely resolve the practical difficulty that is described above.

While, in practice, an FSC could be obtained retrospectively, these regulations expressly provide for a revised FSC (if changes are made in the course of the building that necessitate this) and what is called a regularisation certificate, which does what its name implies – that is, it regularises a situation where an FSC should have been obtained but was not. Substantially higher fees are charged for a regularisation certificate, and the fees for a seven-day notice are also substantially higher than for a commencement notice.

Fire safety certificates

An FSC is required before work starts on all building work to which part (B) of the regulations apply since the relevant part of the *Building Control Act 1990* came into force on 1 August 1992.

In effect, this applies to virtually all buildings other than single dwellings. Applications for FSCs are made to the BCA. An application form, accompanied by detailed drawings, specifications, and calculations in respect of certain fire-related matters is required to be submitted. An application that does not contain the full information will be treated as invalid.

The BCA has two months in which to issue an FSC, unless an extension of time is agreed in writing between the applicant and the BCA.

The BCA may issue a refusal or issue a certificate (with or without conditions). The decision of the BCA may be appealed to An Bord Pleanála, whether it is against refusal or condition(s) imposed by it. The information to be submitted with the FSC is set out in the regulations. The information ranges from location maps of the site, complete plans, and plans of sections of the building, details of construction and services, specification of construction and material, along with certain calculations relating to the fire safety of the building.

There is no obligation on the BCA to follow up their FSC with any inspection of the works either before or during construction.

Register of fire safety certificates

The BCA is required to maintain a register in respect of applications and decisions made in respect of FSCs. The register is to contain the applicant, description of the work, the decision and the outcome of any appeal.

As mentioned before, SI no 351 of 2009 introduced major changes in relation to FSCs. It also introduced a completely new system to toughen the provisions dealing with access for people with disability.

The most significant is a new provision that imposes a prohibition on opening, operating or occupying buildings unless an FSC and also a disability access certificate (DAC) have been granted by the BCA in respect of the building. A breach of this prohibition will be an offence and render a person in breach liable to prosecution under the *Building Control Act 1990* as amended.

The need for a DAC applies to any new building and to an existing building where significant revisions or changes are made to it.

The procedure for making an application for a DAC is set out in the regulations and very sensibly includes provisions for a revised DAC in the event that the design changes.

The procedure for applying for a DAC and the form of the certificate itself is broadly similar to that in relation to the FSC procedure.

Issues for conveyancers

The question arises as to whether the failure to serve a commencement notice or a seven-day notice should make a particular property unsaleable. The effect of not serving the commencement notice or seven-day notice in any case is that the person or persons carrying out the development commits an offence – but should this impact on a subsequent owner?

As already indicated, it is clearly very important for the maintenance of good standards of building that BCAs monitor building standards. The purpose of these notices is to make the BCA aware that a development is commencing so that they can monitor a development in such a manner as they see fit. There are two points that arise in relation to a development if no notice is served:

a) The first is whether there is any downside for a subsequent owner from a conveyancing point of view. Carrying out a development without serving a commencement notice or a seven-day notice is an offence and leaves the parties involved liable to prosecution. It will not impact otherwise on a subsequent owner. Solicitors should ask if a commencement notice or seven-day notice was served and for a copy thereof. We do not feel that solicitors should insist on a copy being furnished if it is not readily available. The Conveyancing Committee has already recommended that solicitors for subsequent owners should not concern themselves unduly about whether a commencement or seven-day notice was served or not or whether a copy of the commencement or seven-day notice is available or not.
b) The second point that arises from the non-service of a commencement or seven-day notice is that it may have been a deliberate omission. In most cases, it will turn out to be a mere oversight, and in some of those cases the BCA will be well aware of the commencement and may have carried out inspections. There may be a case from time to time where

a contractor or developer wants to carry out work and, due to something about the manner in which it is proposed to carry it out, does not wish to have the BCA know about it and be in a position to see what is done and, accordingly, does not serve a commencement or seven-day notice. This scenario is unlikely to arise if there is an architect or structural engineer involved in the development and, if it arises at all, is more likely to happen where a builder is operating without the assistance of professionals.

What, if anything, can a solicitor do? In any case where you establish that a commencement or seven-day notice has not been served (as opposed to a copy not being available), the circumstances should be investigated. If it seems to have been a genuine oversight and this is confirmed by a reputable professional or if the BCA was aware of the development and carried out inspections, no further action should arise. If there is any reason for disquiet as to whether the omission to serve a commencement or seven-day notice was deliberate or not, you should recommend to your client to seek the advice of an architect or structural engineer to consider whether any further surveys are necessary and possibly, in an extreme case, to review the decision to proceed with the purchase at all.

FSCs when buying or leasing second-hand property

In guidelines like this, it would be difficult to review all the possible situations that could arise in relation to buying or leasing a second-hand property. A standalone building may have required and got one FSC, and a mixed development may have required an FSC for the entire structure and then a multitude of different ones for offices, shops, supermarkets and apartments. In buying or taking a lease of a shop or office in a mixed development, the FSC that matters (other than that for the original overall development) is the one for the fit-out of the shop, assuming that the development as a whole is not changing materially in such a way as to require an overall new FSC for the entire development (which would be quite unusual). If the purchaser/tenant intends to refit the shop, the likelihood is that a new FSC will be needed for this and the old FSC for the fit-out is irrelevant. If the purchaser/tenant does not intend to refit, it is obviously important to check and see that the FSC obtained does cover the work done in the property. This is a matter for an architect or engineer and should be carried out before a contract to purchase or agreement for lease is signed.

Contractual considerations

General condition 36(b) of the *Law Society Conditions of Sale* includes a warranty by the vendor that any development on the property that is the subject of the contract has been carried out in substantial compliance with the *Building Control Act 1990*. General condition 36(d) provides that copies of, *inter alia*, all FSCs should be furnished. A solicitor acting for a purchaser should ensure that, where appropriate, a special condition is included in a contract to provide that 36(d) shall be deemed to include a DAC. In any event, the architect or other party issuing one of the agreed forms of certificate of opinion on compliance with building control, required to be furnished under 36(e)(ii), will need to be satisfied that the DAC has issued where required, and that any conditions thereof have been complied with. In the same way that the agreed forms of certificate of opinion on compliance with building control do not make specific reference to FSCs, they need not make specific reference to DACs. A solicitor acting for a tenant should ensure that the agreement for lease covers the production of a DAC in the same way as an FSC and the furnishing of an appropriate certificate of opinion on compliance.

Issues relating to all relevant matters need to be addressed by a vendor's solicitor before issuing a draft contract for sale or agreement for lease, to ensure that whatever documentation the vendor is obliged to provide under general condition 36 will be available, and, in the case of an agreement for lease, that what is to be furnished is clarified, and, in both cases, that any problem area is covered by a carefully worded special condition.

The enquiries to be made by a solicitor for a purchaser or a tenant will be a mirror image of those of a vendor's solicitor. The important thing is that the contract for sale or agreement for lease deals fully with any problem areas.

Conveyancing Committee

APPENDIX

Building Control Acts that are currently in force:

- *Building Control Act 1990*
- *Building Control Act 2007*

Building regulations that are currently in force:

- *Building Control Regulations 1997* (SI no 496 of 1997)
- *Building Regulations 1997* (SI no 497 of 1997)
- *Building Control (Amendment) Regulations 2000* (SI no 10 of 2000)
- *Building Regulations (Amendment) Regulations 2000* (SI no 179 of 2000) (part M)
- *Building Regulations (Amendment) (No 2) Regulations 2000* (SI no 249 of 2000) (part D)
- *Building Regulations (Amendment) (No 3) Regulations 2000* (SI no 441 of 2000) (class 9 exemption extension)
- *Building Regulations (Amendment) (No 2) Regulations 2002* (SI no 581 of 2002) (part F)
- *Building Control (Amendment) Regulations 2004* (SI no 85 of 2004)
- *Building Regulations (Amendment) Regulations 2006* (SI no 115 of 2006)
- *Building Regulations (Part L Amendment) Regulations 2008* (SI no 259 of 2008)
- *Building Regulations (Part G Amendment) Regulations 2008* (SI no 335 of 2008)
- *Building Control (Amendment) Regulations 2009* (SI no 351 of 2009)

BRIEFING

legislation update

12 June – 31 July 2010

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

ACTS PASSED

Adoption Act 2010

Number: 21/2010

Contents note: Repeals the *Adoption Acts 1952-1998* and provides for the re-enactment and updating of their provisions. Gives effect to the *Hague Convention on Protection of Children and Co-operation in Intercountry Adoptions* (1993) and provides the making and recognition of intercountry adoptions in accordance with bilateral agreements. Replaces the Adoption Board with the Adoption Authority of Ireland to act as a central authority for adoption as required under the *Hague Convention* and provides for related matters.

Date enacted: 14/7/2010

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

Central Bank Reform Act 2010

Number: 23/2010

Contents note: Establishes the Central Bank of Ireland as a single, fully integrated structure with a unitary board – the Central Bank Commission – replacing the boards of the Central Bank and the Irish Financial Services Regulatory Authority. Provides for the enhancement of the system of regulatory control and confers additional powers on the Central Bank, the governor and the head of financial regulation to prevent potential serious damage to the financial system in the state and provides for related matters.

Date enacted: 17/7/2010

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

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

Number: 24/2010

Contents note: Establishes a statutory civil partnership registration scheme for same-sex couples and establishes a redress scheme for opposite-sex and same-sex cohabiting couples who are not married or registered in a civil partnership, as the case may be. Provides for the recognition of cohabitation agreements that regulate the shared financial affairs of cohabiting couples and enables couples to opt out of the application to them of the redress scheme and provides for related matters.

Date enacted: 19/7/2010

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

Competition (Amendment) Act 2010

Number: 12/2010

Contents note: Provides for the amendment of the *Competition Act 2001* s35 to permit the appointment of temporary members of the Competition Authority.

Date enacted: 19/6/2010

Commencement date: 19/6/2010

Compulsory Purchase Orders (Extension of Time Limits) Act 2010

Number: 17/2010

Contents note: Provides for the extension of the time within which a notice to treat in respect of lands to which a compulsory purchase order relates may be served and provides for related matters.

