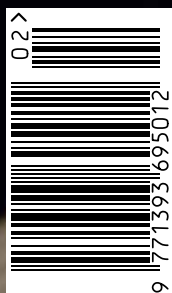


# LAW SOCIETY Gazette

€3.75 Jan/Feb 2010

## GAGGING ORDERS?

### New defamation regime



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# Seeking stability

**T**his is my first message for the *Gazette* and, as I write this, the matters that concerned my predecessor, John Shaw, still remain. The recession hopefully shows some signs of bottoming out. Having said that, it is important that we don't simply wait for a change in fortunes, generally, and that we take steps to play our own part in a return to economic stability within the profession.

Two major policy issues are currently being considered by the Society's Council, both of which have arisen from our difficulties with the recent professional indemnity insurance (PII) process. The first of these relates to commercial undertakings. During the course of 2009, some of the principal providers of insurance to the profession insisted that they would not provide cover for commercial undertakings as part of the minimum terms and conditions and would consider exiting the insurance market unless commercial undertakings were excluded and unless the Assigned Risks Pool was suspended. As a consequence, and in order to ensure a viable market, the Council agreed to change the minimum terms and conditions. Subsequently (and without any consultation or warning), the insurers decided to offer insurance cover for commercial undertakings to the profession. Not surprisingly, many colleagues availed of this offer. However, it is the view of the Council that this situation is not satisfactory.

There is no guarantee that insurance cover for commercial undertakings will be offered by the insurers again next year, or in succeeding years. As you will be aware, insurance must be in place at the time that a claim is made, and insurance cover paid for in a year when the actual legal work is done will not cover a claim made in a subsequent year in respect of that work.

The difficulties are compounded by the fact that there is no agreed system or documentation for commercial undertakings. The Society has already issued a warning to colleagues of the dangers of completing such undertakings. It is the view of the Society that the need for stability and best practice in our commercial banking sector cannot be served properly by reliance on an *ad hoc* system of commercial undertakings designed and underpinned by a juxtaposition of banking and insurance interests.

All of these issues are being considered on behalf of the Council by a task force being chaired by the immediate past-president, John D Shaw. The task force has had meetings with the Irish Banking Federation and with some of the financial institutions and the process is ongoing. In due course, the task force will bring considered proposals to the Council for discussion. This is a complex issue, and I would urge colleagues to share their views with the task force, at [commercialundertakingsTF@lawsociety.ie](mailto:commercialundertakingsTF@lawsociety.ie), in order to

***"There is no guarantee that insurance cover for commercial undertakings will be offered by the insurers again next year, or in succeeding years."***

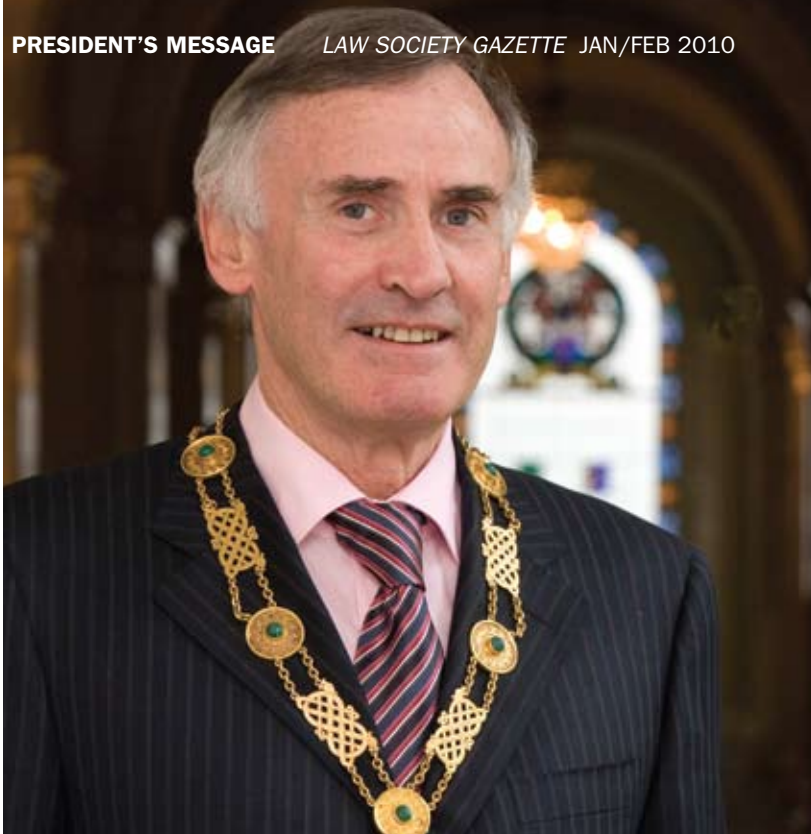
inform the Council's consideration of the matter.

The second matter relates to the broader issue of the future of PII for the profession. Notwithstanding the Society's intensive consultation process with the insurers and its moves to facilitate fundamental changes to the PII scheme, the insurance renewal process for 2009/10 was prolonged, complex and deeply stressful for many individual solicitors and for the profession as a whole. At the time of writing, it appears that the fear that a large number of solicitors might be unable to secure insurance has not come to pass. Indeed, the number of firms that have failed to notify the Society of details of their insurers at this stage is on a par with the same time last year. Accurate figures will not be available until the practising certificate renewal deadline of 1 February has expired, but there is a certain optimism that the numbers are not significant.

However, the Society is determined that the delays, uncertainty and stress that were features of the most recent renewal process will not be repeated in the future. Over the coming weeks, all aspects of the recent renewal process will be subjected to examination by the PII Task Force, under the chairmanship of Eamon Harrington, and a survey will be conducted to ascertain the real experiences of colleagues. All available options will be considered, with the benefit of expert legal and insurance advice; existing processes will be scrutinised; and the Society will engage with the insurers to identify systems, timelines and documentation that will remove unnecessary stress and minimise cost. The task force welcomes your views at [PIITF@lawsociety.ie](mailto:PIITF@lawsociety.ie).

It remains for me to inform you that the theme of this year's annual conference in Kilkenny on 9/10 April will focus on new and emerging business opportunities and 'Building the solicitor's practice of tomorrow'. I would urge colleagues to book for the conference online at [www.lawsociety.ie](http://www.lawsociety.ie).

**Gerard Doherty**  
President







### On the cover

The *Defamation Act 2009* was a long time coming, with many of its provisions being recommended in 1991 by the Law Reform Commission. So what's the story? And – more importantly – can we print it?

PIC: CIAN REDMOND



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The recession has seen a fall in the volume of merger and acquisitions activity, but the rules still apply and merging parties must consider whether a notification to the Competition Authority is necessary, writes Cormac Little

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## ■ WEXFORD

Bar association president Helen Doyle and secretary John Garahy, accompanied by his wife, county registrar Marie Garahy, attended the opening by President Mary McAleese of the Criminal Courts of Justice on Saturday 16 January at a large function attended by the judiciary, practitioners and Courts Service staff and representatives. The building is a sophisticated complex, completed at a cost equivalent to that for the construction of the Four Courts complex just over 200 years ago, and it provides superbly designed facilities for all its users.

Plans for the new Wexford Courthouse have been drawn and were presented to the association in early December. The Courts Service indicates that it is the next complex in line for development. As the present accommodation (in Ardavan and Wexford Town) is not merely inconvenient but is unsuited to today's requirements for the safe and efficient conduct of civil, family or criminal work, practitioners and other court users anxiously await progress.

## ■ KILDARE

Bar association president Frank O'Brien, together with the able assistance of secretary David Osborne and CPD officer Andrew Cody, have been very busy on the seminar front. They combined the serious with the social last month with the holding of a pre-Christmas seminar on office technology. This was then followed by a festive dinner in the Kilashee House in Naas, which was also the seminar venue. Neil Butler,



The Longford Bar Association in conjunction with the Roscommon Bar Association recently hosted a seminar on 'Recognising and managing stress'. Mary Jackson from LawCare gave a presentation on the support services that are available to practitioners suffering with health problems and emotional difficulties. Among those attending the seminar were (back, l to r): Owen Carty, Deirdre Gearty, Alan Mitchell, Bríd Mimmagh, Gerry Gannon, Brian O'Connor, Paul Wynne, Rebecca Finnerty and Siobhan Byrne. (Front, l to r): Mary Rose McNally, Terry O'Keeffe, Mary Jackson, Jonathan Wynne and Bríd Miller

chair of the Law Society's Technology Committee, showed colleagues how to get the most out of their existing IT, and Dan O'Connor, who chairs the eConveyancing Task Force, as well as speakers from the Land Registry, gave practical insights as to how our technical infrastructure can help us.

This seminar was followed up last week with the topic of the moment – the *Land and Conveyancing Law Reform Act* and compulsory registration, sponsored by DX.

## ■ DUBLIN

One noticeable upside to the difficulties being experienced by the profession both in Dublin and outside has been the pulling together of colleagues all around – perhaps no more than colleagues on a particular street in the city making the effort to round a few colleagues up and meet for a coffee or

lunch and see how they are coping. Sometimes, then, more structured gatherings have been taking place among like-minded colleagues. This has been one positive outcome of the PII difficulties, where a great pooling of information and experiences has been taking place, and the bar association has been to the fore in encouraging this type of dialogue.

One gathering of a more formal nature that took place – and now very much a hardy annual – was the Southside Solicitors' Annual Dinner (alias 'Justin's Dinner'), where many colleagues from the old borough hinterland gathered. Special guests were the president of the Law Society and northside practitioner Gerard Doherty, together with local resident and DG Ken Murphy, DSBA president John P O'Malley, and local colleague and court doyen Ronnie Lynam, who

shared some of his many legal anecdotes in his after-dinner duties.

## ■ DONEGAL

Alison Parke, bar association CPD coordinator, has certainly hit the new year with a bang. First up was a seminar on managing risk and regulation in the practice, held in Letterkenny. Next was an offering on 4 February at Gallagher's Hotel, Letterkenny, at which Michael Irvine offered his insight and expertise on mediation.

## ■ LONGFORD AND ROSCOMMON

The Longford Bar Association, in conjunction with the Roscommon Bar Association, recently hosted a seminar on recognising and managing stress. Mary Jackson from LawCare gave a fascinating presentation on the support services that are available to practitioners who are suffering with health problems and emotional difficulties. The Law Society's Louise Campbell also addressed the meeting and gave an update on the various services that the society provides.

## ■ LIMERICK

The LBA is gearing up for the year ahead, kicking off the annual CPD events with a lecture on defamation followed by one in February on costs.

In the meantime, we wish Alex O'Neill and Jim O'Donnell the very best following their practice merger, where they will practise from 22 Barrington Street. **G**

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

# Irish firms top honours list in Europe

Irish law firms walked away with some of the top honours at *The Lawyer* magazine's first European awards, held on 4 November 2009 in Barcelona. Managing partners from many of Europe's top firms congregated to hear if their firms would receive the plaudits.

A&L Goodbody was shortlisted for the 'European Law Firm of the Year' award, which was won by Spanish law firm Garrigues. The Irish firm had earlier taken the accolade for 'Law Firm of the Year: Republic of Ireland'.

Arthur Cox was 'highly commended' in this category, while Matheson Ormsby Prentice and William Fry were both shortlisted.

Arthur Cox had reason to cheer very loudly, however, when its managing partner,



Arthur Cox's managing partner Pádraig Ó Riordáin made it a double when he was named 'European Managing Partner' at the British Legal Awards 2009 on 3 December. (From l to r): Jerome Raguin (DataCert), Rajitha Boer (DataCert), Pádraig Ó Riordáin and Alexander Armstrong (British Legal Awards)

Pádraig Ó Riordáin, took the laurels in the 'European Managing Partner of the Year' category.

The judges commented that

it had been a superb year for Pádraig, both on a personal level and for Arthur Cox. After winning the respect of key figures in the Irish

government, Ó Riordáin has been appointed to various key positions that have helped shape the Irish economy through its recession. These include being instructed to advise the state on its response to the banking crisis, which saw the creation of the first-ever bank guarantee scheme, the nationalisation and recapitalisation of Anglo Irish Bank, and the establishment of the National Asset Management Agency.

'It is unlikely that any lawyer has influenced a country's economy during the economic crisis more than Ó Riordáin,' read the citation. 'An unbelievable year.'

Ó Riordáin consolidated his win when he was also named European Managing Partner at the British Legal Awards 2009, hosted by *Legal Week* magazine in London on 3 December.

## 8% of remand prisoners suffer major mental illness

Almost 8% of remand prisoners in Ireland present with major mental illness (including schizophrenia) – almost ten times that of the general population, according to Dr Conor O'Neill, consultant forensic psychiatrist from the Central Mental Hospital.

Dr O'Neill was speaking at the fourth Prison Law Seminar on the topic of 'Mental Health in Prisons' on 19 November 2009, writes *Agnieszka Martynowicz* (Research & Policy Officer, Irish Penal Reform Trust). The seminars are jointly hosted by the Irish Penal Reform Trust (IPRT), the Irish Criminal Bar Association and the Dublin Solicitors' Bar Association.

The forensic psychiatrist outlined the work of the Prison In-reach and Court Liaison Service (PICLS), an initiative recently established in Cloverhill Prison. The PICLS aims to divert mentally-

ill individuals away from the courts and the prison system into mental-health care through assessment of remand prisoners.

While Ireland does not have specific legislation that deals with diversion to mental health services, current regulations regarding bail, for example, allow for such a course of action. The PICLS has successfully facilitated the transfer of almost 300 people from remand prisons to more appropriate therapeutic settings.

### The need for reform

Dublin-based solicitor Dara Robinson outlined the need for reform of the mental health legislation. In his assessment, such legislation has only recently come to the attention of lawmakers as requiring significant change. Until 2006, the main piece of legislation regulating this area was the Lunatics (Ireland) Act 1921

– a law largely ill-prepared for dealing with the modern approach to mental-health issues.

Sean Gillane SC outlined some recent cases decided in the High Court and in the European Court of Human Rights (ECtHR) in relation to the treatment of prisoners and the impact on their mental health. Mr Gillane spoke in detail about the case of *Devoy v The Governor of Portlaoise Prison* (22 June 2009). Among other arguments relating to alleged breaches of Mr Devoy's rights, his solicitors argued before the court their concern regarding the effects of being placed in a segregation unit and the consequent restricted regime on Mr Devoy's mental health. In this case, the court disagreed with the applicant.

The senior counsel then briefly outlined two recent cases decided by the

ECtHR – those of *Orchowski v Poland* and *Norbert Sikorski v Poland*, in which the court found that overcrowding in prisons amounted – of itself – to inhuman and degrading treatment contrary to article 3 of the *European Convention on Human Rights*. This lack of space had been made worse by lack of exercise, lack of privacy, unhygienic conditions and frequent transfers between prisons. Mr Gillane argued that urgent attention is needed on the issue of overcrowding in Irish prisons and its impact on the mental health of prisoners.

### 'Protection' regime in prisons

The seminar was attended by members of legal professions, staff of the Irish Prison Service, chaplains working in places of detention and other professionals involved in the delivery of education and care in prisons.

# Reciprocal admissions under threat

**F**or the last 20 years, solicitors qualified in this jurisdiction have been free to transfer to become solicitors in England & Wales without taking any examination, and vice versa. Many hundreds of solicitors have availed of this facility to the benefit of the professions and publics in both jurisdictions.

More than 600 solicitors who initially qualified in England & Wales have subsequently been admitted in Ireland, although by no means all of them have practised here. It is thought that a much larger number of Irish qualified solicitors have transferred to England & Wales, where a great many have built very successful careers, particularly in the enormous legal services marketplace of London.

The decisions of the law societies of Ireland, on the one hand, and England & Wales, on the other, in 1990 were based on the absence of any significant difference in the education and training requirements for admission to the rolls in the two jurisdictions. Both law societies gave recognition to this fact when implementing the *Mutual Recognition of Diplomas Directive* of 1989 (89/48/EEC).

This automatic and frictionless transfer system (it

simply involves completing some documentation and paying an administration fee) has produced no problems whatsoever on either side of the Irish Sea. Nor have the training systems diverged over the last 20 years – if anything they have grown even more similar. Nevertheless, the Solicitors Regulation Authority in England & Wales is at an advanced stage with proposals likely to require examinations, to be taken and passed by Irish qualified solicitors, as a pre-requisite for admission in England & Wales.

In 2007, the Solicitors Regulation Authority (SRA) assumed responsibility from the Law Society of England & Wales for all matters relating to the regulation and admission of solicitors in England & Wales. The SRA is proposing to replace current admission arrangements between Ireland and England & Wales, with effect from sometime later this year, although potentially from as early as April 2010.

The then President of the Law Society, John D Shaw, and director general Ken Murphy travelled to the SRA headquarters in Leamington Spa in May 2009 to meet with their counterparts in the SRA and to make strong representations that



Ken Murphy 'no objective justification for exams for transferring to England & Wales'

the current arrangements should continue.

They pointed out that the proposed changes are at odds with the liberal regime which has operated for 20 years, based on the recognition that there is no substantial difference between the content of training in the two jurisdictions.

A key representation they also made was that the changes proposed by the SRA do not comply with the relevant *European Directive on the Recognition of Professional Qualifications* (Directive 2005/36/EC) and would constitute an unjustifiable obstacle to the free movement of persons in the

European Union.

However, the SRA has indicated that it will proceed with its proposal regardless of these representations.

The potential changes affecting Irish qualified solicitors are part of an SRA review of transfer arrangements between jurisdictions all over the world and England & Wales. Even Northern Ireland is likely to be affected.

Ken Murphy remarked: "The general test that the European Court of Justice uses in free movement cases to assess restrictions and possible breaches of treaty-based free movement rights is that of objective justification. It is difficult to see how treating an Irish solicitor differently in 2010 to the manner in which he or she was treated in 2009, or indeed for 20 years previously, could be objectively justified. The two training systems have not changed in any significant manner."

"But given the current uncertainty," says Murphy, "the Society recommends that all members who are interested should give urgent consideration to making their application to be admitted to the roll of solicitors in England & Wales, before any potential new requirements are introduced."

## Back by popular demand – 'Strategies for Career Success'

**S**uch has been the popularity of the 'Strategies for Career Success' series of evening seminars that the Society's Career Support service is to run them again in Dublin and Cork in February.

The series of five seminars starts in Dublin on 3 February and continues every Wednesday between 5.30pm and 7.30pm. The first seminar, 'Succeeding in the Current Job Market', will be relevant to all solicitors, whether they are employed,

in practice, or currently not working.

Subsequent seminars will focus on specific job-seeking challenges – such as how to draft an effective CV, the hidden market of unadvertised jobs and interview performance. All events will be interactive and will incorporate an opportunity to network.

In Cork, the series will be run over two Thursday afternoons and evenings on 18 and 25 February from 3pm to

5pm, and a second session from 6pm to 8pm.

The seminars all qualify for CPD group study credits and are provided free of charge to solicitors registered with the Career Support service as either out of work or facing job loss. A charge of €40 for each event will apply for other attendees.

Capacity will be limited. As a result, it will not be possible to admit anyone to these seminars who has not booked their place

in advance.

Career Support is a Society initiative set up in early 2009 to assist solicitors faced with career challenges. Career development advisor Keith O'Malley and Sharon Hanson provide a wide range of supports and information.

For full details on these training events and to book your place, visit [www.lawsociety.ie/en/pages/careersupport](http://www.lawsociety.ie/en/pages/careersupport); or email: [careers@lawsociety.ie](mailto:careers@lawsociety.ie).



# Supreme Court clarifies leases law

**T**he Supreme Court case of *Re Linen Supply Ireland Limited*, delivered on 10 December 2009, has clarified the law in relation to repudiation and variation of leases during an examinership, write *Andreas McConnell and Orlaith Daly*.

Prior to this case, there had been uncertainty about the law, resulting in divergent rulings on, and interpretations of, section 20 of the *Companies (Amendment) Act 1990* and section 25B of the same act (as inserted by section 26 of the *Companies (Amendment) (No2) Act 1999*). This was illustrated by the prolific *O'Brien's Sandwich Bar* case, where the High Court refused to allow the company to repudiate leases it held on franchised restaurants, which in turn led to the subsequent liquidation of the company. In contrast, in April of last year, in the case of *Chartbusters*, the court approved a scheme that enabled the examiner to repudiate leases on six premises. (*Chartbusters* successfully exited examination in May of last year.)

Section 20(1) of the 1990 act provides that: "Where proposals for a compromise or scheme of arrangement are to be formulated in relation to a company, the company may, subject to the approval of the court, affirm or repudiate *any contract* [our emphasis] under which *some element of performance other than payment remains to be rendered by both the company and the other contracting party or parties*."

In the *Re Linen Supply Ireland Limited* case, the Supreme Court has confirmed that:

- 1) A lease for the purpose of this section can be construed as "*any contract*", and,
- 2) By their very nature, leases involve the performance of obligations by both lessor and lessee and, as such, leases satisfy the limitation imposed by section 20 that the contract must include "*some element of performance other than payment [that] remains to be rendered*".

This ruling now firmly sets out the law that examiners may repudiate leases as part of a compromise or scheme



of arrangement, subject to the approval of the court.

In making this ruling, the Supreme Court specifically rejected the argument that the wording of section 25B of the 1990 act, which sets out various prohibitions on varying the terms of a lease (including downward adjustment of rent and variation of the rights to recover possession, forfeiture rights and right of re-entry etc), ought to be interpreted so that leases did not come with the term of "any contracts" for the purposes of section 20 of the 1990 act.

In particular, the Supreme Court held that the repudiation of a lease "... which involves the mutual release by both lessor and lessee from all rights and obligations under the lease is an entirely different matter and entirely different to that which section 25B contemplates".

The law as it currently stands can be summarised as follows:

- 1) A lease may be repudiated pursuant to section 20 of the 1990 act, subject to approval of the court,
- 2) The rent payable pursuant to the provisions of a lease may not be reduced as part of a proposal or scheme of arrangement, save and except where the lessor has consented in writing to such reduction (section 25B(3) 1990 act),
- 3) Rights in favour of the landlord to recover possession, forfeiture rights or right of re-entry etc may not be varied as part of a proposal or scheme of arrangement, save and except where the lessor has consented in writing to such reduction (section 25B(3) 1990 act).

## STAMPING OF COURT DOCUMENTS – GUIDELINES

**I**n order to ensure consistency of document stamping and acceptance in all court offices, the Courts Service asks that practitioners adhere to the following guidelines:

- 1) All documents must be stamped on the *front page only*. Documents must not be stamped on any other page.
- 2) Any documentation which has been stamped prior to 1 January 2010 and lodged after 1 January 2010 will be accepted by the Courts Service. The Courts Service

will, however, be obliged to initial and date such documentation.

- 3) All documents presented for stamping *must include the title of the action, for example, names of the defendant/plaintiff*. Blank documents presented for stamping will be returned.

This policy comes into effect from 1 January 2010. All Courts Service staff have been informed of the new procedures.

## New Supreme Court judge

**M**r Justice Donal O'Donnell (51) has been appointed a judge of the Supreme Court of Ireland, effective from 20 January 2010. Married to Mary Rose Binchy, they have four children. Mr Justice O'Donnell is the son of Lord Justice Turlough O'Donnell, retired judge of the Northern Ireland High Court and Court of Appeal.

He was educated in the CBS Belfast, was awarded a BCL from UCD, studied as a barrister in the Kings Inns, Dublin, and was awarded an LLM from the University of Virginia.

He was called to the Bar



of Ireland in 1982, the Bar of Northern Ireland in 1989, was made a senior counsel in 1995 and a Bencher of Kings Inns in 2009.

# Trading places proving popular

In 2009, as part of the Law Society's initiatives to support and create opportunities for solicitors, the EU and International Affairs Committee introduced an exchange programme for two young solicitors. The programme was coordinated by the Society and the Ilustre Colegio de Abogados de Madrid, and included courses and placements with legal firms in Madrid and Dublin. The lucky participants were Jane Roberts and Luis Puentes-Gutiérrez.

Jane arrived in Madrid in early November to take part in the five-week programme. She stayed at the very friendly Colegio Mayor Argentinom. The programme consisted of classes in the Ilustre Colegio de Abogados and a work placement in the international law firm, Eversheds Lupicinio. "My college classes consisted of courses in company and insolvency law, due diligence, international contracts and commercial contracts. I learned a great deal about the course topics and, because of the international application of much of the subject matter, feel that the knowledge I gained



Jane Roberts travelled to the Spanish capital

could be of real use to me in Ireland."