Date enacted: 7/7/2010

Commencement date: 7/7/2010

Criminal Justice (Psychoactive Substances) Act 2010

Number: 22/2010

Contents note: Prevents the misuse of dangerous or otherwise harmful psychoactive substances and provides for offences relating to the sale, importation, exportation or advertisement of those substances; provides for offences relating to the sale and advertisement of certain objects for use in the cultivation of certain plants, fungi, natural organisms or substances in contravention of the *Misuse of Drugs Act 1977* and provides for related matters.

Date enacted: 14/7/2010

Commencement date: Commencement order(s) to be made as per s26(2) of the act

Criminal Procedure Act 2010

Number: 27/2010

Contents note: Amends the *Criminal Justice Act 1993* in relation to victim impact evidence and provides that a child or person with a mental disorder, or any other person with the leave of the court, may make a victim impact statement by means of a live television link and provides that any questioning of a child or person with a mental disorder in relation to his or her victim impact statement may be done via an intermediary, that is, a person appointed by the court to act in that capacity. Modifies the rule against double jeopardy by allowing the DPP to make an application to the Court of Criminal Appeal in certain circumstances for a retrial order in respect of a person who has been acquitted of an offence, and provides for an appeal to the Supreme Court on a point of law from a determination of the Court of Criminal Appeal in respect of such applications. Extends the powers of An Garda Síochána in relation to the investigation of certain offences. Extends the circumstances in which the DPP or the Attorney General, as may be appropriate, may take an appeal in criminal proceedings. Amends the *Criminal Justice (Legal Aid) Act 1962*, the *Courts of Justice Act 1924* and the *Offences Against the State Act 1939*, and provides for related matters.

Date enacted: 20/7/2010

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

Dog Breeding Establishments Act 2010

Number: 29/2010

Contents note: Regulates the operation of dog-breeding establishments. Requires local authorities to establish and maintain registers of dog-breeding establishments. Increases the fees for dog licences in addition to some other amendments to the *Control of Dogs Acts 1986-1992* and provides for related matters.

Date enacted: 21/7/2010

Commencement date: Commencement order(s) to be made as per s1(3) of the act

Electricity Regulation (Amendment) (Carbon Revenue Levy) Act 2010
Number: 13/2010
Contents note: Provides for the imposition of a levy to be known as the carbon revenue levy on such amount of the revenues received by certain electricity generators, through participation in the single electricity market, as is attributable to the emissions from each installation of which an electricity generator is the operator.
Date enacted: 30/6/2010
Commencement date: 30/6/2010

Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010
Number: 11/2010
Contents note: Provides for the increased supply of biofuel in the state by means of a biofuel obligation requiring that a specified amount of road transport fuel be biofuel and provides for related matters.
Date enacted: 9/6/2010
Commencement date: 9/6/2010 for part 1 and s3 (insofar as it applies to ss44A and 44B of the *National Reserves Agency Act 2007*, ss4, 5, and 16); commencement order(s) to be made for other sections as per s1(2) of the act

European Financial Stability Act 2010
Number: 16/2010
Contents note: Provides for matters relating to the participation of the state in the European Financial Stability Facility (EFSF), provides for matters relating to guarantees given by the state for the purposes of the EFSF agreement and provides for related matters.
Date enacted: 3/7/2010
Commencement date: 3/7/2010

Health (Amendment) Act 2010
Number: 15/2010
Contents note: Amends the *Health Act 2004* to provide, in the public interest, for the furnishing by the Health Service Executive of information and documents to the Minister for Health and Children and to provide for related matters.
Date enacted: 3/7/2010
Commencement date: 3/7/2010

Health (Amendment) (No 2) Act 2010
Number: 20/2010
Contents note: Amends the *Health Act 1970* to provide for the charging of fees in respect of prescribed items dispensed by community pharmacy contractors to persons with full eligibility and provides for related matters.
Date enacted: 13/7/2010
Commencement date: Commencement order(s) to be made as per s2(3) of the act

Health (Miscellaneous Provisions) Act 2010
Number: 18/2010
Contents note: Provides for the dissolution of the Saint Luke's Hospital Board and the transfer of its employees, assets and liabilities to the Health Service Executive and provides for related matters.
Date enacted: 9/7/2010
Commencement date: Commencement order(s) to be made as per s1(2) of the act for all sections other than ss3(1), 14, 15, 16 and 17(a)

Merchant Shipping Act 2010
Number: 14/2010
Contents note: Provides for the further implementation of the *International Convention for the Safety of Life at Sea*, signed in London on 1/11/1974, and its protocols; makes provisions in relation to access to passenger vehicles for persons with reduced mobility, and provides for related matters.
Date enacted: 3/7/2010
Commencement date: 3/7/2010

Planning and Development (Amendment) Act 2010
Number: 30/2010
Contents note: Amends the *Planning and Development Act 2000* and the *Transport (Railway Infrastructure) Act 2001*. Provides that development plans shall contain an evidence-based core strategy that shall provide relevant information to show that the development plan and the housing strategy are consistent with regional planning guidelines and the national spatial strategy 2002-2020. Development plans must also contain mandatory objectives for the promotion of sustainable settlement and transportation strategies in urban and rural areas, including appropriate measures to reduce man-made greenhouse gas emissions. Also makes provision in relation to the duration of a planning permission, the refusal of permission by a planning authority where the applicant has previously carried out a substantial unauthorised development or has been convicted of an offence under the *Planning Acts*, the increase in penalties for offences, the taking in charge by the planning authority of a housing/residential estate, An Bord Pleanála's statutory quorum when making decisions on specified classes of cases, and provides for related matters.
Date enacted: 26/7/2010
Commencement date: Commencement order(s) to be made as per s1(3) of the act

Road Traffic Act 2010
Number: 25/2010
Contents note: Amends and extends the *Road Traffic Acts 1961-2007*. Consolidates and re-enacts the provisions of the *Road Traffic Acts* relating to intoxicated driving offences. Provides for the lowering of the blood alcohol concentration for drivers and revises associated penalties. Provides for the mandatory alcohol testing of drivers of mechanically propelled vehicles involved in road traffic collisions. Provides powers to assist the gardaí in forming the opinion that a driver is or is not under the influence of an intoxicant and to carry out a preliminary impairment test on such a driver. Provides for amendments to certain fixed charge and penalty point matters, introduces new provisions relating to driving licences and disqualifications from holding a driving licence, and provides for related matters.
Date enacted: 20/7/2010
Commencement date: Commencement order(s) to be made as per s1(2) of the act

Social Welfare (Miscellaneous Provisions) Act 2010
Number: 28/2010
Contents note: Provides for a reduced rate of jobseeker's allowance and supplementary welfare allowance for claimants who refuse to participate in an appropriate course of training or to participate in a programme under the National Employment Action Plan. Provides for changes to the one-parent family payment to reduce, from April 2011, the qualifying age for receipt of payment to when the youngest child reaches the age of 13. Provides for the transitional arrangements for current recipients of the one-parent family payment. Provides for miscellaneous amendments to the *Social Welfare Consolidation Act 2005*.
Date enacted: 21/7/2010
Commencement date: Commencement order(s) to be made for ss3, 6, 14, 18-20 and parts 3, 4 and 5 of the act

Údarás na Gaeltachta (Amendment) Act 2010
Number: 26/2010
Contents note: Amends the *Údarás na Gaeltachta Acts 1979-1999* in order to increase the maximum interval between elections to Údarás na Gaeltachta from five years and six months to seven years and six months.
Date enacted: 20/7/2010
Commencement date: 20/7/2010

Wildlife (Amendment) Act 2010
Number: 19/2010
Contents note: Gives legislative effect to the commitment in the renewed *Programme for Government* to ban the practice of stag hunting with a pack of hounds. Provides for the increase in penalties for breaches of various provisions in the *Wildlife Acts*.
Date enacted: 10/7/2010
Commencement date: 10/7/2010

SELECTED STATUTORY INSTRUMENTS

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (Commencement) Order 2010
Number: SI 342/2010
Contents note: Appoints the 15/7/2010 as the commencement date for the act.

District Court (Criminal Justice (Miscellaneous Provisions) Act 2009 Rules 2010
Number: SI 260/2010
Contents note: Amend the *District Court Rules 1997*, orders 16, 18, 27 and 28A, to facilitate the operation of the *Criminal Justice (Miscellaneous Provisions) Act 2009*.
Commencement date: 1/7/2010

District Court (Criminal Justice (Surveillance) Act 2009 Rules 2010
Number: SI 314/2010
Contents note: Insert a new order 34A in the *District Court Rules 1997* to facilitate applications to the District Court pursuant to the *Criminal Justice (Surveillance) Act 2009*.
Commencement date: 22/7/2010

District Court (Criminal Justice (Surveillance) Act 2009 (No 2) Rules 2010
Number: SI 360/2010
Contents note: Substitute forms 34A.1-34A.15 in schedule B of the *District Court Rules 1997*.
Commencement date: 22/7/2010

District Court (Enforcement of Maintenance Orders) Rules 2010
Number: SI 325/2010
Contents note: Amends orders 54, 57 and 62 of the *District Court Rules 1997* to facilitate the operation of the *Enforcement of Court Orders Act 1940* s8, as amended by the *Enforcement of Court Orders (Amendment) Act 2009*.
Commencement date: 8/7/2010

European Communities (Consumer Credit Agreements) Regulations 2010
Number: SI 281/2010
Contents note: Transpose into domestic law the provisions of the *Consumer Credit Directive* (Dir 2008/48), which establishes a harmonised legal framework for the provision of consumer credit ranging from €200 to €75,000. It does not apply to mortgages.
Commencement date: 11/6/2010

Health and Social Care Professionals Act 2005 (Commencement) Order 2010
Number: SI 263/2010
Contents note: Appoints 3/6/2010 as the commencement date for part 3 (other than s27 (3)(b) and (e)) and for schedule 2 of the act.

Housing (Miscellaneous Provisions) Act 2009 (Commencement) Order 2010
Number: SI 253/2010
Contents note: Appoints 14/6/2010 as the commencement date for s7 and schedule 1 (insofar as they apply to the repeal of the *Housing Act 1988*, s11); s8 and schedule 2 (insofar as they apply to the amendments set out in part 5 of that schedule in respect of the *Housing (Miscellaneous Provisions) Act 1997*, s14(1), (2)); part 9 of schedule 2 (insofar as it applies to the substitution of subparagraph (ii) of paragraph (b) of the definition of "relevant purpose" in the *Social Welfare Consolidation Act 2005*, s265(1)); s22, s32 (6), (7) and (8); s33 (insofar as it applies to s32(8), s47(4), s48 (5) and (6)); s34 (insofar as it applies to s32(8)).

Petroleum (Exploration and Extraction) Safety Act 2010 (Commencement of Certain Provisions) Order 2010
Number: SI 227/2010
Contents note: Appoints the 22/5/2010 as the commencement date for ss1, 2 and 4 together with ss13A, 13B, 13C, 13G, 13H and 13K of the act.

Post-release (Restrictions on Certain Activities) Orders Scheme 2010
Number: SI 330/2010
Contents note: Outlines categories of restrictions and conditions that a court may impose on an offender when making a post-release order.
Commencement date: 5/7/2010

Rules of the Superior Courts (Arbitration) 2010
Number: SI 361/2010
Contents note: Amends the *Rules of the Superior Courts*, order 11, and substitutes a new order 56 to facilitate the operation of the *Arbitration Act 2010*.
Commencement date: 20/7/2010

Social Welfare and Pensions Act 2008 (Section 16(c)) (Commencement) Order 2010
Number: SI 246/2010
Contents note: Appoints 2/6/2010 as the commencement date for s16(c) (domiciliary care allowance) of the act.

Solicitors (Professional Practice, Conduct and Discipline – Commercial Property Transactions) Regulations 2010
Number: SI 366/2010
Contents note: Prohibits solicitors from giving undertakings in commercial property transactions.
Commencement date: 1/12/2010 G

Prepared by the Law Society Library

NOTICE: THE HIGH COURT

2010 no 44SA
In the matter of Desmond O'Brien, solicitor, of Cregg, Lahinch, Co Clare, and in the matter of the *Solicitors Acts 1954 to 2008*

Take notice that, by order of the High Court made on Monday 14 June 2010, it was ordered that the name of Desmond O'Brien, solicitor, of Cregg, Lahinch, Co Clare, be struck off the Roll of Solicitors.

John Elliot, Registrar of Solicitors,
Law Society of Ireland
12 July 2010

Solicitors Disciplinary Tribunal

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

In the matter of Hilary Fitzpatrick, a solicitor carrying on practice as HL Fitzpatrick & Company, Solicitors, at Church Street, Ballyconnell, Co Cavan, and in the matter of the *Solicitors Acts 1954 to 2008* [4253/DT64/09]
Law Society of Ireland (applicant)
Hilary Fitzpatrick (respondent solicitor)

On 27 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Allowed a deficit of €54,769 to occur on the client account as of the accounting date, which deficit was due to the existence of client ledger debit balances in breach of regulation 7 of the *Solicitors' Accounts Regulations*,
b) Updated a number of deeds in relation to the payment of stamp duty as identified in paragraph 2.8 of the investigation report dated 6 November 2008, and in particular:
   i) Updated a deed in respect of a purchase for €965,000 completed on 31 May 2006 by dating the transfer 2 July 2008, thereby avoiding interest and penalties,
   ii) Updated a deed in respect of a purchase for €500,000 completed on 16 April 2007 by dating the deed July 2008, thereby avoiding interest and penalties,
   iii) Updated a deed in respect of a purchase for €375,000 completed on 14 October 2005 by dating the deed 31 May 2006, thereby avoiding interest and penalties,
   iv) Updated a deed in respect of a purchase for €635,000 completed on 10 February 2006 by dating the deed February 2008, thereby resulting in the imposition of a lower stamp duty regime introduced under Budget 2007,
   v) Updated a deed in respect of a purchase for €370,000 completed on 21 February 2007 by dating the deed 24 January 2008, thereby avoiding interest and penalties,
   vi) Updated a deed in respect of a purchase for €225,0000 completed on 12 July 2007 by stamping the deed on 2 April 2008, thereby resulting in a saving of stamp duty of €2,000,
   vii) Updated a deed in respect of a purchase completed on 23 April 2005, which deed was stamped in August 2008 with no evidence of interest and penalties paid.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €1,000 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.

The tribunal gave the following reasons for its decision, saying that it had taken consideration of:

- The submissions made by the parties, including the submission made on behalf of the respondent solicitor that he had paid huge amounts of money by way of penalty to the Revenue,
- That a limited practising certificate would not be feasible, and
- That the respondent solicitor, through his solicitors, had indicated that he would be winding down his practice within the year.

In addition, the tribunal stated as follows: while the monetary penalty the tribunal imposed was modest, it should not be taken as being an indication that the tribunal viewed the matter as non-serious. The tribunal did view this matter as serious, but had regard to the present financial circumstances of the respondent solicitor.

In the matter of Patrick Gillespie, a solicitor formerly practising as P Gillespie & Company, Solicitors, at Bury Street, Ballina, Co Mayo, and in the matter of the *Solicitors Acts 1954 to 2002* [6919/DT45/08]
Law Society of Ireland (applicant)
Patrick Gillespie (respondent solicitor)

On 27 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to respond to the Society's correspondence, and in particular to the Society's letters dated 13 February 2007, 26 February 2007, 15 March 2007, 20 April 2007, 17 May 2007, 18 September 2007, 18 December 2007,
b) Failed to inform the Society as to his progress/lack of progress in discharging his undertaking to IIB Homeloans,
c) Failed to attend meetings of the committee of the Society, despite being requested to do so until the Society sought an order from the High Court compelling his attendance.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €3,000 to the compensation fund,

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

In the matter of Michael B O'Donnell, a solicitor practising as Michael B O'Donnell, Solicitor, at Rathkeale, Co Limerick, and in the matter of the *Solicitors Acts 1954 to 2002* [8415/DT81/05]
Law Society of Ireland (applicant)
Michael B O'Donnell (respondent solicitor)

On 11 May 2006, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, as follows:

a) That he communicated directly with another solicitor's client instead of through that client's solicitor,
b) That he paid the proceeds of the sale of property directly to the vendor instead of the vendor's solicitor,
c) That he paid the proceeds referred to at (b) above, notwithstanding written instructions from the vendor's solicitor on closing and contained in a letter dated 14 July 2004 that all documentation furnished to be held in trust pending the receipt by the vendor's solicitor of the balance of the purchase money,
d) That he, through his conduct, precluded the vendor's solicitor from complying with his undertaking to a lending institution.

The tribunal, after 33 adjournments, on 11 May 2010, ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €12,000 to the compensation fund, and
c) Pay the whole of the costs of the applicant as taxed by a taxing master of the High Court in default of agreement.

In the matter of Martin J Kearns, a solicitor of 1 Devon Place, The Crescent, Galway, and in the matter of the *Solicitors Acts 1954 to 2002* [4403/DT366/03]
Law Society of Ireland (applicant)
Martin J Kearns (respondent solicitor)

On 14 May 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to implement the agreement made by his named client to sell her apartment back to a named purchaser in a timely manner,
b) Failed to take the necessary steps to secure title to the apartment acquired by another named client in a timely manner,
c) Failed to take the necessary steps to provide title to the named purchaser of the site agreed to be transferred to him in a timely manner,
d) Failed to protect the interests of his clients,
e) Failed to keep his clients fully informed,
f) Failed to reply to correspondence from the Society in a timely manner or at all, and in particular letters dated 7 December 2000, 17 January 2001, 29 January 2001, 11 April 2001, 6 June 2001, 16 June 2001, 28 June 2001, 9 July 2001, 27 July 2001, 17 December 2001, 6 March 2002, 21 March 2002, 19 April 2002,
g) Failed to furnish progress reports to the Society, as requested by letters dated 8 May 2001, 17 December 2001 and 6 March 2002 in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €10,000 as part restitution to the beneficiaries of the estate of a named deceased, without prejudice to the legal rights of such beneficiaries whether against the respondent solicitor or any other person, such sum to be distributed by the respondent solicitor to the beneficiaries concerned as if that sum formed part of the assets of the said estate; that sum to be so applied by the respondent solicitor not later than 31 December 2010, and
c) Pay the whole of the costs of the applicant as taxed by a taxing master of the High Court in default of agreement, such costs, if agreed, to be paid by not later than 31 December 2010 or, if taxed in default of agreement, to be paid by not later than 183 days after the date of the certificate of taxation.

In the matter of Desmond O'Brien, solicitor, Cregg, Lahinch, Co Clare, and in the matter of the *Solicitors Acts 1954 to 2008* [4952/DT58/09 and High Court record 2010 no 44SA)
Law Society of Ireland (applicant)
Desmond O'Brien (respondent solicitor)

On 27 April 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) In April 2006, misappropriated €31,900 of clients' monies to purchase a motorcar.
b) In April 2006, misappropriated €6,000 of clients' monies by means of a client account cheque payable to Bank of Ireland, which he used to purchase a bank draft payable to his wife, which was then lodged in their joint account in Bank of Ireland.
c) In May 2005, misappropriated €9,500 of clients' money by means of a client account cheque payable to Bank of Ireland, which he used to purchase a bank draft payable to his wife, which was then lodged in their joint account in Bank of Ireland.
d) In February 2006, misappropriated €5,200 of clients' money, which he then put into his credit card account.
e) In September 2006, misappropriated €21,500 of clients' money, which, according to the bank, was lodged to an account in his own name in AIB.
f) Caused or allowed a possible underpayment of CGT in the case of a named client arising from an alteration in the computation by the solicitor.
g) Deducted costs from the estate of a named deceased, in breach of the regulations, without issuing a bill of costs, and the amount involved was €2,178.
h) In February 2006, misappropriated €3,224 of clients' money, which he used to pay into his accounts in GE Money, Bank of Ireland mortgages, and into a Bank of Ireland loan account.
i) Deprived the elderly beneficiary of the estate of a named deceased of her money for the three years up to when he ceased practice, having misappropriated some of the estate money for his own personal benefit.
j) In February 2006, misappropriated €3,000 of clients' money, with which he purchased an international bank draft payable to Bank Nationale de Paris and caused the cheque to be debited to the clients' ledger account of a named client, described as 'Bank of Ireland inheritance tax'.
k) On 3 July 2006, issued a client account cheque for €14,000 payable to the Revenue Commissioners, which was used with two other client account cheques to pay the stamp duty and penalty on a deed relating to a pur-

chase by a named client that was completed in July 2004. He caused the cheque to be debited to the aforementioned named client's ledger account.