In her work placement in the firm's labour law department, she received valuable insights into Spanish employment law, attended meetings and hearings, and assisted with translations to English. "My days were quite busy, working weekdays from 10am-2pm, and either working or studying from 4pm-8pm. Classes took place on most Saturdays from 9.30am-1.30pm. Nevertheless, I did find time to explore the beautiful city of Madrid. Thanks to Eva Massa (Law Society), Teresa Cabezas



Luis Puentes-Gutiérrez got acquainted with Dublin

(Ilustre Colegio de Abogados de Madrid) and the staff at Eversheds Lupicinio for their assistance and support during my time on the programme."

Luis Puentes-Gutiérrez is a lawyer and member of the Madrid Bar Association (Ilustre Colegio de Abogados de Madrid) with 18 months of post-qualification experience, chiefly in business and corporate law. During the exchange lawyer programme, he attended PPC1 lectures in Blackhall Place and did his work placement with William Fry Solicitors. The PPC1 lectures were much more

practical and dynamic than university lectures, he said.

Working for William Fry Solicitors was "an enriching experience. I was placed, firstly, in competition and, subsequently in the corporate department. I worked mainly with John Handoll and Shane Kelleher, partners. They were fantastic mentors but, most of all, were very friendly and accessible to me. In William Fry, I discovered other ways to deal with clients, witnessed a more personable relationship between partners and the rest of the staff, as well as reasonable working hours, which Spanish law firms often lack. However, one of the things that amazed me most was the high level of social consciousness in the Irish legal sector, in terms of charity, benefaction and fundraising. This was one of the most unforgettable experiences of my life."

He thanks Eva Massa (Law Society) for her hard work and support during the programme. The Society thanks William Fry, Eversheds Lupicinio and the Ilustre Colegio de Abogados de Madrid for supporting this initiative.

## Education Centre pilots diploma webcasts

The Education Centre's diploma programme is to offer webcasting for two of its diploma courses in the spring, writes *Freda Greal*. The Diploma in Employment Law (starting on 17 April) and the Commercial Litigation Diploma (beginning on 20 April) will take place on site in the Education Centre in Blackhall Place – but for those students unable to attend Dublin on a weekly basis, lectures will also be broadcast over the web.

Webcasting allows lectures

to be streamed live via the Education Centre's secure server. Students can watch the broadcast without having to attend on-site lectures. In addition, lectures can be reviewed and played on demand by students for the duration of the course.

This new way of learning forms part of the Education Centre's 'blended learning' approach to its diploma programme, which comprises a mixture of on-site and online sessions. Students need to attend Blackhall Place for all

workshop sessions, usually comprising three sessions per course. Workshops are held on Saturdays starting at 11.30am to facilitate students travelling from outside of Dublin.

### Reduced fees

Reductions of 20% are available for out-of-work solicitors attending diploma courses. For students who have completed two or more diploma courses, a 10% reduction is available.

Separately, a collaborative LLM (Practitioner) programme for solicitors and barristers is

being offered by the Diploma Programme and the Faculty of Law at University College Cork. If you are a student who is embarking on the LLM programme and have successfully completed one or more Law Society diploma courses, you will receive credit for those awards (up to a maximum of two such diplomas).

For further information, visit the diploma programme pages at [www.lawsociety.ie](http://www.lawsociety.ie); email: [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie); or tel: 01 672 4802.

# LawCare travelling roadshow

**R**ecognising the professional and personal challenges being faced by members of the legal profession as a result of occupational stress, the Law Society decided in January 2008 to fund LawCare's 'Stress recognition and management training' seminars for the country's bar associations. To date, half of all bar associations have taken advantage of the training, writes *Mary B Jackson, LawCare coordinator in Ireland*. These include bar associations in Donegal, Drogheda, Limerick, Waterford, Carlow, Dundalk, Navan, Sligo, Cork, Kilkenny, Wexford, Tipperary, Clare, Longford and Roscommon.

What has been striking has been the resilient, stoical attitude of the lawyers taking part. In private conversations, what becomes evident are the particular difficulties of sole practitioners, smaller practices and the anxiety of many who are uncertain of their future prospects. Rather encouragingly, the 'ostrich mentality' that can arise when life takes an unexpected downward turn is largely absent. Many solicitors, it seems, are finding time to retrain and acquire new skills.

Lawyers, it would appear, are trying to make time during their busy day for some 'me' time or



renewing their enthusiasm for a hobby or interest.

While a genuine spirit of collegiality is noticeable, the other side of the coin is evident, too, with certain practitioners admitting that they would feel uncomfortable sharing their professional worries with a colleague in their area. This is where LawCare has proved to be a lifeline, since its help is 100% confidential, non-judgemental and independent.

At each seminar, the support services offered by the Society are highlighted, with support services executive Louise Campbell providing input at certain events. Lawyers are encouraged, also, to sign up as LawCare volunteers and to use their life experiences to help fellow lawyers.

Not surprisingly, calls to the LawCare freephone helpline – 1800 991 801 – have increased due to these visits. The helpline is available 365 days a year, Monday to Friday, from 9am to 7.30pm;

and at weekends and *British* bank holidays from 10am to 4pm.

LawCare can also be contacted by email at [help@lawcare.ie](mailto:help@lawcare.ie) (for pastoral support) and [admin@lawcare.ie](mailto:admin@lawcare.ie) (for administrative matters). The Law Society has extended the funding for LawCare's seminars for 2010 for those bar associations that have not yet taken up this offer. You can arrange a seminar by emailing Mary Jackson at [mary@lawcare.ie](mailto:mary@lawcare.ie). The seminar covers, among other matters:

- Stress and its effects,
- The legal personality,
- Time management, and
- Tips on managing stress.

Having attended a training event, one practitioner wrote: "Thank you. I gained a lot from the seminar personally. That evening was the start of a short but very important journey for me in recognising my own stress and the stress, more importantly, I carried for and because of others."

## Dublin District Civil Office relocation

**F**rom 18 January 2010, the Dublin District Court Civil Office, including the Small Claims Office, will be relocated to a new Circuit and District Court Office on the First Floor, Áras Úi Dhálaigh, Inns Quay, Dublin 7. From that date, clients will be able to transact any civil business they have for both jurisdictions in one location.

The location of the courts hearing District Court civil matters is also changing, as is the arrangement of court business.

Court lists currently heard in Court 40 will, in the main, be heard in Court 23, Public Records Building, Four Courts, Dublin 7.

Lists currently heard in Court 49 will be heard in Court 50, Richmond Courthouse, Brunswick Street, Dublin 7.

In relation to matters adjourned, the office is in contact with parties at present to advise them of the change of venue.

The venue for the hearing of civil summonses issued from now on should be given as Court 23, Public Records Building, Four Courts, Dublin 7.

## Ahern extends small claims procedure to cover business claims

**T**he Minister for Justice has introduced new court rules to extend the current remit of the small claims procedure to include certain business claims. The new rules, which came into effect on 11 January 2010, will facilitate claims from a business against another business for goods or services not exceeding €2,000.

The new small claims procedure amends the *District Court Rules* (order 53A of the *District Court Rules 1997*).

The consumer or business must have purchased goods or services from someone selling them in the course of business. Claims cannot be made in respect of debts, personal injuries or breach of leasing or hire-purchase agreements. The procedure provides an alternative and complementary mechanism to the civil bill procedure. Irish jurisprudence currently requires limited liability companies to engage legal representation for

court-based proceedings. The minister has requested that this precedent be reviewed by the Company Law Review Group.

Introducing the new procedure, Minister Ahern said: "The extension of this successful procedure will provide a choice of legal routes to pursue a small claim, as the current civil bill system will also remain available. This will allow a business to choose whichever route – small claims or civil bill procedure – it considers most

economic and appropriate to its circumstances."

The minister went on to say: "By limiting the new procedure to consumer and business-to-business claims, the fundamental pro-consumer ethos of the small claims process will be maintained. It is essential that consumers, especially in vulnerable economic circumstances, are protected. The new procedure provides the necessary safeguards for consumers."





Law Society of Ireland

# LAW SOCIETY ANNUAL CONFERENCE

9<sup>th</sup>/10<sup>th</sup> April 2010

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### FRIDAY 9 APRIL 2010

1.30pm	Registration
2pm	Address by the President of the Law Society, Gerard Doherty
2.10-5pm	CPD programme
8pm	Gala dinner

### SATURDAY 10 APRIL 2010

9.30am-12.30pm	Conference business session, with keynote speakers
12.30pm	Lunch

### CONFERENCE BUSINESS SESSION KEYNOTE SPEAKERS



Dermot Ahern, Minister for  
Justice, Equality and Law  
Reform



Mr Justice Nicholas Kearns,  
President of the High Court

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# New solicitors drop 10% in 2009

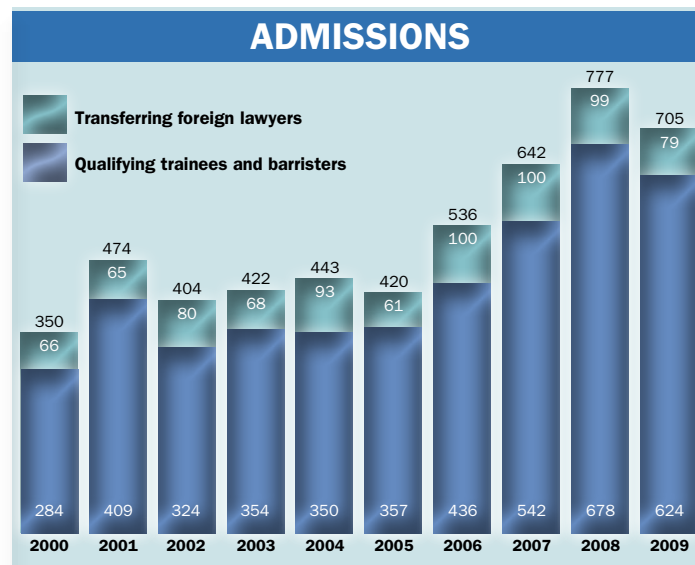
In the calendar year 2009, a total of 705 new names were entered on the roll of solicitors. This was a 10% reduction in the all-time record of 777 new solicitors of 2008.

But even 2009's reduced number of new solicitors, at 705, was more than double the 350 admitted in 2000, the first year of the decade just ended. The underlying trend throughout the decade, despite some occasional year-on-year blips, has been relentlessly upwards.

In the decade from 1 January 2000 to 31 December 2009, a total of 5,173 new names were entered on the roll of solicitors in this jurisdiction.

These statistics record total numbers and not just solicitors who qualified by the conventional route through a training contract in a solicitors office and the Law Society's professional practice courses (PPC). Needless to say, the overwhelming majority travelled this route. But the numbers qualifying through other routes were not insignificant.

For example, the 705 who came on the roll in 2009 comprised 615 qualifying trainees, nine transferring barristers, 45 English solicitors and ten Northern Irish solicitors. In addition,



there were 17 so-called 'Section 52' lawyers from jurisdictions with equivalent transfer arrangements for Irish solicitors, namely California, New York, New South Wales, New Zealand and Pennsylvania. Added to these were three EU lawyers under the *Diplomas Directive* and four under the *Establishment Directive*.

## 'Where will they all get jobs?'

"Where will they all get jobs?" was a common question asked throughout the decade by those attending parchment ceremonies. It might also have been asked by anyone viewing page after page of *Gazette* photos with hundreds of smiling young

faces – about two-thirds of them female – of fresh new solicitors, each holding a parchment in their hand.

Yet, up to about two years ago, they were all getting jobs. Indeed at the peak of the economic boom, they were, in many cases, able to name their price to prospective employers and choose both the firm and area of work they wanted.

So very sadly, dream-shatteringly different now. Today hundreds of the solicitors who qualified in recent years are without work. A great many are contemplating, if they have not already started, applying their high-quality transferable skills to other careers in Ireland or,

increasingly, abroad.

Is the Law Society to blame for qualifying too many solicitors? Some think so. But since certain High Court decisions were handed down as far back as the 1980s, the Society has known that it did not have the legal power to seek in any way to control the numbers entering the profession.