l) Paid the second part of the stamp duty and penalty on a named client's deed with a client account cheque for €3,684, which he caused to be debited to the client's ledger account of another named client and which he caused to be described in the books of account as 'Revenue Commissioners CGT'.

m) The third part of the stamp duty and penalty on a named client's deed he paid with an AIB bank draft for €11,141, which, more than 18 months earlier, on 16 January 2005, the solicitor had drawn from a named client's client account by means of a client account cheque payable to 'Allied Irish Banks for Revenue' and which the solicitor caused to be debited to the clients' ledger account of a named client.

n) In February 2006, misappropriated €663 of clients' money to pay his electricity bill.

o) In February 2006, misappropriated €417 of client's money to pay his wife's car insurance.

p) In February 2006, paid €665 to a named plant hire company and €283.22 to a named refuse and recycling company. These payments were debited to the client ledger account of a named deceased and there was nothing in that client's file to support the payments.

q) On 17 November 2006, misappropriated €700 of clients' money to pay his gas bill.

r) In February 2007, misappropriated clients' money of €2,727.50 to pay his family's VHI bill. The €2,727.50 was misappropriated as part of a larger amount of clients' money, the balance of which was misappropriated as part of teeming and lading.

s) Misappropriated €4,250 of client's money, which he lodged into his credit card account in March 2008.

t) In March 2008, misappropriated €2,000 of clients' money, which he paid into a mortgage account in Bank of Ireland held in his own and his wife's names.

u) In February 2008, misappropriated €5,000 of clients' money, which he lodged to his credit card account.

v) In July 2006, misappropriated €4,800 of clients' money, which he lodged to his credit card account.

w) In September 2005, misappropriated €5,000 of clients' money, which he lodged to his credit card account.

x) On 17 August 2005, issued a client account cheque for €15,700 payable to a named client. The returned paid cheque shows that it was endorsed on the back with the name of a person bearing the same surname as the named client. The solicitor caused the cheque to be wrongly debited to the estate account in the clients' ledger of a named client, described in the books as a named deceased's bequest, although there was no such beneficiary in that estate. The books of account, however, show that the solicitor acted for the first-named client in the estate of a named deceased.

y) On 22 September 2006, misappropriated €13,250 of clients' money, which he used to make a payment of €6,000 to a bank in France, €3,500 into his credit card account, and the balance of €3,750 was lodged into a joint account in his and his wife's name.

z) Caused the bookkeeper/accountant to make false and misleading entries in the books of account.

The tribunal recommended that the matter be sent forward to the President of the High Court and, on 14 June 2010, the President of the High Court made an order that the name of the respondent solicitor shall be struck from the Roll of Solicitors and that the Law Society do recover the costs of the proceedings before the High Court and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained. G

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

New EU rules on vertical agreements enter into force

The European Commission has adopted a revised regulation on the competition rules for distribution of goods and services – that is, vertical agreements. In essence, it provides for a presumption of legality in relation to vertical agreements concluded between companies that have limited market power – that is, a market share not exceeding 30% – provided they contain no hardcore restrictions of competition. Commission Regulation (EU) No 330/2010 on the application of article 101(3) of the *Treaty on the Functioning of the European Union* to categories of vertical agreements and concerted practices (the 2010 regulation) was adopted on 20 April 2010 and entered into force on 1 June. It will be valid until 2022, with a one-year transitional phase. The 2010 regulation and accompanying guidelines replace Council Regulation (EC) No 1215/1999, which expired on 31 May 2010 along with its guidelines.

The 2010 regulation, like its predecessor, is in the form of a block exemption. A block exemption provides a safe harbour, for the category of agreement to which it relates, from the prohibition of anti-competitive agreements set out in article 101(1) of the *Treaty on the Functioning of the European Union* (TFEU), formerly article 81(1) of the *EC Treaty*. The application of a block exemption is limited in time.

The 2010 regulation applies to vertical agreements and concerted practices that are capable of appreciably restricting competition within the meaning of article 101 and appreciably affecting trade between member states. The term 'vertical' implies that the agreement is entered into between non-competing undertakings, that is, operating at different levels of the production or distribution chain. Competition policy takes a much more benign approach to vertical agreements than to horizontal agreements, that is, agreements between direct competitors. With vertical agreements, the activities of the parties are complementary – the product of one is the input for the other. They can often be pro-competitive, by leading to a reduction in the transaction and distribution costs of the parties and to an optimisation of their sales and investment levels. Competition concerns generally only arise where there is insufficient competition due to one or both parties having market power. Negative effects of vertical restraints include foreclosure of other suppliers or buyers by raising barriers to entry.

Market share threshold

The 2010 regulation was introduced following a period of consultation. On going to consultation, the European Commission noted that the existing rules were working well overall and should not be fundamentally modified. The main market developments it noted were the increased buyer power of big retailers and the evolution of online sales. The 2010 regulation contains some changes, as do the guidelines. The most significant of these is that the 30% market share threshold now applies to both parties to the vertical agreement.

Under the former regulation, it was necessary only to ensure that the supplier's market share did not exceed 30% in order to avail of the exemption (except for exclusive supply agreements, where the purchaser's share could not exceed 30%). Under the 2010 regulation, parties to a vertical agreement will only enjoy the benefit of the block exemption if each of their respective market shares does not exceed 30%. This will inevitably limit the scope of the block exemption.

The market shares to be taken into account are, insofar as the supplier is concerned, the relevant market on which it sells the contract goods or services and, insofar as the buyer is concerned, the market on which it purchases the contract goods or services. The latter, as stipulated in article 3 of the 2010 regulation, represents a welcome development, when compared with what was initially proposed and consulted upon by the European Commission. The original proposal was that the market share held by each of the undertakings party to the agreement should not exceed 30% on any of the relevant markets affected by the agreement. For the buyer, this referred to the market where the contract goods are resold. Respondents to the consultation were particularly concerned with this and the impact it would have where the geographic market shares of retailers are narrow (considering that consumers are unlikely to travel long distances to shop). However, such concerns are now addressed by the amended provision that it is the purchaser's share on the market on which it purchases – as opposed to resells – that counts.

Outside the thresholds

In relation to vertical agreements where one or both parties has a market share higher than 30%, there is no presumption that the agreement is caught by article 101(1) or that it fails to satisfy the conditions of article 101(3), provided that the agreement does not contain restrictions of competition by object, in particular hardcore restrictions. Outside the scope of the block exemption, it is relevant to examine whether, in the individual case, the agreement falls within the scope of article 101(1) and, if so, whether the conditions of article 101(3) are satisfied.

De minimis provisions

As before, the guidelines provide that agreements that are not capable of appreciably affecting trade between member states, or capable of appreciably restricting competition by object or effect, are not caught by article 101(1). However, the

market-share threshold for each individual undertaking is now raised to 15%, as opposed to the previous 10%. The guidelines provide that vertical agreements entered into by non-competing undertakings whose individual market share on the relevant market does not exceed 15% are generally considered to fall outside the scope of article 101(1). Article 101(1) may apply below the 15% threshold where there are hardcore restrictions, provided that there is an appreciable effect on trade between member states and on competition. Vertical agreements between small and medium-sized undertakings (SMEs) are rarely capable of appreciably affecting trade between member states, or of appreciably restricting competition within the meaning of article 101(1).

Vertical agreements take on a new significance when you're left hanging around

Agreements between competitors

As before, the exemption does not apply to vertical agreements entered into between competing undertakings. However, it does apply to certain non-reciprocal agreements. Non-reciprocal means that while one party carries out an activity on behalf of another party that operates at the same level, it is not reciprocated (for example, a manufacturer that distributes on behalf of another manufacturer, without the latter also distributing on behalf of the former). Article 2(4) is modified so as to remove one of the situations in which a non-reciprocal agreement between competitors is exempted.

Whereas before, non-reciprocal vertical agreements where the buyer's turnover did not exceed €100 million were excepted, this is no longer the case. Now, in order for vertical non-reciprocal agreements between competitors to benefit from the block exemption, it is necessary that the parties to the agreement do not compete on the upstream market.

Agency

The guidelines, as before, elaborate on the characteristics of a genuine agency agreement, which will be such as to bring these agreements outside the scope of article 101(1). The determining factor in defining an agency agreement for the application of article 101(1) is the financial or commercial risk borne by the agent. The agreement will be qualified as an agency agreement if the agent does not bear any, or bears only insignificant, risks in relation to the contracts concluded and/or negotiated on behalf of the principal in relation to market-specific investments for that field of activity and in relation to other activities required by the principal to be undertaken on the same product market. Note that the rather nebulous sounding "other activities" is a new addition to the guidelines.

Scope of the 2010 regulation

The 2010 regulation applies to agreements and concerted practices and not to unilateral conduct. It is also necessary that the agreement or concerted practice is between two or more undertakings, as opposed to with a final consumer. Each of the undertakings must operate, for the purposes of the agreement, at a different level of the production or distribution chain – for example, one undertaking produces a raw material that the other undertaking uses as an input, or the buyer resells the goods purchased. Finally, the agreement or concerted practice must relate to the conditions under which the parties may purchase, sell or resell certain goods or services. Thus, an obligation preventing parties from carrying out independent research and development would not be covered.

The guidelines, referring to recent case law, usefully expand on what the commission will regard as acquiescence, including tacit acquiescence, of the other party in the context of vertical agreements. For example, if the clauses of the agreement drawn up in advance provide for, or authorise a party to adopt subsequently, a specific unilateral policy that will be binding on the other party, the acquiescence of that policy by the other party can be established on the basis thereof.

Hardcore restrictions

Article 4 of the 2010 regulation contains a list of hardcore restrictions that lead to the exclusion of the whole vertical agreement from the scope of application of the 2010 regulation. The inclusion of such a hardcore restriction results in a presumption that the agreement falls within article 101(1). It is also presumed that the agreement is unlikely to fulfil the conditions of article 101(3).

The first hardcore restriction not permitted is resale price maintenance (RPM). As before, whereas maximum and recommended resale prices are allowed, fixed or minimum resale prices are not.

The second hardcore restriction relates to territorial protection. The restriction of passive (that is, unsolicited) sales to customers outside of an exclusively allocated territory is not permitted, although it is permitted to restrict active sales.

As before, the commission con siders that the restriction of sales on the internet is a restriction of passive sales and thus a hardcore restriction. However, whereas the previous guidelines

dispensed with discussing internet sales in one paragraph, now the commission has included much more detail in relation to what will and will not amount to acceptable restrictions on online sales. In aiming to strike a balance between allowing consumers to purchase online and prevent free-riding by resellers, the guidelines set out some concrete examples of hardcore restrictions of passive selling (online) :

- An agreement whereby a distributor shall prevent customers located in another territory from viewing its website, or shall automatically re-route its customers,
- An agreement whereby a distributor shall terminate consumers' transactions over the internet once their credit-card data reveal an address outside the distributor's territory,
- An agreement that a distributor shall limit its proportion of overall sales made over the internet – however, this does not exclude the supplier requiring, without limiting the online sales of the distributor, that the buyer sells at least a certain absolute amount (in value or volume) of the products offline to ensure an efficient operation of its brick-and-mortar shop (the 'brick-and-click' principle),
- An agreement that the distributor shall pay a higher price for products intended to be resold by the distributor online than for products intended to be resold offline.

The guidelines also set out some examples of what are permissible restrictions, stating, for example, that the commission considers online advertisement specifically addressed to certain customers as a form of active selling to those customers. For example, paying a search engine or online advertisement provider to have advertisements displayed specifically to users in a particular territory is active selling into that territory. Moreover, a supplier may require quality standards for the use of the internet site to resell its goods or require that its distributors have one or more brick-and-mortar shops as a condition for becoming a member of its distribution system.

It will also be permitted to restrict sales by members of a selective distribution system to unauthorised distributors *within the territory reserved by the supplier to operate that system*. The wording in italics represents an important change and did not appear in the former regulation. Previously, it had been permitted to restrict sales by members of a selective distribution system to unauthorised distributors operating anywhere. Now a supplier can restrict an appointed distributor in a selective distribution system from selling, at any level of trade, to unauthorised distributors located in any territory where the system is currently operated, or where the supplier does not yet sell the contract products (referred to as 'the territory reserved by the supplier to operate that system'). Thus, in areas where sales are made by the supplier, though not through a selective distribution system, sales by members of the selective distribution system to unauthorised distributors must be allowed if the exemption is to be availed of.

The third hardcore restriction remains unchanged and concerns the restriction of active or passive sales to end users by members of a selective distribution system operating at the retail level of trade. The final two hardcore restrictions relate to a restriction of cross-supplies between selective distributors and a restriction relating to the supply of components, and they remain unchanged. The guidelines contain a new section on hardcore restrictions that may fall outside the scope of article 101(1) or may fulfil the conditions of article 101(3). In relation to new brands or the sale of an existing brand on a new market, restrictions of passive sales by other distributors into a territory of an exclusive distributor, which are necessary to allow the distributor to recoup substantial investments, generally fall outside the scope of article 101(1) during the first two years. In relation to selective distribution, while the restriction on cross-supplies between appointed distributors is listed as a hardcore restriction, restrictions on active sales by wholesalers to appointed retailers in other territories may fulfil the conditions of article 101(3) in situations where appointed wholesalers are obliged to invest in promotional activities in their territories.

Other excluded restrictions

Article 5, as before, contains a list of excluded restrictions, which – unlike the hardcore restrictions contained in article 4 – are severable from the agreement. These include non-compete obligations exceeding five years; post-contract non-compete restrictions, except in limited circumstances; and restrictions on selective distributors preventing them selling the brands of particular competing suppliers.

Analysis methodology

The guidelines, as before, set out a four-step approach to assessing vertical restraints. First, the undertakings need to establish the market shares of the supplier and buyer on the market where they respectively sell and purchase the contract products. Secondly, where the 30% threshold is not exceeded by either party, then – provided there are no hardcore restrictions or excluded restrictions – the agreement is exempted. If the market-share threshold is exceeded, then the third step would be to assess whether the vertical agreement falls within article 101(1). Finally, if the agreement is caught by article 101(1), it is necessary to examine whether it fulfils the conditions for exemption under article 101(3).

In the former guidelines, there was a section setting out 'general rules for the evaluation of vertical restraints', indicating, for example, that vertical restraints generally only cause competition concerns if there is insufficient inter-brand competition. This section has been removed from the guidelines. The subsequent and final part of the guidelines relating to an analysis of the types of specific vertical restraints contains two new sections dealing with up-front access payments and category management agreements.

Transitional period

Although the 2010 regulation entered into force on 1 June 2010, there is a transitional period until 31 May 2011, whereby agreements already in force on 31 May 2010, and satisfying the criteria for exemption under the former regulation, are not subject to the prohibition under article 101(1), even if they do not satisfy the conditions for exemption under the 2010 regulation.

Finally, it should be noted that the Competition Authority's rules on vertical restraints (applying to vertical agreements that have an effect on competition within the state, as opposed to the common market), in the form of a declaration and notice, which were due to expire on 31 May 2010, have been amended to extend their validity until 30 November 2010. The Competition Authority has issued a consultation paper proposing to amend the declaration in line with the 2010 regulation and to allow the notice to lapse. Submissions are invited on the paper and details are available on the Competition Authority's website. G

Rosemary O'Loughlin is a member of the EU and International Affairs Committee.

Recent developments in European law

CONTRACT

In Case 133/08, *Intercontainer Interfrigo (ICF) v Balkenende Oosthuizen BV & Mic Operations BV*, 6 October 2009, the CJ gave its first decision on the *Rome Convention*. It considered the application of the rules in the *Rome Convention* relating to contracts by freight to a contract for freight traffic by rail between the Netherlands and Germany. The parties had not chosen a governing law. The court held that the law of the state in which the carrier has his principal place of business will only apply to a charter party when it involves not only making available a means of transport but also the actual transportation of the goods.

LITIGATION

Case C-394/07, *Gambazzi v DaimlerChrysler Canada Inc*, 2 April 2009. Hundreds of millions of dollars had been fraudulently obtained from Canadian pension funds and trustees. Daimler Chrysler and CIBC brought proceedings in London against a number of those alleged to be involved in the fraudulent transactions. One of these was Gambazzi, a Swiss lawyer resident in Switzerland. Freezing orders and asset-disclosure orders were made against him. He did not fully comply with the latter, and a default judgment was given against him, under which he had to pay very large financial damages. Proceedings were brought to enforce the order in Switzerland, but the Swiss Tribunal Federal held that the English judgment could not be enforced under the *Lugano Convention* on public-policy grounds. The claimants then tried to have the judgment enforced in Italy. Gambazzi opposed this on public-policy grounds, claiming that he had been denied a fair trial in England as he had not been allowed to defend himself. The Italian court made a reference to the Court of Justice. It held that recourse to the public-policy defence is only permissible where recognition or enforcement of a judgment delivered in another member state would contravene to an unacceptable degree the legal order of the state is which enforcement is sought. The infringement must be a manifest breach of a rule of law regarded as essential in the legal order of the state in which enforcement is sought or of a right recognised as being fundamental within that legal order. The rights of the defence occupy a prominent position in the organisation and conduct of a fair trial. This is one of the fundamental rights deriving from national constitutions and from international treaties. Fundamental rights may be subject to proportionate restrictions. The enforcing court can take into account, with regard to article 34, the fact that the court of origin ruled on the applicant's claims without hearing the defendant, who entered an appearance but was excluded from the proceedings by order on the basis that he had not complied with the obligations imposed by an order made earlier in the same proceedings. This must follow a comprehensive assessment of the proceedings and, in light of all the circumstances, it must appear that the exclusion measure constituted a manifest and disproportionate infringement of the defendant's right to be heard.

Case C-204/08, *Rehder v Air Baltic Corporation*, 9 July 2009. Mr Rehder was a German national who booked a flight from Munich to Vilnius. The flight was cancelled and he wanted to claim the €250 compensation to which he was entitled under regulation 261/2004. He started proceedings in a German court. It referred the matter to the Court of Justice, asking whether it had jurisdiction under article 5(1)(b) of the *Brussels Regulation*. This provides for jurisdiction in contract for services where "the services were provided or should have been provided". The German court asked where this jurisdiction was in the case of air transport of persons from one state to another where there is a claim for compensation on foot of regulation 261/2004. The reason for the rules in article 5 is the existence of a close link between the contract and the court called upon to hear and determine the case. In the earlier case of *Color Drack*, the court looked at the article 5 rules on the sale of goods, which provide that the state where the goods were or should have been delivered has jurisdiction. In *Color Drack*, the court held that, where there are several places of delivery of goods, the place with the closest linking factor between the contract and the court having jurisdiction is that of the principal delivery. The CJ held that similar rules should be applied to contracts for the provision of services where provision of the service is not carried out in one single member state. The only places with a direct link to an air transportation contract are those of the departure and the arrival of the aircraft. It is impossible to find that one of these places has a closer connection with the contract, and so both must be considered as the place of provision of the services. The person claiming compensation can choose either jurisdiction in which to sue.