Public policy, as expressed by successive governments and by the Competition Authority, repeatedly made clear that there was absolutely no legitimate role for the Society to seek – directly or indirectly – to limit the numbers of newly qualifying solicitors. Only the attractiveness of the profession as a career and the market for legal services can determine the numbers entering the profession.

It's a long pipeline and market forces will take years to have an effect. But there is clear evidence of a decline in interest in the solicitors' profession as a career, with a drop of no less than one-third in the numbers commencing the PPC1 in Blackhall Place in September 2009, compared with September 2007.

It was quite a decade – mostly boom – but with a crashing bust at the end. An upturn in the economy in 2010 would be nice.

## COMMISSION SEEKS EXPERTS

The EC's European Banking Committee (EBC) is seeking experts in the field of re-organization, resolution and insolvency law in the banking and financial sector. Their role will be to assist in the work and development of a so-called 'EU crisis management regime'.

Applications should be submitted no later than 15 February 2010 to: European Commission, DG Internal

Market and Services, Unit MARKT/H1 Secretariat, SPA2 4/13, B-1049 Brussels; or by e-mail to: MARKT-H1@ec.europa.eu. For further information, contact Silvia Scatizzi, tel: 02/296 08 81, email: Silvia.Scatizzi@ec.europa.eu; and see web: [http://ec.europa.eu/internal\\_market/bank/crisis\\_management/index\\_en.htm#Call\\_for\\_expression\\_of\\_interest](http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm#Call_for_expression_of_interest)

## PRIZE BOND DRAW RESULTS FROM 5 NOVEMBER

**1 x €1,250:** bond number 1776 (Kevin Smith, 59 Fitzwilliam Sq, Dublin 2).

**4 x €500:** bond number 1602 (Charles F Bergin, Michale P Donnelly, Barrack St, Tullow, Co Carlow); bond number 1918 (George V Maloney, GV Maloney & Co, Solicitor, Cavan); bond number 1219 (WB Somerville, A&L Goodbody, 31 Fitzwilliam Square, Dublin 2); bond number 1289 (Brian J Murphy, 89 Upper George's St, Dun Laoghaire, Co Dublin).

**3 x €250:** bond number 1778 (Kevin Smith, 59 Fitzwilliam Sq, Dublin 2); bond number 2316 (Jacqueline Maloney, George V Maloney, 6 Farnan St, Cavan); bond number 2306 (Alan Donnelly, 39 Trimgate St, Navan, Co Meath).

# FLAC conference hears call for test

**Economic and social rights are better guaranteed through the political process rather than through the courts, argued Dr Maurice Hayes at the annual Dave Ellis Memorial Lecture**



ALL PICS: DEREK SPEIRS

Dr Maurice Hayes was the main speaker at the Dave Ellis Memorial Lecture

**E**conomic and social rights, though no less significant than other fundamental rights, are better guaranteed through

the political process, rather than through the courts. So argued Dr Maurice Hayes when he delivered the annual Dave Ellis

Memorial Lecture on 1 December 2009.

While social and economic rights were not fundamental rights in the same way as rights to liberty, life and freedom of conscience, he argued, civil and political rights required the courts to protect them – rather than to enforce them, as is the case for social and economic rights.

Dr Hayes noted, however, that whatever one's views on the justiciability of socio-economic rights, one surely had to admit that the right to life would include at least a minimum standard of enjoyment and satisfaction,

covered by the provision of healthcare and education. He also saw room for the courts to hear test cases on socio-economic rights.

Dr Hayes is a former senator and previously held the posts of Northern Ireland ombudsman and boundary commissioner. He was also a permanent secretary of the Department of Health and Social Services of Northern Ireland and is currently a member of the Royal Irish Academy. This third memorial lecture, held at the Law Society of Ireland, was chaired by the director-general of FLAC Noeline Blackwell and by chairperson of FLAC's



Dr Maurice Hayes with Peter Ward SC (FLAC chairperson) and Noeline Blackwell (FLAC director general)



# cases on socio-economic rights

national council Peter Ward SC.

Speaking on the topic of access to justice, Dr Hayes's lecture spanned a broad spectrum of ideas. The diversity of questions that followed illustrated that he had touched on several thought-provoking and stimulating subjects for the 125 guests who attended.

He began his talk with a quote from Sir James Matthews, a 19th century Irish judge who commented: "In England, justice is open to all, just like the Ritz Hotel."

Though much progress had been made since the 19th century, this maxim still prevailed to some extent, in that one needs money and contacts in order to gain access to justice. Dr Hayes argued that much remained to be done to ensure an accessible system of justice. The task of reform was an endless one, he said. Improvements,

initially seen as pioneering and cutting edge, quickly become the norm. As change was implemented, expectations rose with improving standards, and the net effect was to engender new problems and new areas requiring the energies and enthusiasm of reformers.

## Myopic cuts

With Budget 2010 merely days away, he went on to address the looming cuts to the public purse and the possible impact on the justice system. While efficiency was always to be encouraged, he argued, certain services were a right and a necessity and were not a luxury to be shed in times of difficulty.

Dr Hayes highlighted how cuts to organisations working with disadvantaged groups are so often myopic in nature. While the exchequer might be saved some expenditure in the current fiscal year, he argued that social problems would be

left to fester and emerge at a later date, incurring a much greater cost to the state.

Current economic developments had left many people in serious debt. Dr Hayes stressed the importance of implementing the kind of reforms for which FLAC has been campaigning. These include the abolition of imprisonment on foot of debt and a move away from a costly, cumbersome and often confusing system of judicial debt settlement.

## 'Leaner, but not necessarily meaner'

Focusing on general issues of governance, Dr Hayes noted how the state now faced a period of reform in relation to its services and public functions. The time might have arrived for restructuring the public service to make it less remote and more accountable. It should be "a leaner machine,

but not necessarily meaner", he stated. "Being efficient does not mean being uncaring. Indeed, the essence of efficiency in caring services is to provide the support people need when they need it." Thus, he concluded, one should be able to access justice at a more local level – while redress through the courts should be a measure of last resort.

With FLAC celebrating its 40th year in existence, Dr Hayes praised the work of the organisation, noting how volunteers gained a valuable insight into a world that many were fortunate enough to be unfamiliar with prior to volunteering. So much so, that Dr Hayes believed that every young lawyer should volunteer with FLAC or a similar organisation "in order to keep them plugged into reality". **G**

*Peter McKenna is a legal intern with FLAC.*



Attendees at the third annual Dave Ellis Memorial Lecture on 1 December 2009 at Blackhall Place

# Court rejects 'de facto families'

The Supreme Court used surprisingly trenchant language recently when overturning a High Court decision in a case involving a lesbian couple and a sperm donor, writes Michael Farrell

The Supreme Court's judgments in *McD v L & Another* ([2009] IESC 81, 10 December 2009) have important implications for the position of unmarried couples, whether same sex or opposite sex, and for the role of the *European Convention on Human Rights* in Irish law.

The sperm donor (McD), who had helped one of the women to conceive, had originally agreed not to get involved in the child's upbringing, but later applied to be made a guardian and to have regular access to the child. The couple, who had been together for 12 years and had entered into a civil partnership in Britain, objected.

Mr Justice Hedigan rejected McD's claims in the High Court. He relied partly on a finding that the couple and the child

constituted a 'de facto family' that had rights as a 'family unit' under article 8 of the ECHR. These rights, in his view, helped to outweigh the claims of the biological father McD.

Judge Hedigan acknowledged that the Constitution only recognised the family based on marriage, but he noted that the Irish courts had begun to recognise the existence of 'de facto families' made up of unmarried heterosexual couples in stable relationships and had accorded them certain rights.

Looking to the ECHR, Judge Hedigan – who is a former judge of the European Court of Human Rights – said that he could see no reason why same sex couples should not qualify as 'de facto families' as well.

Judge Hedigan based his

decision in the case on the best interests of the child, but he afforded some weight to the position of the 'de facto family' consisting of the couple and the child.

In its decision, the Supreme Court agreed that, based on the best interests of the child, McD should not be appointed a guardian, but held that the High Court had not given sufficient weight to his position as the biological father of the child and that he should be given access rights, the details to be decided by the High Court.

The Supreme Court reserved its strongest criticism for Judge Hedigan's views on the question of 'de facto families' and his use of the ECHR.

Three of the four Supreme Court judgments – by the Chief

Justice, Mr Justice Fennelly and Ms Justice Denham – strongly rejected the idea that 'de facto families' had any legal status or any rights in Irish law, referring to the well-known statement of Henchy J in *State (Nicolau) v An Bord Uchtala* ([1966] IR 567): "For the state to award equal constitutional protection to the family founded on marriage and the 'family' founded on an extra-marital union would in effect be a disregard of the pledge ... in article 41.3.1 to guard with special care the institution of marriage."

On the role of the ECHR, the Chief Justice said that it was not directly applicable in Irish law and had no direct effect other than through the *ECHR Act 2003*, which was quite limited. He said: "The learned trial judge

## ONE TO WATCH: NEW LEGISLATION

### Circuit Court Rules (Case Progression (General)) 2009 (SI no 539 of 2009)

From 1 January 2010, new *Circuit Court Rules* were signed into law that permit a Circuit Court judge or the county registrar at a case progression hearing to adjourn certain civil proceedings for a period not exceeding 28 days in order to allow the parties to use mediation, conciliation and arbitration or any alternative dispute resolution mechanism to settle or determine the issues (order 19A, rule 7).

The new Circuit Court case progression rules contain almost identical provisions to those used extensively and successfully in the Commercial Court, whereby a judge

can order the parties to engage in alternative dispute resolution, thus shortening proceedings and costs associated with them. The overall purpose of the new case progression rules is to maximise pre-trial preparations, thus minimising the cost of proceedings and ensuring the time and resources of the courts are used efficiently.

The Minister for Justice stated: "Similar rules introduced last year in the area of family law are working well. The volume of such pre-trial work is considerable, and this mechanism will free up the time of Circuit Court judges to concentrate on conducting trials."

These rules are to apply to such proceedings (as listed below) commenced after 1 January 2010.

Any proceedings pending on that date shall be continued and completed as if these rules had not been made.

#### Proceedings covered

The following proceedings are covered by the new *Case Progression Rules*:

- Equity proceedings,
- Proceedings on foot of a succession law civil bill,
- Any proceedings, not referred to at paragraph (a), which include a claim for specific performance or for damages for breach of contract in respect of the construction, extension, alteration or repair of a building or other structure,
- Any other category of

proceedings, or any other proceedings having or involving any characteristics, designated by the President of the Circuit Court as proceedings that may be subject to case progression, such designation to be published in such manner as the President of the Circuit Court shall direct.

#### Proceedings exempt

These rules shall not apply to the following proceedings:

- Proceedings in which relief is being sought under any of the following acts:
  - Family Law (Divorce) Act 1996* (no 33 of 1996),
  - Family Law Act 1995* (no 26 of 1995),

## human rights watch



## in lesbian couple case

had no jurisdiction to consider the claims [of the parties] under article 8 of the convention.”

Judge Fennelly argued that the European Court of Human Rights had not so far accepted that same-sex couples were protected by article 8 of the convention. He said the High Court judge had been interpreting the convention directly, and he warned against the domestic courts ‘outpacing’ the Strasbourg court.

Judge Hedigan had acknowledged that the Strasbourg court had not yet recognised that a lesbian couple could constitute a family unit for the purposes of article 8. However, he said that national courts were entitled to interpret and apply convention principles, and he believed that recognition of such couples was a natural development of those principles.

This raises a bigger issue. Is it



the role of national courts under the ECHR to wait until the Strasbourg court has ruled on an issue and then apply that ruling? Or can a national court be more proactive and seek to interpret and apply the Strasbourg jurisprudence directly to the issues it is dealing with, thus engaging in a sort of dialogue with the Strasbourg court and playing a part in the development of ECHR law?

There is a lively debate about

this issue going on in Britain at the moment, but that is against the background that the British courts have embraced the convention since it was incorporated through the *Human Rights Act 1998* and have been very active in applying and even developing convention law.

It seems unnecessarily defensive for the Supreme Court here to come down so heavily against what they seem to see as an over-enthusiastic approach to

the convention at a time when there has been so little case law under the *ECHR Act* in our courts. And it seems unfortunate that they were so dismissive of the concept of ‘*de facto* families’ at a time when the number of people in such relationships has increased so substantially.