Case C-189/08, *Zuid-Chemie BV v Philippo's Mineralenfabriek NV/SA*, 16 July 2009. Zuid-Chemie is a Dutch fertiliser manufacturer, which purchased two consignments of a fertiliser ingredient from another Dutch company. It ordered these consignments from a Belgian company, Philippo. Philippo had all the raw materials to manufacture the product except for zinc sulphate, which it purchased from GJ de Poorter in the Netherlands. The cadmium level of the zinc sulphate was too high and thus the fertiliser made from it was unsuitable or of limited use. Zuid-Chemie argued that, as a result, it had suffered loss. On this basis, it brought proceedings against Philippo. The matter was appealed through the Dutch courts to the Supreme Court, which referred the matter to the CJ. The case turned on whether "the place where the harmful event occurred" meant in this case whether the defective product was manufactured and delivered or where the damage occurred following use of the product for the purpose for which it was intended. The court sought to apply the decision in *Bier*. Both parties agreed that Belgium, where the ingredient was made, is the place of the event giving rise to the damage. They disputed the place where the damage occurred. The court held that this is "the place where the damage caused by the defective product actually manifests itself". Thus, this cannot be any other than Zuid-Chemie's factory in the Netherlands, where the defective ingredient was processed into fertiliser. The fertiliser was substantially damaged, and this damage went beyond the damage to the ingredient. G

PROFESSIONAL NOTICES

WILLS

Chambers, John (deceased), late of Shanco, Corvalley, Corduff PO, Carrickmacross, Co Monaghan, who died on 15 June 1999. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Thomas Sheridan of T Sheridan & Co, Solicitors, Bailieborough, Co Cavan; tel: 042 966 5377, email: tsheridanco@eircom.net

Docherty, Patrick (deceased), late of 93 Kilblain Court, Greenock, Scotland, PA15 1SW, formerly of 44 Kelso Court, Greenock, Scotland and 57 Cardross Crescent, Greenock, and who may have been occasionally resident in Gweedore, Co Donegal. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, who died on 24 April 2010, please contact Nanette Cunningham, Blair & Bryden Solicitors, 4 Cathcart Square, Greenock, Scotland, PA15 1 BS; tel: 01475 558 420

Doolan, Fr William (otherwise Billy/Bill) (deceased), late of 134 Hyde Park Mews, Thorndale, Dublin Hill, Cork, having also worked in the parishes of Limerick city, Killeady, Kilfinan, Askeaton and Kilcolman, Co Limerick, who died on 13 December 2009. Would any person having knowledge of a will made by the above-named deceased please contact Ursula Nodwell, Donegans Solicitors, 6 Union Quay, Cork; tel: 021 500 5333, fax: 021 432 0157, email: unodwell@donegans.ie

Doyle, Charles (Charlie) (deceased), late of Ballyvocran (Boolynavoughran) Bunclody, Enniscorthy, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 4 August 2010, please contact John A Sinnott & Co, Solicitors, Market Square, Enniscorthy, Co Wexford; tel: 053 923 3111, fax: 053 923 3402, email: info@johnasinnottsolicitors.ie

Fannen, Edward Patrick (deceased), late of 9 Glenview Drive, Hospital, Co Limerick. Would any person having knowledge of a will executed by the above-named deceased, who died on 14 January 2010, please contact Frances Cunneen of Dermot McNamara & Co, Solicitors, Main Street, Rush, Co Dublin; DX 213001 Rush; tel: 01 843 8766, fax: 01 843 8940, email: frances@dermotmcnamara.ie

Feuerstak, Ronald (deceased), late of 7 Ludford Drive, Ballinteer, Dublin 16. Would any person having knowledge of a will executed by the above-named deceased, who died on 12 December 2009, please contact PD Gardiner & Co, Solicitors, 77 Sir John Rogerson's Quay, Dublin 2; DX 9; tel: 01 676 6350, email: dg@pdgsolicitors.com

Kerr, Ann (deceased), Main Street, Doneraile, Co Cork. Would any person having the knowledge of the whereabouts of any will made by the above-named deceased, who died on 27 June 2010, please contact Bowen & Co, Solicitors, Main Street, Sixmilebridge, Co Clare; tel: 061 713 767, fax: 061 713 642, email: info@legalsupportservices.ie

McCarthy, Prof Michael Joseph (deceased), late of 8 Aravon Court, Bray, Co Wicklow. Would any person having knowledge of a will executed by the above-named deceased, who died on 1 March 2010, please contact McKenna Murphy Solicitors, Stonebridge Close, Shankill, Co Dublin; tel: 01 272 1344, fax: 01 272 1353, email: mckennamurphysolicitors@eircom.net

McNamee, Patrick (deceased), late of 62 Homelawn Road, Tallaght, Dublin 24. Would any person having knowledge of a will executed by the above-named deceased, who died on 7 April 2009, please contact Brian O'Brien Solicitors, 129 Capel Building, Mary's Abbey, Dublin 7; tel: 01 878 8649, fax: 01 878 8650, email: boblaw@brianobrien.ie

Monahon, Michael Emmet (otherwise Emmett Monahan) (deceased), of Ballintra, Inniskeen, Co Monaghan. Would any person having knowledge of a will made by the above-named deceased, who died on 29 August 2002, please contact G Jones & Co, Solicitors, Main Street, Carrickmacross, Co Monaghan; tel: 042 966 1822, fax: 042 966 1464, email: clynch@gjones.ie

O'Neill, Annie (deceased), late of St Anne's Ward, St Vincent's Hospital, Athy, Co Kildare and formerly of Maisonettes, Ballylinan, Co Laois. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 20 March 2010, please contact HG Donnelly & Sons, Solicitors, 5 Duke Street, Athy, Co Kildare; reference RP/ONE004-1

Poyser, Honoria May (otherwise Noni) (deceased), retired nurse, late of 146 Ard Na Mara, Malahide, in the county of Dublin and (nursing home) Tara Winthrop Nursing Home, Airside, Swords, Co Dublin. Date of death: 24 April 2010. Would any person having knowledge of the whereabouts of a will made by the above-mentioned deceased, and in particular a will dated 25 August 1993, please contact John McCarthy, Liston & Company, Solicitors, Argyle House, 103/105 Morehampton Road, Donnybrook, Dublin 4; tel: 01 668 5557, email: john@wtliston.ie

Redman, Mary Evelyn (deceased), late of 22 Oakdene, Ballinclea Road, Killiney, Co Dublin. Would any person having knowledge of a will executed by the above-named deceased, who died on 8 July 2010, please contact Mason Hayes & Curran Solicitors, South Bank House, Barrow Street, Dublin 4, tel: 01 614 5000, fax: 01 614 5001, email: nlarkin@mhc.ie; ref: NL/ADM

Walsh, Patrick (deceased), late of 35 Lourdes Road, Maryland, Dublin 8, who died on 21 May 2010. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Aidan T Stapleton & Co, Solicitors, Parliament Buildings, 38 Parliament Street, Dublin 2; tel: 01 679 7939, fax: 01 679 2494, email: info@astapleton.com

MISCELLANEOUS

Solicitor(s) sought to invest in medium-sized practice, Co Clare, with a view to partnership and future ownership. This is a long-established practice with a large and loyal client base providing a full range of legal services. The principal of the firm anticipates retirement within six/seven years and desires a reduction in workload in the interim. This is a partnership opportunity for one or two solicitors to take over a busy practice that has the scope for further expansion. Replies in strictest confidence to: Patrick O'Hara, Fiducial, 23H Unit 4 Liosban Business Park, Galway; email: p.ohara@fiducial.ie

Traineeship with solicitor's firm sought by hard-working and highly motivated law graduate with all FE1 exams completed and ranked in the top 10% of law class in 2007. Trained typist with excellent administrative and client relations experience in my current position. Tel: 087 906 4528 or reply to box no 08/10/11

Apartment for sale or rent at Blackhall View, only 100m from Law School. €280,000 for quick sale or rent €1,100 pm. Modern, secure development constructed 2004. Two double bedrooms, one bath, kitchen/dining/living area. Fully furnished. Tel/txt: 086 418 7668

TITLE DEEDS

Notice re lost lease: Application D2010LR047143H has been received in the Property Registration Authority for the cancellation of a burden on folio DN174423F relating to 56 Moore Street, Dublin 1 of a lease dated 3 December 1979 made between Martina Investments Limited and Riva Harris of the one part and Dolphin Discs Limited of the other part, whereby the said 56 Moore Street was demised to the said Dolphin Discs Limited for a term of 33 years from 1 December 1979 subject as therein. The said lease cannot be located and is stated to have been lost. Any person holding the lease or having knowledge of its whereabouts should have regard to the existence of this application and its effect upon the holder of the lease. Unless notification is received from any person or body having custody of the said lease within 28 days from the date of publication of this notice, the Property Registration Authority will proceed with the said application. Any such notification should state the grounds upon which the lease is being held.
Date: 27 August 2010
Signed: Paul Doyle, chief examiner of titles, PRA, Chancery Street, D7

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 the land and premises known as nos 133, 135, 137, 139 and 141 Lower Rathmines Road, Rathmines, Dublin 6: an application by Yvonne Fogarty and Miriam Rees
Take notice that any person having a superior interest in the following property: the piece or plot of ground fronting Rathmines Road, Rathmines, and now known as nos 133, 135, 137, 139 and 141 Lower Rathmines Road, in the parish of St Peter, barony of Upper Cross and city of Dublin, being the land demised by a lease dated 22 May 1934 made between the Rathmines Amusements Company Limited of the one part and Patrick Fearon of the other part for the term of 236

years from 1 January 1934, subject to the yearly rent of £100 (€126.97), should give notice of their interest to the undersigned solicitors.

Take notice that Yvonne Fogarty and Miriam Rees intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of all superior interests in the aforesaid property, and any party asserting that they hold an interest therein is called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

In default of any such notice of interest being received, Yvonne Fogarty and Miriam Rees intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior interests in the above property are unknown or unascertained.

Date: 27 August 2010

Signed: Murphy McElligott (solicitors for the applicant), 69 Patrick Street, Dun Laoghaire, Co Dublin

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1987*, section 8, between Michael Connolly and the representatives of Denis L McDonnell, Mary N McDonnell and Provincial Bank of Ireland Limited and the representatives of Swithin White

Take notice that any person having an interest in the fee simple or in any superior interest in the property known as 87 Lower Glanmire Road in the city of Cork, being the premises held firstly under indenture of lease made 29 October 1959 and made between Denis L McDonnell, Mary N McDonnell and Provincial Bank of Ireland Limited of the one part and Margaret Rose Cronin of the other part for a term of 99 years from 29 October 1959, subject to a yearly rent of £62, and held, secondly, under indenture of lease made 21 July 1747 and made between Swithin White of the first part and Joseph Austin of the other part for a term of 997 years from 21 March 1747, subject to a yearly rent of £20.

Take notice that the applicant, Michael Connolly, intends to submit an application to the county registrar for the city of Cork sitting at the Courthouse, Washington Street, Cork, for the acquisition of the fee simple interest in the aforesaid property and that any party asserting that they hold the said fee simple interest or any superior interest in the said property are called upon to furnish evidence of title to the under mentioned within 32 days from the date of this notice. In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the said county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 27 August 2010

Signed: Diarmaid O 'Cathain (solicitor for the applicant), 30 South Terrace, Cork

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Ann Byrne and in the matter of premises situate at St Vincent's Road, The Burnaby, Greystones, Co Wicklow

Take notice that any person having an interest in the freehold estate or any intermediate interests of the premises situate at St Vincent's Road, the Burnaby, Greystones, Co Wicklow, held under an indenture of lease made on 22 June 1906 between Elizabeth Alice Frances Le Blond of the first part and Harry Arthur Gustavus St Vincent Burnaby of the second part, and Eleanor Bruce Pratt of the other part (hereinafter, 'the lease') for a term of 991 years from 1 May 1906 at the annual rent of £4.5s.0d sterling and subject to the covenants and conditions therein contained.

Take notice that Ann Byrne intends to submit an application to the county registrar for the county of Wicklow at the Courthouse, Wicklow, Co Wicklow for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Ann Byrne intends to proceed with the application before

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the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Wicklow for directions as may be appropriate that the person or persons beneficially entitled to the intermediate interests, including the fee simple in the aforesaid property, are unknown or unascertained.
Date: 27 August 2010
Signed: Messrs Smyth O'Brien Hegarty (solicitors for the applicant), 24 Lower Abbey Street, Dublin 1

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the land and premises known as no 29 Charleville Road, Phibsboro, Dublin 7: an application by Sylvarna Limited
Take notice that any person having an interest in the freehold estate or any superior or intermediate interest in the property known as number 29 Charleville Road, North Circular Road, in the parish of Grangegorman, barony of Coolock and city of Dublin, being the land demised by a lease dated 16 April 1894 made between William Ellis of the one part and Alice Rendell of the other part for the term of 148 years and six months from the date of the lease, subject to the yearly rent of £7.7s.0d (€9.33), should give notice of their interest t o the undersigned solicitors.

Take notice that the applicant, Sylvarna Limited, intends to apply to the county registrar for the county of the city of Dublin for the acquisition of the freehold and all intermediate interests in the said property, and any party asserting that they hold an interest therein is called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

In default of any such notice of interest being received, Sylvarna 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 such directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior interests in the said property are unknown or unascertained.
Date: 27 August 2010
Signed: EP Daly & Company (solicitors for the applicant), 23/24 Lower Dorset Street, Dublin 1

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Joseph O'Reilly
Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 54 Upper O'Connell Street in the parish of St Thomas and city of Dublin, comprising part of folio DN187485F, the subject of a perpetual yearly rent of €28.61 (£22.53) created by a fee farm grant dated 2 October 1893 from George Vance Scovell to the Rt Hon the Earl of Longford, the Rt Hon Arthur Edward Baron Ardilaun, the Very Rev Thomas Hare and Thomas Packenham Law.

Take notice that Joseph O'Reilly, being the person entitled to the grantee's interest in the said fee farm grant, intends to apply to the Dublin county registrar for the acquisition of the fee simple estate and all intermediate interests if any in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.
Date: 27 August 2010
Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

In the matter of the *Landlord and the 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 Ken Lawford
Take notice that any person having an interest in the fee simple or in any superior interest in the property known as nos 39/40/41/42 Clanbrassil Street, Dublin 8, in the city of Dublin, being part of the property comprised in a fee farm grant dated 19 June 1884 from Edmond (aka Edmund) Lawless to Thomas Slevin, subject to the perpetual yearly rent of €13.72 (£10.16).

Take notice that the applicant, Ken Lawford, intends to submit an application to the county registrar for the city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple interest in the aforesaid property and that any party asserting that they hold the said fee simple interest or any superior interest in the said property are called upon to furnish evidence of title to the under mentioned within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.
Date: 27 August 2010
Signed: Seamus Maguire & Co (solicitor for the applicant), 10 Main Street, Blanchardstown, Dublin 15

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (No 2) (Ground Rents) Act 1978* (as amended) and in the matter of an application by Teresa Bolton – premises at 9 Lower Camden St in the city of Dublin
All that and those the premises known as 9 Lower Camden Street in the city of Dublin, being the premises comprised in and held under indenture of lease of 11 October 1951 between Sarah Elizabeth Grahame Day of the one part and Peter Hanlon of the other part: the premises demised to the said Peter Hanlon for a term of 99 years from 29 September 1950, subject to the yearly rent of £75.

Take notice that Teresa Bolton, being the person currently entitled to the lessee's interest under the said lease, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Teresa Bolton intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion in the aforesaid premises, are unknown and unascertained.
Date: 27 August 2010
Signed: Taylor and Buchalter (solicitors for the applicant), Greenside House, 45/47 Cuffe Street, St Stephen's Green, 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 Joe O'Reilly
Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 71/71A Parnell Street, Dublin 1, comprised in folio DN186738F, held

under a fee farm grant dated 10 November 1914 made between Joseph Westby Kincaid and Charles Colhoun Little of the one part and Maria Larkin of the other part, subject to the perpetual yearly rent of £32.66, now €41.77, thereby reserved, and to the covenants on the part of the grantee and conditions therein contained.

Take notice that Joseph O'Reilly, being the person entitled to the grantee's interest in the said grant, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 27 August 2010

Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Joseph O'Reilly

Take notice that any person having an interest in the fee simple or in any superior estate or interest in those parts of 37 Henry Street, Dublin 1, comprised in folio DN140418L, being parts of the property comprised in a lease dated 21 June 1810 from George Daniel to Edward Mulligan for a term of 900 years from 29 September 1810, which reserved the yearly rent of £100 late currency.

Take notice that the applicant, Joseph O'Reilly, intends to submit an application to the county registrar for the city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple and any intermediate superior estate or interest in the aforesaid property and that any party asserting that they hold the said fee simple or any such superior estate or interest in the aforesaid property is called upon to furnish evidence of title to the under mentioned within 21 days from the date of this notice.

In default of any such notice being received, the said applicant intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 27 August 2010

Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Allied Irish Banks plc of Bankcentre, Ballsbridge, in the city of Dublin – re: premises at the rear of 15/16 Marlborough Street in the city of Cork

Take notice any person having interest in the freehold estate or any other estate of the following property: premises at the rear of 15/16 Marlborough Street with an entrance under number 16 Marlborough Street in the city of Cork.

Take notice that Allied Irish Banks plc intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all superior interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below name.

In particular, such persons who are entitled to the interest of Reverend Thomas Carson, being the lessor pursuant to a lease of 28 August 1840 between Thomas Carson of the one part and Samuel Hobart of the other part for a term of 300 years from 1 May 1840 in the said premises at Marlborough Street in the city of Cork, should provide evidence of their title to the below named.

In default of such notice being received, the applicant, Allied Irish Banks plc, 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 Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold in the premises, are unknown and unascertained.

Date: 27 August 2010

Signed: A&L Goodbody (solicitors for the applicant), IFSC, North Wall Quay, Dublin 1

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Allied Irish Banks plc of Bankcentre, Ballsbridge, in the city of Dublin – re: 15 Marlborough Street in the city of Cork

Take notice any person having interest in the freehold estate or any other estate of the following property: 15 Marlborough Street in the city of Cork.

Take notice that Allied Irish Banks plc intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all superior interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named.

In particular, such persons who are entitled to the interest of Henry Hickman, pursuant to a lease of 13 October 1978 between Henry Hickman of the one part and Thomas Dunscombe of the other part for a term of 380 years from 1 November 1797 in lands at Marlborough Street in the city of Cork, and such persons who are entitled to the interest of Parker Dunscombe, Elizabeth Batchelor Dunscombe, Edward Batchelor Dunscombe, Jane Waggett Dunscombe, Christopher Waggett Dunscombe, the lessors in a lease of 20 October 1840 made between the said parties of the one part and Samuel Hobart of the other part for a term of 200 years from 1 May 1840 relating to lands at Marlborough Street in the city of Cork, should provide evidence of their title to the below named.

In default of such notice being received, the applicant, Allied Irish Banks plc, 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 Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold in the premises, are unknown and unascertained.

Date: 27 August 2010

Signed: A&L Goodbody (solicitors for the applicant), IFSC, North Wall Quay, Dublin 1

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Allied Irish Banks plc of Bankcentre, Ballsbridge, in the city of Dublin – re: 62 South Mall in the city of Cork

Take notice any person having interest in the freehold estate or any other estate of the following property: 62 South Mall in the city of Cork.

Take notice that Allied Irish Banks plc intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all superior interest in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named.

In particular, such persons who are entitled to the interest of Mary Anne Keating, pursuant to a lease of 2 October 1795 between Williams Kearns of the one part and Jackson Walsh Delacour of the other part for a term of 383 years from 29 September 1795 in lands at South Mall in the city of Cork, should provide evidence of their title to the below named.

In default of such notice being received, the applicant, Allied Irish Banks plc, 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 Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold in the premises, are unknown and unascertained.

Date: 27 August 2010

Signed: A&L Goodbody (solicitors for the applicant), IFSC, North Wall Quay, Dublin 1

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the part of the lands and premises of Callary in the half barony of Rathdown and county of Dublin, situate at Deerpark Road, Mount Merrion, in the county of Dublin: an application by Flanagan's of Buncrana Limited

Take notice that any person having an interest in the freehold estate of or superior interest in the following premises: all that and those that piece or plot of ground being part of the lands of Mount Merrion, otherwise Callary, situate in the half barony of Rathdown and county of Dublin, with the cinema or theatre and offices erected thereon, which premises are particularly delineated, measured (be the same more or less) and described on the map or plan drawn on these

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presents and are thereon edged red, together with the right in common with the lessors and all other persons having a similar right (including all persons lawfully resorting to the said premises) at all times and for all purposes whether on foot or with horses, carts, carriages or motors to pass and repass over and along the road or avenue adjoining the said premises (which said road or avenue is not intended to be hereby demised) and all other roads or avenues of the lessors communicating therewith (hereinafter called 'the premises') which were demised to the Deerpark Cinema Limited for a term of 250 years from 25 March 1953, subject to the yearly rent of £435 sterling and subject to the covenants and conditions therein contained on the part of the lessee to be observed and performed.