At the end of his judgment in the High Court, Judge Hedigan made a plea for urgent consideration by the Oireachtas of the position of same-sex couples, especially where they wish to have children, so as to avoid the sort of emotional trauma suffered by the parties in this case. It is perhaps a pity that the Supreme Court did not at least endorse the urgency of that plea, without expressing any views on particular proposals before the Oireachtas. **G**

*Michael Farrell is the senior solicitor with Free Legal Advice Centres.*

- *Judicial Separation and Family Law Reform Act 1989* (no 6 of 1989),
- *Guardianship of Infants Act 1964* (no 7 of 1964),
- *Children Act 1997* (no 40 of 1997),
- *Family Law (Maintenance of Spouses and Children) Act 1976* (no 11 of 1976), and
- *Family Home Protection Act 1976* (no 27 of 1976).

b) Proceedings in which the plaintiff claims any of the following reliefs:

- Recovery of possession of any land on foot of a legal mortgage or charge,
- An order declaring the amount due on foot of a mortgage to be well charged on land.

#### When may a case progression direction be given?

A case progression direction may be given by the county registrar or by the judge at any listing or hearing before them in the proceedings, or on the application by motion of any party to the county registrar or the judge, on notice to the other party or parties.

The county registrar or the judge, in deciding whether to give a case progression direction, will consider the complexity of the proceedings, the number of issues or parties, the likely volume of evidence, or other special reasons.

Once a case progression direction has been given, the proceedings shall be listed before

the county registrar for case progression.

The county registrar will then issue a summons to the parties for a case progression hearing, giving at least 21 days notice to the parties.

No later than seven days prior to the case progression hearing, the plaintiff or other party prosecuting shall file in the office an indexed book of pleadings, and shall also furnish a copy of the index to the other party or parties.

The county registrar shall maintain a record of all case progression hearings before him. A copy of such record shall be put on the court file and a further copy made available to parties involved on request.

#### Alternative dispute resolution

Rule 7 of order 19A permits the judge or the county registrar at a case progression hearing, on application of any of the parties, to order that the proceedings be adjourned for a period not exceeding 28 days so as to allow the parties to use mediation, conciliation, arbitration or other dispute resolution process to settle the proceedings.

#### Costs

The county registrar may award costs incurred in connection with the case progression hearing as between party and party. **G**

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



## The National Asset Management Agency Act 2009: Annotations and Commentary

By Hugh B. Byrne and Louis McEntagart

**This publication will assist legal practitioners, academics and other professionals navigate their way through this complex piece of legislation.**

The National Asset Management Agency Act 2009, establishes the National Asset Management Agency (NAMA) and is one of the most significant pieces of legislation enacted in the history of the State.

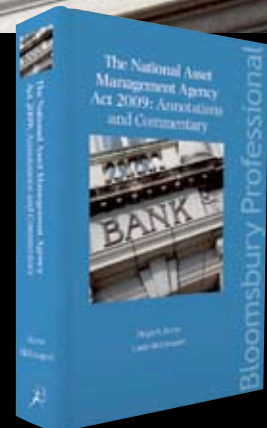
One of the primary purposes of NAMA is to address the serious threat to the economy and the need to maintain and stabilize

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### About the authors

Hugh B. Byrne B.L. was called to the Bar in 2004. He has lectured in finance with U.C.D. and is now a practicing barrister.

Louis McEntagart B.L. has practised almost exclusively in commercial law and has a depth of experience covering the areas of banking law, finance and company law.

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# letters



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

## Protecting the title of 'architect'

*From: John Graby, director of the Royal Institute of the Architects of Ireland and Registrar for Architects, 8 Merrion Square, Dublin 2*

Up until recently, the title 'architect' was without legal protection and, indeed, anyone could claim to be an architect. However, since the commencement of the *Building Control Act 2007* and the launch of the register for architects in November 2009, jointly launched by the Royal Institute of the Architects of Ireland (RIAI) and Minister for the Environment John Gormley, those misusing the title 'architect' can be liable to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months, or both, under section 18(1) of the *Building Control Act 2007*.

Established under the *Building Control Act 2007*, the register for architects lists architects whose qualifications meet the standards set out in the act. Now only architects who are on the register may use the title 'architect'. This development is of critical importance for Irish architecture, the construction industry and the general public, as the register for



architects establishes an internationally, EU-agreed and recognised professional standard against which all persons applying for registration will be measured.

The register, therefore, improves and protects the quality of service to consumers who can now see if an architect is registered by checking the online register at [www.riai.ie](http://www.riai.ie). The system also provides consumers with an advice service and with dispute resolution mechanisms in the case of poor service or suspected malpractice.

As of the end of November 2009, there are over 2,700 architects on the register. For people who are not fully qualified, but who have substantial experience, there is now an established framework, set up under the terms of the *Building Control Act*, to support

them in becoming registered architects.

Certainly, during the initial stages of registration, there will be people not on the register who have qualifications listed in the *Building Control Act 2007* or who are in the process of completing submissions for evaluation. There will also be those who don't have listed qualifications but who are preparing for assessment under the technical assessment process, which evaluates relevant experience in architecture and can lead to registration. In addition, there are those who are taking the register admission examination.

However, for persons not registered, nor in the process of registration, and who use the title 'architect' – either alone or in combination with any other words or letters, or name, or title, or description implying

the person is so registered, or who practises or carries on business under any name, title, not in accordance with relevant RIAI rules – legal action can be pursued, though our focus initially will be on supporting people to become registered.

The RIAI is the designated registration body and competent authority for architects in Ireland. Independence and government oversight is provided by the Admissions Board, the Technical Assessment Board, the Appeals Board and the Professional Conduct Committee, having a majority of non-architects nominated by the state and chairpersons with a legal background. The registration of architects is a serious process and the statutory independent committee has the same legal powers, rights and privileges as a High Court judge, including the discovery of documents and enforcing witnesses.

Since 1893, the RIAI has been committed to upholding the highest standards in architecture. The register for architects is a major milestone for the profession and will lead to securing higher quality in our built environment for future generations. **G**



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# Out-of-court cautions

**Out-of-court cautioning is doing damage to the adversarial system of justice in Ireland and Britain. Darragh Connell and Conor O'Keeffe say the entire system needs urgent revision**

The recent BBC legal drama *Garrow's Law* focused on the life of Sir William Garrow, a young, idealistic, British barrister (1760-1840) who revolutionised what it meant to be a criminal defence advocate under a particularly brutal system of justice then in operation across the common law world. Central to Garrow's approach to defending London's poorest citizens were the skills of rigorous cross-examination, sustained legal analysis, and the concept of putting the prosecution to full proof on the charge before the court. In essence, Garrow practised (and preached) the virtues of adversarial justice.

Now, over 150 years after his death, the concept of adversarial justice is something of an anachronism in the courts of England and Wales. The demise of the right to silence, the widespread utilisation of police powers by regulatory bodies and the expansion of out-of-court cautions have all combined to render the once-revered English adversarial system an endangered species.

An organised system of out-of-court cautioning – both formal and informal – has existed in England and Wales since the mid-1980s. A number of Home Office circulars, particularly those of 1985 and 1990, encouraged greater use of cautioning, especially in relation to juveniles, noting the possible harmful effects of court appearances. By 2001, the cautioning rate (that is, the percentage of offenders formally cautioned out of the total number of offenders found

guilty or cautioned) for indictable offences for men aged 21 or over was 19%; and for women aged 21 or over, 32% (Ministry of Justice, *Criminal Statistics Annual Report 2002*). By 2005, the cautioning rate for indictable offences had increased to 25% for men over 21 and an astonishing 41% for women over 21 (Ministry of Justice, *Criminal Statistics Annual Report 2005*).

## Admission of guilt

Under Britain's *Criminal Justice Act 2003*, a new conditional caution was introduced that enabled Crown Prosecution Service (CPS) lawyers, in the absence of court involvement, to attach certain requirements, such as attendance at a drug clinic or community reparation work, in lieu of a formal court prosecution and conviction. An admission of guilt is a prerequisite for such a caution while non-compliance requires the CPS to make a decision on whether to:

- Prosecute the offender for the original offence,
- Take no further action, or
- Vary the conditions.

Ultimately, the extension and development of out-of-court cautions became a central plank of the British government's justice policy, which focused on a statistical, results-driven approach to crime detection and prevention, albeit within a context of concerted diversion from the courts as regards punishment.

There are laudable aims at the core of an attempt to divert offenders from the

judicial sanction route, since such innovative initiatives seek to balance the protection of the public with the need to address social problems that hasten so many into a life of crime. Nevertheless, significant difficulties have been experienced in Britain with the reforms made to the criminal justice system over the last ten years.

Specifically, two principal concerns exist in relation to cautioning in Britain. First, the cautioning regime has been extensively utilised in the context of serious indictable offences. In 2008, a total of 40,000 cases of assault were dealt with by way of caution in England and Wales (BBC News, 9 November 2009). Figures released under the *Freedom of Information Act* (BBC News, 11 July 2007) showed that 1,291 cautions had been issued for sexual offences between 2001 and 2006. The information supplied by the Metropolitan Police revealed that 29 of the total cautions for rape involved children under the age of 16. A further 50 cautions were issued between 2001 and 2006 for sexual assaults on children aged under 13. While cautioning in a sexual assault case will result in an individual being placed on the sex-offenders register, staggeringly no criminal record will exist. Notably the court processes in existence for a formal prosecution are avoided in their entirety unless the conditions of the caution are breached and the CPS decide, at that point, to pursue the case through the courts.

A second significant difficulty

inherent in this regime is that it denies the accused rights of due process. While the CPS must agree with the police to administer a conditional caution, such oversight is often cursory and will fail to properly substitute the accountability mechanisms available in a court of law, such as:

- Extensive adversarial cross-examination,
- Provision of independent legal advice for an accused,
- Extensive evidential disclosure, and
- The imposition of a high burden of proof on the prosecution as regards all the elements of the offence alleged.

Given the scale of these difficulties, calls for extensive reform of the entire cautioning regime have come from organisations such as the Magistrates' Association and human rights groups. In the aftermath of a recent *Panorama* programme exploring the pervasive nature of the cautioning regime, Justice Secretary Jack Straw announced a review of the entire system on 9 November 2009.

The outcome of the review will not be announced until the end of 2010, but it is obvious that substantial reform, if not abolition, of the police-cautioning regime will materialise. Ultimately, the difficulties experienced in Britain afford all who are interested in crime prevention and punishment a salutary reminder of the dangers faced by imbuing prosecutorial authorities with too much discretion in the





# are killing justice

sanctioning of offenders.

In this jurisdiction, there is also a long history of utilising out-of-court cautions, particularly when dealing with road traffic offences. More recently, a worrying adherence to the utilitarian ideals of Britain's legislation has been developing across Irish criminal law. Losing sight of the importance of adversarial justice, our legislature may be unable to resist the expansion of relatively cheap fixed-penalty notices.

## Fixed-penalty notices

The increase in fixed-penalty notices is evident from a cursory analysis of the recent amendments made to the *Criminal Justice (Public Order) Act 1994*. Section 4 of the act concerns the offence of being intoxicated in a public place. Of importance is the change inserted by section 184 of the *Criminal Justice Act 2006*, wherein fixed-penalty notices, similar to the ones in existence for certain road traffic offences, are incorporated into the fabric of the public order sentencing regime in respect of section 4 and, indeed, section 5 (disorderly conduct in a public place) offences.

Of note is the fact that the proofs required for a successful prosecution of section 4 represent a higher threshold than mere drunkenness. Rather, the individual must be "present in any public place while intoxicated to such an extent as would give rise to a reasonable apprehension that he might endanger himself or any other person in his vicinity."

There will undoubtedly be instances when an individual's drunken behaviour may mandate



"Let me put it to you..."

police intervention, but by virtue of the unusual burden of proof required under section 4, a summary prosecution may ultimately fail. Thus, the Garda Síochána may be more willing in certain circumstances to utilise their power to impose a €50 fine as inserted by the 2006 act. The accused, who is unlikely to have knowledge of the proofs necessary, is faced with a Hobson's choice made all the more palatable, by virtue of his own lack of legal knowledge. Notably, if the accused were to challenge the charge in court, with the aid of legal advice, he may very well be acquitted of the section 4 offence as it currently stands.

## Public interest not served

A further reason against the diversion of section 4 charges away from the courts by way of fixed-penalty notice is that section 4 is an offence that can be an early indicator of criminogenic behavioural patterns related to substance abuse. Thus, by depriving the offender of an early opportunity to engage with the Probation Service, through the medium of, say, a typical District Court sentence under section 1(1)(b)

of the *Probation of Offenders Act 1907*, namely a probation bond, the fixed-penalty notice could further facilitate a lifetime of criminal behaviour by the offender. Therefore, despite the administrative efficiencies solved by the issuance of an out-of-court fine under section 4, the wider public interest in the effective prosecution of offences may not be adequately served.

Section 4 of the *Criminal Justice (Public Order) Act 1994* as amended is just one example of the plethora of recent minor offences on the statute book that allow for punishment by way of fixed-penalty notice in lieu of court appearance. For example, section 5 of the *Road Traffic Act 2006* provides that a fixed disqualification (from driving) notice may be issued where someone is found to have committed an offence under section 42(2) or (3) of the *Road Traffic Act 1961*.

When one supplements this list of offences with the utilisation of the Adult Cautioning Scheme, the penalty points system and the considerable number of fixed-penalty notices imposed by regulatory bodies, it is hard not to reach the conclusion that

Ireland is further along the road of diversion from the criminal courts than is often popularly envisaged. Given the difficulties encountered in Britain with the expansive use of out-of-court sanctions, this is representative of a dystopian progression in Irish criminal law away from the traditional adversarial system once trumpeted by Sir William Garrow.

## Ultimate burden of proof

A system of law and order in a modern democratic state should be predicated upon fair procedures, the tempering of mob sentiment and the strict allocation of the ultimate burden of proof for criminal offences on the state prosecutorial authorities.

Aside from the current economic climate, the realities of a modern and developed society dictate a broader holistic approach to offender diversion in regard to certain lesser offences than is necessarily offered within a judicial sentencing hearing. Nevertheless, the lesson to be gleaned from the experience of Britain is that there are significant dangers inherent in any widespread expansion of out-of-court sanctions, particularly if such expansion is justified on grounds of economic expediency. It was this very fixation on cost efficiency, coupled with a culture of blind adherence to the merits of crime statistics, that provided the impetus for the worrying developments in Britain. **G**

*Darragh Connell BCL (NUI) is a barrister and current candidate for the LLM (Cantab). Conor O'Keefe BCL (NUI), LLM (Cantab) is assistant lecturer at QUB.*

# DEFAME &

**The 2009 *Defamation Act* is not without its faults, but it introduces sensible and long overdue reform and will benefit plaintiffs and defendants alike. It is a major step forward, says Michael Kealey**

**T**he gestation of the *Defamation Act 2009* was long, even by Irish law reform standards. Many of its provisions were recommended in 1991 by the Law Reform Commission.

The slowness of the change – allied, in some parts of the act, to a somewhat rigid statutory approach – carries dangers. Thus, the defence of qualified privilege, enshrined in the act, has already been overtaken by judicial developments in Britain. This could leave Irish law open to challenge under the ECHR.

The act does not apply retrospectively. It only concerns causes of action arising after 1 January 2010.

## Major changes

The distinction between libel and slander is abolished; there is a new tort of defamation, which is actionable *per se*.

The limitation period has been standardised to one year, although there is a discretion to extend this to two years in the interests of justice. This will benefit defendants, particularly when allied to the single publication rule introduced by section 11. Prior to the act, a new cause of action arose with every publication. Thus, each time an article was downloaded from the internet, the limitation period would restart. Now a person has only one cause of action over a multiple publication, although the court can deviate from this where the interests of justice so require. Solicitors need to be very mindful of the new time limit.

The single most important change for defendants is a procedural one. They will, like their counterparts in all other tort actions, be able to make a lodgement without an admission of liability.

Two other, largely unheralded, changes will likely have a major impact on damages. Defamation cases are decided in the High Court by juries, and it has long been a complaint that awards are erratic. Judges

must, however, now give directions to the jury on damages, and the parties may make submissions on the topic. In an effort to achieve consistency, the Supreme Court is empowered to substitute its own damages figure on appeal, rather than – as has been the practice to date – putting the parties to the cost and hazard of a retrial.

## New reliefs

While damages will undoubtedly remain the primary remedy sought by plaintiffs, the 2009 act introduces a number of innovative alternative reliefs. Their purpose is to amend previous practice whereby the courts could not order a defendant to apologise or correct a false statement. These are: declaratory, correction and prohibition orders.

Declaratory orders are only available in the Circuit Court, whose jurisdiction in defamation cases is increased to €50,000. An application can be made at any stage during the proceedings for an order declaring material false. No damages may be awarded, although costs can. If the application fails, a plaintiff can continue with the substantive proceedings. Relief will only be granted where material is clearly defamatory and where the applicant sought a retraction or apology and the request was declined or the apology did not get suitable prominence.

Correction orders can only be sought at trial, where a statement is defamatory and there is no defence to the action. The court must also order “the form, content, extent and manner of publication of the correction”.

A plaintiff can apply for an order prohibiting the publication or further publication of a defamatory statement. The order may be made following an interim or interlocutory application. It may also be made permanent. The order is discretionary where the statement is defamatory and the defendant has no defence that is reasonably likely to succeed.

## MAIN POINTS

- Defamation, libel and slander
- Declaratory, correction and prohibition orders
- Remedies available from the Press Council of Ireland

# FORTUNE



PIC: CIAN REDMOND



## ‘GENTLEMEN OF THE PRESS’ – CODE OF PRACTICE

Solicitors should keep an eye on the remedies available from the Press Council of Ireland, which the Minister for Justice is empowered to recognise under the act. The PCI has prepared a code of practice, covering accuracy, fairness and privacy. It has a complaints procedure that is promised to be “fast, free and fair”. The Press Ombudsman will make a binding determination, usually within eight weeks from the making of the complaint, based on written submissions. While he cannot award compensation

or costs, he can force a newspaper or magazine to publish his determination.

While the Press Ombudsman cannot act on a complaint if legal proceedings are threatened or in being, the converse is not the case. Solicitors should at least explore whether it would be worthwhile spending the relatively short time in bringing a complaint, and thereby obtaining a possible vindication and an outline of the newspaper’s case, before taking proceedings.

The act codifies interlocutory applications for both parties to proceedings, which were previously rarely used. Section 34 allows for the summary disposal of claims, while section 14 allows the court to rule whether statements are reasonably capable of bearing a pleaded meaning and whether that meaning is defamatory.

Other examples of the act restating existing law are the provisions that corporate bodies can sue for defamation without having to prove financial loss, and the rules on whether a member of a class of persons can show that a defamatory statement could be understood to refer to him/her.

### Changes to defences

A major challenge for practitioners is the requirement that affidavits must be sworn by both parties, verifying any assertions or allegations of fact in a pleading. There are criminal penalties if the affidavits are false or misleading, and the parties may be cross-examined on their affidavits.

Section 15 abolishes all pre-existing common law defences, leaving part 3 of the act as the consolidated source of the options open to defence lawyers. Most defences have been re-enacted with fairly modest amendment.

Thus, while justification has been recast as ‘the defence of the truth’, there is little practical change; thus, the onus of proof remains on the defendant. That said, the requirements to swear affidavits verifying any assertion in a pleading, including an allegation that a statement is true or false, will likely introduce greater caution on both sides.

Similarly, the newly titled defence of ‘honest opinion’ will be familiar to practitioners as the somewhat inaccurately named ‘fair comment’. However, the requirement in section 20(2) that a defendant prove that (s)he believed in the truth of the opinion at the time of publication is both arguably more restrictive than the common law and will mean that the author will most likely have to be called if the plea is to succeed.

Absolute privilege is placed on a comprehensive

statutory footing and the act expands on the common law by listing an extensive, but not exhaustive, set of statements to which the privilege applies. The act also brings clarity to the absolute privilege attaching to statements made in courts of local and limited jurisdiction, the coroner’s courts and tribunals of inquiry.

The common law on qualified privilege, where a person had a duty to communicate information to a person with a reciprocal interest in receiving it, is retained. So too is the privilege attaching to reports of certain bodies listed in schedule 1; for example, courts outside the island of Ireland. Malice continues to defeat the immunity.

### ‘Right to be wrong’?

The most significant change to the defences available to the media is that of fair and reasonable publication on a matter of public interest, enshrined in section 26. This is closely akin to, but not the same as, the defence of qualified privilege established by the House of Lords in *Reynolds v Times Newspapers*. (This was adopted into Irish law in the decisions of O’Caoimh and Charleton JJs in *Hunter v Duckworth* and *Leech v Independent Newspapers*.)

The House of Lords recognised that, in certain instances, the duty of the press to inform the public on matters of public interest outweighed the rights of individuals about whom defamatory statements were made. Unsurprisingly, but somewhat inaccurately, this became known as the ‘right to be wrong’.

To establish whether the media had acted reasonably, Lord Nicholls laid down ten factors to be taken into account by the court. These are now largely, but not identically, established on a statutory basis. They include the seriousness of the allegations, the steps taken to verify facts, the context and content (including the language used), whether the publication contained the gist of the wronged person’s story, and adherence to the standards of the PCI.

**“While criticised as unworkable, there has only been one reported attempted blasphemy prosecution in Ireland in the last 80 or so years, and that figure is unlikely to change greatly”**



The defence does not give the press *carte blanche*. Its actions will be closely scrutinised to see if they meet the stringent criteria.

#### Fluid and fast moving

The common law in this area is heavily influenced by the *European Convention on Human Rights* and is both fluid and fast moving. The *Reynolds* defence has been somewhat liberalised in Britain through subsequent decisions bringing the law there closer to the freedom enjoyed by the US media when publishing allegations about public figures. There is a real danger that the codification of this defence will strangle the flexibility necessary to keep the defence in line with the requirements of the ECHR.

While not a defence, section 22 establishes a potentially useful weapon in a defendant's armoury – the offer to make amends. Where a defendant has published an allegedly defamatory statement, it can offer to publish a correction and apology and pay

### LOOK IT UP

- *Hunter v Duckworth* [2003] IEHC 81
- *Leech v Independent Newspapers* [2007] IEHC223
- *Reynolds v Times Newspapers* [1994] 4 AER 609

Hot pursuit – Oscar-winning actress Nicole Kidman arrives to give evidence at a defamation hearing at the Sydney Supreme Court on 19 November 2007

compensation and costs. In Britain, making such an offer leads to a discount in any damages that may be awarded at trial – as much as 50%. However, if a defendant makes such an offer, no other defence may be pleaded.

Overall, the 2009 act is a major step forward. While not without its faults, it introduces sensible but long overdue reform and will benefit plaintiffs and defendants alike. **G**

*Michael Kealey is in-house counsel at Associated Newspapers.*

## APOLOGIES AND UTTERANCE OF BLASPHEMOUS MATTER

Two provisions that generated much comment before the bill became law may have less of an impact in practice.

The first is that an apology does not amount to an admission of liability and is not relevant to the determination of liability. Despite this statutory disclaimer, it will remain difficult for a jury not to

view an apology as an admission of some form of (compensational) wrongdoing.

The second is criminal liability for the publication or utterance of blasphemous matter. While criticised as unworkable, there has only been one reported attempted blasphemy prosecution in Ireland in the last 80 or so years, and that figure is unlikely to change greatly.

# QUALITY

**What are the benefits of having a risk management strategy? Will implementing quality-control systems affect your professional indemnity insurance and help your bottom line? Noelle McDonald has the answers**

**S**ystems for quality control are documented processes that will help manage and, in particular, minimise the risk exposure to potential claims and/or complaints from clients or third parties. To be effective, systems have to be communicated and understood – but must be also utilised – by staff. They should be reviewed and updated on a continuous basis. Some of the more obvious benefits from implementing quality-control systems are that your professional indemnity insurance premium will be kept low and that your practice will become more efficient in delivering a consistent high quality of service. You will also improve your marketability and competitive advantage – for instance, you will increase your success in tendering processes and panel reviews. Quality controls applied across the board will result in increased uniformity, consistency and transparency between departments.

## **One size may not fit all**

How should you go about implementing new quality controls and how do you convert the non-believers? How do you incorporate systems to meet your firm's needs?