Take notice that the applicants, Flanagan's of Buncrana Limited, being the lessee entitled under sections 8, 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the said aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 27 August 2010

Signed: CS Kelly & Co (solicitors for the applicant), Market House, Buncrana, Co Donegal

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 St Finian's Diocesan Trust

Take notice that St Finian's Diocesan Trust, having its registered office at Bishop's House, Mullingar, in the county of Westmeath, being the person currently entitled to the lessee's interest, under a lease dated 29 November 1879, in the premises and hereditaments more particularly described in the schedule hereto, intends to apply to the county registrar for the county of Meath for the acquisition of the fee simple and all intermediate interests in the said property, and any person asserting that they hold the fee simple or any intermediate interest in the aforesaid property is hereby called upon to furnish evidence of title to same to the below named within 21 days from the date of publication of this notice.

In default of any such notice being received, St Finian's Diocesan Trust intends to proceed with an application before the county registrar for the county of Meath at the end of 42 days from the date of publication of this notice for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the fee simple and any intermediate interest in the said premises are unknown and are unascertained.

Schedule: all that and those the premises and hereditaments now known as the Old National School, Donacarney, in the barony of Lower Duleek and county of Meath, and being the premises comprised in and demised by an indenture of lease dated 29 November 1879 and made between the Reverend Thomas Mathews of the one part and Partick Mathews and Thomas Michael Mathews of the other part, and which said premises comprises 0.15 acres (0.0607 hectares or thereabouts).

Date: 27 August 2010

Signed: Smyth and Son (solicitors for the applicant), Rope Walk, Drogheda, Co Louth

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*.

BEALE
AND COMPANY

Professional Indemnity Litigation Partner

Beale and Company Solicitors is a niche law firm, with offices in Dublin and the UK, offering legal services to professionals and their professional indemnity insurers. Due to continued business expansion an opportunity exists for an additional partner to join the existing partners in our Dublin office.

Beale and Company are well known for their knowledge and understanding of insurance, professional indemnity, the professions and the construction industry. Their partners and staff are experts in their practice areas and consistently feature in professional guides.

The successful applicant will be a proven expert in defending professional indemnity claims against engineers and architects and their insurers or claims against surveyors, solicitors, accountants, financial advisers and other professionals.

You will have at least five years experience dealing with professional negligence claims for professionals and their insurers at partner or senior associate level. A client following or strong contacts in the insurance and/or construction sector will be a distinct advantage. You must be capable of attaining a high profile in the Dublin and London markets with insurers, brokers and construction clients alike.

This is an exceptional opportunity to join a highly respected, successful and driven team.

Interested applicants should contact our retained recruiter, Yvonne Kelly of Keane McDonald in strict confidence on 01 841 5614. Alternatively email your CV to ykelly@keanemcdonald.com.

All direct applications to Beale and Company will be redirected to Keane McDonald

Keane McDonald
executive legal recruitment

Keane McDonald
executive legal recruitment

Head of Legal & Compliance

Our client, part of a highly regarded international banking group, is seeking to hire an exceptional solicitor who will assume executive responsibility for its legal and compliance affairs in Ireland. The successful candidate will join the Dublin-based executive leadership team and will report directly to the CEO.

The Role:

As Head of Legal & Compliance you will have full executive responsibility for the Legal and Compliance function in the organisation. You will be a key member of the executive leadership team and you will lead a large team of qualified solicitors, managers and staff.

You will:

- Hold executive responsibility for all legal, regulatory and compliance aspects of the bank
- Oversee the legal aspects of all credit management and credit recovery work
- Manage any litigation proceedings working closely when required with external counsel
- Ensure all compliance related activities are managed effectively and efficiently, including the bank's regulatory responsibilities
- Work closely with the bank's group headquarters as appropriate

The Person:

The successful applicant will:

- Be a qualified lawyer in Ireland or the UK with at least 10 years experience in a financial services legal environment
- Be a high achiever with experience of working at a senior level in a banking or similar relevant environment
- Be a solid communicator with a business oriented approach
- Have proven ability to lead and manage a legal and compliance team while working comfortably at executive level
- Thoroughly understand banking activities and the markets within which the bank operates
- Have an expert knowledge of the legal, credit, compliance and regulatory environment associated with banking in Ireland

The level of seniority associated with this exceptional opportunity will be reflected in the attractive remuneration package on offer.

Interested applicants should contact Yvonne Kelly of Keane McDonald in strict confidence on 01 8415614 or email your CV to ykelly@keanemcdonald.com

Fitzwilliam Business Centre
77 Sir John Rogerson's Quay
Dublin 2

Tel: +353 18415614
Fax: +353 16401899

Web: www.keanemcdonald.com
Email: info@keanemcdonald.com

Mako Search,
Alexandra House,
The Sweepstakes,
Ballsbridge, Dublin 4.

T: +353 1 685 4018
E: admin@makosearch.ie
W: www.makosearch.ie

CORPORATE — DUBLIN

Our client is a high profile practice and is now looking to recruit a high calibre corporate lawyer. You will provide legal advice to blue chip companies in the areas of mergers and acquisitions, joint venture agreements, management buy outs, reverse takeovers and shareholder agreements.
Contact: carolmcgrath@makosearch.ie **Ref: C1115**

TAX PARTNER — DUBLIN

Our Client is looking to recruit a tax professional. You will advise on the complexities of international and domestic transactions. You will have an ability to provide leadership on projects requiring tax input and will possess strong commercial focus and business acumen.
Contact: carolmcgrath@makosearch.ie **Ref: C1116**

COMPLIANCE PROFESSIONAL — DUBLIN

This role provides an excellent opportunity to liaise closely with different units of the financial services department. Work to include authorisation of new entities, liaising with the regulator, providing relevant information and keeping up to date with all regulatory developments. FSA experience beneficial.
Contact: carolmcgrath@makosearch.ie **Ref: C1117**

BANKING — DUBLIN

Our Client is a prestigious law firm and is seeking an ambitious banking lawyer with strong acquisition/property/leveraged finance experience. You will be involved in a range of transactions and will act on behalf of international and domestic clients. Experience with a reputable firm is beneficial.
Contact: carolmcgrath@makosearch.ie **Ref: C1118**

TAX ASSOCIATE — DUBLIN

Excellent opportunity for tax adviser to join a dynamic law firm. You will provide tax related advice to support various departments including the corporate and financial services sector thus ensuring that transactions are managed tax efficiently and to promote a high standard of tax compliance throughout the business.
Contact: carolmcgrath@makosearch.ie **Ref: C1119**

FUNDS — DUBLIN

Top ranking law firm requires an excellent funds lawyer. You will advise investment managers, custodians, administrators and other service providers of investments funds on establishing operations in Ireland. You will be commercial minded and ambitious with strong exposure to investment funds.
Contact: carolmcgrath@makosearch.ie **Ref: C1120**

CORPORATE — SYDNEY

Our client is one of Australia's leading law firms. An opportunity exists for a corporate lawyer to join at associate or senior associate level. The role covers mergers and acquisitions, capital markets, joint ventures, procurement, financial services, private equity, corporate recovery, and corporate governance. Relocation and visa assistance will be provided.
Contact: sharonswan@makosearch.ie **Ref: C1121**

CONSTRUCTION — SYDNEY

This leading firm has a construction practice second to none. From concept through to completion they advise on all roles including initial concept, development, contract drafting, documentation, project management and completion. An opportunity exists for a mid-level construction lawyer. Excellent salary and benefits.
Contact: sharonswan@makosearch.ie **Ref: C1122**

BANKING — SYDNEY

This leading firm is seeking to recruit a banking associate. You will have excellent knowledge of all aspects of project financing, property development and corporate financing transactions. Knowledge of corporate lending, including various forms of security is also essential. A very competitive remuneration structure is available.
Contact: sharonswan@makosearch.ie **Ref: C1123**

IP & Technology — SYDNEY

The ideal candidate will have gained experience from a leading firm or in-house. Specifically you will have experience in the drafting and negotiation of IP development and commercial agreements, software development, licence and support agreements. Excellent salary and benefits.
Contact: sharonswan@makosearch.ie **Ref: C1124**

BANKING & FINANCE — SYDNEY

Our client's banking & finance team is looking for a mid-level associate to join their close-knit team. The team is involved in a variety of financing transactions including project finance, debt, capital markets and corporate finance transactions on behalf of banks and sponsors. Experience from a leading Irish firm as well as top academics are essential.
Contact: sharonswan@makosearch.ie **Ref: C1125**

LITIGATION — SYDNEY

The successful candidate will have solid litigation experience. Land court litigation and/or planning and environment litigation experience would also be advantageous, but not essential. The successful candidate will be a good communicator, a dynamic team player and have a natural ability to manage client relationships to ensure seamless client service delivery.
Contact: sharonswan@makosearch.ie **Ref: C1126**

New Openings

Partnership

Our clients include the leading Irish law firms. Significant opportunities exist in the following practice areas and a client following is not essential.

Employment
Funds
Insolvency
Litigation
Regulatory/Compliance
Environmental & Planning

Private Practice

We have significant opportunities in the following practice areas:

Banking – Associate
Banking – Senior Associate
Commercial Property – Senior Associate
Insurance (Contentious and Non-Contentious) – Associate to Senior Associate
Environmental and Planning – Senior Associate
Funds – Assistant
Funds – Associate
Funds – Senior Associate
Litigation (Professional Indemnity) – Associate to Senior Associate
Tax – Associate to Senior Associate

For more information on these or other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.
T +353 (0) 1 670 3997 E mbenson@benasso.com

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Legal Recruitment Specialists