It is important that you don't set standards that staff can't meet. You should try to build in procedures that are easy to carry out and that create little interruption to daily work routines.

Initially, you may find some resistance from staff – for instance, many will argue that have more important things to do, like looking after clients. The general perception will be that all this 'compliance stuff' is just another box-ticking exercise that leads to less time fee-earning. New roles will have to be filled, for instance, compliance officer and money-laundering officer. Staff should be reminded of the importance of having compliance systems and the consequences or penalties that can be imposed by the Law Society if a client or third party makes a complaint or a claim.

## **Six of the best**

The following are some risk-management and quality control systems that can be easily implemented as part of an overall risk-management strategy.

1) *Client care/terms of engagement.* A comprehensive 'terms of engagement' letter can cover all compliance issues required by law – for instance, money laundering and data protection. This letter may also set out a limitation on liability in accordance with section 44 of the *Civil Law (Miscellaneous Provisions) Act 2008*. As solicitors will be aware, they are entitled to limit their level of cover, the minimum now being €1.5 million as per the 2009 *Professional Indemnity Insurance Regulations*. Client care policies and procedures can also be incorporated into the terms of engagement, for example, complaints procedures, billing and invoicing, scope of work, applicable law, contact, termination clauses, email policy, and requirements under section 68 of the *Solicitors Act* to provide an estimate of expected costs. The Law Society also has available a template 'terms of engagement' that can be tailored to each law firm's needs (see 'Precedents for practice' in the 'Best practice and guidance' section of the Law Society website – [www.lawsociety.ie/Documents/committees/guidance/Precedent%20Letter.pdf](http://www.lawsociety.ie/Documents/committees/guidance/Precedent%20Letter.pdf)).

2) *Complaints policy and complaints register.* A formal complaints system will ensure that complaints are dealt with in an efficient manner. A complaints register will record centrally all types of complaints made and how long each complaint took to be resolved. The register can be reviewed annually to assess trends, which in turn will enable you to take preventative action to eliminate similar complaints occurring in the future. In the North, it is legal requirement under the *Client Communication Practice Regulations 2008* to have a complaints policy and maintain a central complaints register to record the history of all written complaints by clients, including details of how those complaints were resolved. Britain has similar guidelines under rule 2 of the *Solicitors Code of Conduct 2007*.

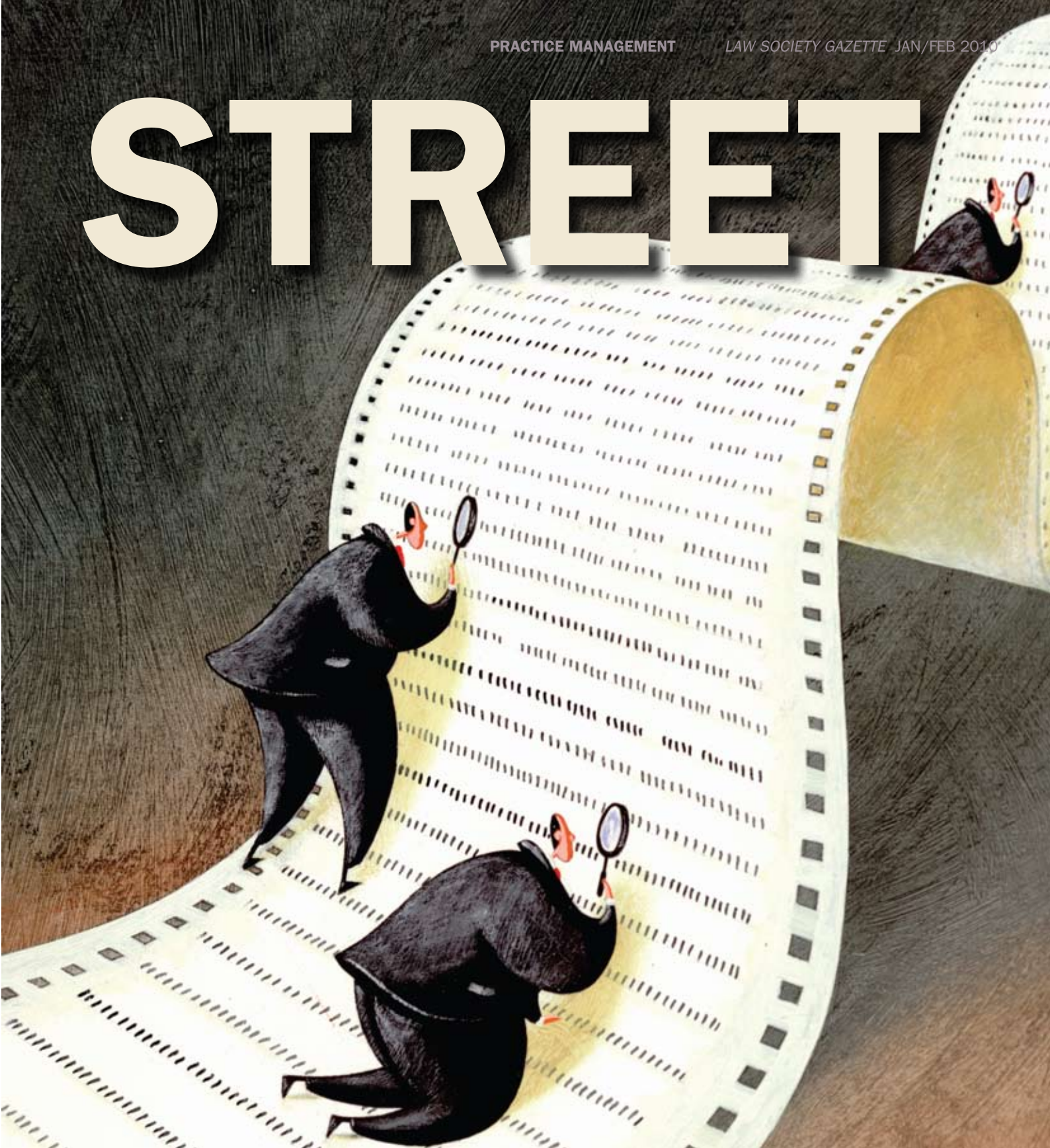
3) *Undertakings register.* This is an area that has become a high priority for professional indemnity insurers and is a risk management system that most insurers may require in the future. Where no such register exists, this may be considered when calculating premiums. It is important that you can show that a central register exists and that it is reviewed on a regular basis.

## **MAIN POINTS**

- Risk management and quality-control systems
- Recognised professional standard accreditations
- Six simple strategies



# STREET



4) *File audits.* All staff, both junior and senior, should be subject to file audits. This is another way of picking up whether there are any staff who are experiencing difficulties with their files and whether more supervision and support is necessary. Problems can be resolved quickly through file audits. Junior solicitors need more supervision, as they are more likely to pick up bad habits or make mistakes. Giving structural support in a systematic way will result in better file management, which will lead to a higher

turnover. File audits should focus on danger spots to ascertain if a file is being managed adequately or whether there are missed limitation dates or service/registration dates. Is there a good record being taken of attendances with clients and legal advice given? Has a terms of engagement letter been sent to the client? Have all money-laundering documents been obtained and undertakings discharged?

5) *Account checks.* Regular account and costs reviews are a good way of monitoring accounting controls.



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## ACROSS THE WATER

In Britain, there are many recognised professional standard accreditations that incorporate a number of quality controls systems, such as 'Lexcel' and 'Investor In People'. There are also international accreditations, such as the ISO 9001:2008, which is the recognised international standard for a quality management system, regardless of what the user organisation does, its size, or whether it is in the private or public sector. The standard provides a tried-and-tested framework for managing an organisation's processes, so that they consistently turn out 'product' that satisfies customers' expectations.

### Checking that it works

- 1) The standard requires the organisation itself to audit its ISO 9001:2008-based quality system to verify that it is managing its processes effectively and to check that it is fully in control of its activities.
- 2) The organisation may invite its clients to audit the quality system, giving them confidence that the firm is capable of delivering services that will meet their requirements.

- 3) The organisation may also engage the services of an independent quality system certification body to obtain a certificate of conformity – extremely popular in the market-place because of the perceived credibility of an independent assessment.

### Reducing product liability exposure

According to one American legal expert in compliance issues, however, any quality management system will benefit from building risk-management preventative law principles into their QMS. "This means using the ISO 9001 platform to address product liability exposure and taking steps to reduce that exposure. Failure to do that means that the company's QMS becomes a platform for supporting a product liability lawsuit."

The choice is clear and simple, he says, but requires extra effort and, consequently, will be ignored by most firms. Quality managers do not see this as their responsibility and senior managing partners, chief financial officers and corporate counsel, generally, can be oblivious to the legal opportunities and threats presented by their QMS.



Practice management is like a box of chocolates – just make sure you don't end up with all the dodgy orange ones

Circulating monthly account reports to all fee earners is the only way to ensure that all client and office accounts are reviewed, deeds have been stamped in time, and that balances are sent to clients so that files can be closed off in a timely fashion. Failure to manage disbursements will result in an accumulation of bad debt. Good invoicing procedures will improve cash flow.

6) *Business continuity plan.* Often, insurers will want to know if a business continuity plan exists – in other words, what procedures will be used in the event of a disaster. For instance, if there is a fire, where will the

firm relocate, who is responsible for ensuring staff safety, what steps will be taken to minimise the time it will take to have your firm operating again, and so on?

There are many benefits to be gained from implementing quality-control systems, which should result in your practice being in the best possible position if faced with having to defend any potential claim or complaint. **G**

*Noelle McDonald is a solicitor and the risk management/quality control compliance officer at the Dublin law firm O'Rourke Reid.*

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# Night of the

**Solicitors have a duty to protect estate assets – and to defend an estate from any apparently unfounded actions. Cian O’Sullivan looks at the intricacies of the administration of estates and statute-barred claims**

**A**t common law, a personal representative has a duty to protect estate assets and, by extension, a duty to defend an estate from any apparently unfounded actions. Section 8 of the *Civil Liability Act 1961* states that all causes of action subsisting against a deceased person at the date of death shall survive against his estate. Section 9 provides that no proceedings shall be maintainable against an estate unless they were validly issued and were pending at the date of death, or proceedings are issued within the period of two years after death or during the remainder of the statutory period, whichever period expires first. Section 11 of the *Statute of Limitations 1957* prescribes a limitation period of six years for breach of contract claims (sections 8, 9 and 11 are collectively referred to as the ‘statute’). Section 27 of the *Succession Act 1965* empowers the High Court to grant administration to such person as it thinks fit. This section is frequently used by persons who intend suing an estate where the statute is in danger of expiring and where a grant of representation has not issued. An independent individual consents to being nominated by the applicant and, if acceptable to the court, is duly appointed an administrator *ad litem*, whose function is generally limited to accepting and defending a particular set of proceedings.

## Difficulties

There are two areas in practice that may cause difficulties for practitioners and banks:

- a) *Guarantees* – if an individual personally guaranteed the debts of a connected company and a bank demanded payment and the individual subsequently died without making any payment, this liability would constitute a cause of action surviving against the deceased at the date of death, and section 9 would operate. The bank would have the lesser of six years from the date of demand or two years from date of death to issue proceedings against the estate, otherwise the bank’s claim would be statute barred. If no demand was made during an individual’s life, section 8 and, consequently, section 9 do not operate. The bank would have six

years from the date of demand after death to sue for breach of contract (section 11).

- b) *Mortgages* – generally, standard form mortgages provide that non-payment of any instalment due, coupled with a demand, shall constitute a breach. Some mortgages provide that mere non-payment for a period constitutes a breach. In any case, the wording of any special and general conditions attached to a loan offer will have to be considered, as these will be incorporated into the mortgage and any inconsistency may operate against the bank *contra proferentum*.

If mere non-payment *per se* by an individual during his/her life is a breach and that person dies, the bank has the lesser period of six years from the date of non-payment (default) or two years from date of death to issue proceedings against the estate; similarly where non-payment and demand constitute default and both occur during the individual’s life.

If there is no default during the individual’s life, then section 11 will apply in the normal way.

In *Bank of Ireland v O’Keefe*, MO’K guaranteed on 18 November 1980 to pay, on demand, the debts of B Ltd. MO’K died on 11 February 1982. A first demand for payment was made on 6 May 1982 and proceedings issued on 19 February 1985. Barron J held that no cause of action was subsisting against MO’K at the date of death. He stated that: “The claim which is brought is one which was not maintainable until after demand was made and no cause of action could have arisen until such demand was made ... Since this demand was not made until after the death of the deceased, it follows that there was no cause of action subsisting against him at the date of death.”

The result was that the relevant period under section 11 (six years from 6 May 1982) applied, and the bank had issued in time.

## Promissory note

In *First Southern Bank Limited v Eileen Maher*, DM executed a promissory note on 14 November 1980, repayable by monthly instalments. No money was ever paid on foot of the promissory note. DM

## MAIN POINTS

- **Administration of estates and statute-barred claims**
- **Solicitor’s duty to protect estate assets**
- **Challenging third-party claims**

# living debt



died on 21 July 1983. The plaintiff demanded repayment of the total amount due from DM's estate, and proceedings issued on 27 February 1989. The defendant argued that the claim was statute barred and the plaintiff argued that demand was a prerequisite to enforcement of its security.

Having reviewed the security documentation, Barron J dismissed the plaintiff's claim on the basis that, as soon as default was made on the first instalment (30 June 1981), the monies became due and owing. It was at this time that the statute began to run against the plaintiff. As the plaintiff had a cause of action subsisting against DM at the date of his death, and since no proceedings were brought within two years of death (being the lesser of the two relevant periods), the plaintiff's claim was statute barred by virtue of section 9(2).

In *Allied Irish Banks plc v Philip English*, the deceased guaranteed any sums due or to become due and owing by his son to the limit of £3,000. A demand was made on 12 April 1985, but the bank

never sought to enforce the guarantee while the deceased was alive. The deceased died on 18 February 1987. Proceedings issued on 28 September 1989. While the decision turned largely on the fact that the bank had not advised the elderly deceased to obtain independent legal advice at the time the guarantee was executed, Sheridan J did say *obiter* that the present case was distinguishable from the *Bank of Ireland* case, as the demand in the present case was made during the lifetime of the deceased and therefore a cause of action was subsisting as at the date of death. Consequently, sections 8 and 9 would have applied and, as the bank did not issue within two years of death (being the lesser period), its claim would have been statute barred.

## Inadvertent acknowledgement

Practitioners need to take care that a statute-barred debt is not inadvertently acknowledged during the administration, thereby running the risk of a negligence action. Sections 56 and 65 of the 1957 act



## LOOK IT UP

### Cases:

- *Bank of Ireland v O'Keeffe* [1987] 1 IR 47
- *Allied Irish Banks plc v Philip English* (unreported, Circuit Court, 14 March 1992, Sheridan J)
- *First Southern Bank Limited v Eileen Maher* [1990] 2 IR 477
- *Finnegan v Richards and Madigan* [2007] 3 IR 671
- *Prendergast v McLoughlin* (unreported, High Court, 20 May 2009, O'Keeffe J)
- *Flack v President of the High Court* (unreported, High Court, 29 November 1983, Costello J)

### Legislation:

- *Succession Act 1965*, sections 3, 10, 13, 27, 46, 50, 115, 117(6) and 126
- *Statute of Limitation 1957*, sections 11, 13, 43 and 45
- *Civil Liability Act 1961*, sections 7, 8 and 9
- *Family Law (Divorce) Act 1996*, section 46

### Literature:

- James Brady and Anthony Kerr, *The Limitation of Actions* (second edition)
- Anthony Kerr, *Civil Liability Acts* (third edition)

provide that, where any right of action has accrued to recover any debt and the person liable therefor acknowledges the debt, or makes part payment in respect thereof, the right of action is deemed to have accrued at the date of the acknowledgement or part payment. In addition, the common law doctrines of mistake and legal disability have not been displaced by section 9 and, in particular, the use of the words 'any cause of action whatsoever'.

Depending on the circumstances, an administrator may be estopped from pleading the statute. In *Finnegan v Richards*, the deceased died intestate on 13 May 2004. At that date, the plaintiff had vested in him a cause of action against the deceased's estate within the meaning of sections 8 and 9; that is, proceedings had to issue by 12 May 2006. On 5 May 2006, and prior to the issuance of letters of administration, the plaintiff's solicitors wrote to the defendants' solicitors seeking confirmation that they would accept service of proceedings and that, in default, application pursuant to section 27 would be made. On 8 May 2006, the defendants' solicitors replied and confirmed authority to accept service of proceedings. Proceedings issued against the defendants on 9 May 2006 and the defendants entered an unconditional appearance. A grant subsequently issued. Upon delivery of the statement of claim, the defendants issued a motion seeking to have the proceedings struck out on the basis that they were statute barred, in that, when proceedings issued, a grant had not issued and the defendants did not act in their capacity as administrators of the deceased's estate.

McKechnie J dismissed the application. He held that the defendants were estopped from pleading the statute. McKechnie J treated the defendants' solicitors' letter, dated 8 May 2006, as a "material

representation ... as duly authorised agents, which was intended to and in fact did influence the plaintiff to his detriment in refraining from applying for the appointment of an administrator *ad litem*".

It is submitted that, where there is doubt that the estate has bound itself in equity and is estopped from pleading the statute, it would be prudent for a plaintiff/creditor to make a section 27 application and obtain the blessing of the court.

McKechnie J stated that: "In fact, the only risk of instituting proceedings prior to the grant rests with the plaintiff in that he can never execute any award unless the named defendant had by that date obtained letters of administration ... Likewise, if a person unconnected with the estate is wrongfully named, he can immediately so indicate and the court would surely make the required consequential order, including costs, virtually for the asking."

Generally, the definition of default is crucial and determines what provisions apply. It is the duty of a personal representative, where appropriate, to challenge third-party claims, especially where they might be statute barred. Acknowledging a statute-barred debt or part payment thereof will cause the period of limitation to recommence.

Practitioners may find themselves open to an action in negligence on the part of disappointed beneficiaries or legitimate creditors (for example, where an estate is insolvent) who may find that the amount of their recoverable entitlement/debt is reduced or wiped out as a consequence of the acknowledgement/part payment. **G**

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# MERGER most foul

The recession has seen a fall in the volume of merger and acquisitions activity, but the rules still apply and merging parties must consider whether a notification to the Competition Authority is necessary, writes Cormac Little



Cheese and chocolate rarely meet – except when it comes to fondue

## MAIN POINTS

- Irish merger control rules
- Minimising delays in merger approval
- Approval of transactions that give rise to competition concerns

**T**he current economic downturn has witnessed a significant fall in the volume of merger and acquisitions activity. Many transactions that are occurring involve distressed businesses where the parties usually wish to close the deal quickly. However, EC and Irish merger control rules continue to apply, and the parties must continue to consider whether merger-control filings are necessary and, if so, the prospects for early clearance.

If a transaction satisfies the financial thresholds under the EC *Merger Regulation*, it must be notified to the European Commission and not the Competition Authority. In such cases, EC member states may intervene to protect legitimate interests such as public security, plurality of the media, and prudential rules in the financial sector, even if the merger does not give rise to competition concerns. The EC thresholds are – in the context of a small economy

such as Ireland's – very high, and comparatively few transactions involving Irish companies are notified to the commission.

We will, therefore, focus on Irish merger-control rules and consider when a notification is necessary to the Competition Authority under part 3 of the *Competition Act 2002*.

In addition, we will examine ways of accelerating the timetable, where early completion is crucial to the viability of the target's business.

Finally, we will consider the circumstances where the authority may approve transactions giving rise to potential competition concerns.

### Turkish delight

In general, a merger or acquisition must be notified to the Competition Authority if the following three conditions are satisfied:

- In their respective most recent financial years,

## HMV/ZAVVI AND ACCELERATED REVIEW

Before Christmas 2008, the British-based Zavvi Group entered administration following the collapse of its main supplier. As a result, its wholly-owned subsidiary, Zavvi Ireland, became insolvent and went into provisional liquidation. Zavvi Ireland operated 11 stores selling CDs, DVDs, electronic games, MP3 players and music-related books. On 15 January this year, HMV Ireland, which operates a retail chain selling a similar mix of products, notified its proposed purchase of the assets of five Zavvi-branded stores to the authority. The provisional liquidator agreed to operate these shops pending merger approval, but made it clear to the authority that, if the shops were not sold as quickly as possible, they would close with a consequent loss of around 100 jobs.

The authority responded by halving its usual ten-day notice period for the receipt of third-party

comments and moved quickly to examine the relevant competition issues, focusing on the overlaps between HMV and Zavvi stores in both greater Dublin and Limerick. The authority concluded that, given the limited geographical overlaps between the parties' respective shops in these cities and the strength of rivalry from other retailers, HMV's proposal did not give rise to competition concerns. The authority granted its approval on 23 January. This eight-day review period by the authority is the shortest since the entry into force of the current Irish merger-control regime over six years ago.

The HMV/Zavvi case shows that the authority is willing to accelerate its review timetable but will, nevertheless, continue to look into the likely market impact of a transaction to ensure that its competition analysis is robust.

the global turnover of each of two or more of the parties involved, respectively, is not less than €40 million,

- Each of two or more of the parties involved carries on business in any part of the island of Ireland, and
- Any one of the parties involved has turnover in the state of at least €40 million.

Special rules apply to media mergers and certain transactions involving credit institutions. Mergers or acquisitions that involve two or more media businesses (such as radio or TV stations and newspapers) must be notified to the authority, provided at least one party is active in the state. Moreover, under recent emergency legislation, proposed transactions involving credit institutions may, in certain circumstances, be notifiable to the Minister for Finance.

If a transaction must be notified to the authority, the merging parties should not close the transaction until they receive regulatory approval, because it is

not possible to get a waiver to complete in advance of approval from the authority. This delay may not be good news for a target company that urgently requires a capital injection or for a liquidator that is looking to rescue a failing business by selling it as a going concern. There is an exemption from the requirement to notify for transactions where the acquirer is a liquidator or receiver, but subsequent sales by these practitioners are subject to review by the authority in the normal way, provided the relevant jurisdictional tests are satisfied.

### Fruit and nut

As discussed, a crucial jurisdictional question is the level of the parties' respective most recent turnover. Normally, figures contained in the relevant, most recent audited accounts are used. However, the authority, relying on the European Commission's *Consolidated Jurisdictional Notice*, will recognise that the relevant turnover figures should reflect permanent changes in the economic reality of the parties to the transaction, such as closures or divestitures since their respective most recent financial year-ends. This may be helpful to a company that has shut or sold loss-making parts of its business and is anxious to avoid the delay caused by a filing. A slowdown in orders after the last year-end is not, however, seen as a permanent change. In addition, any closure or sale of a business should take place in advance of, or as a precondition to, the conclusion of the transaction agreement in order to trigger a readjustment of the relevant party's most recent audited turnover figures.

### Glass-and-a-half

After the transaction is notified, the authority will consider whether the proposal gives rise to competition concerns. As discussed, the deal cannot be closed until the authority grants its approval. Save for transactions involving credit institutions,

## LOOK IT UP

### Cases:

- Competition Authority Determination – M/09/002 – HMV Ireland/Zavvi
- Competition Authority Determination – M/07/046 – Smart Telecom/E-nvi

### Legislation:

- *Competition Act 2002*, part 3
- *Credit Institutions (Financial Support) Act 2008*
- *EC Merger Regulation*

### Literature:

- Competition Authority, *Guidelines for Merger Analysis* – N/02/004
- European Commission, *Consolidated Jurisdictional Notice*, OJEU 2008 C 95/01

the substantive test under Irish merger-control rules is whether the proposal gives rise to a substantial lessening of competition. If so, the transaction will be blocked or cleared, subject to steps designed to remedy its anti-competitive impact, such as the sale of a business.

In cases that do not give rise to competition concerns, the authority normally takes around one month to issue its approval. If the authority feels that it requires further information, it may extend this timetable. On the other hand, if the parties quickly satisfy the authority that a notification does not give rise to competition difficulties, it may issue its clearance decision within a matter of weeks.

### Finger of fudge

Under Irish merger-control rules, a transaction may not be notified to the authority until the agreement is concluded. Put another way, a notification may not be made on the basis of a non-binding letter of intent. This means that the parties are likely to have the opportunity, prior to notification, of engaging the authority in order to discuss the information to be provided in the actual filing. These discussions may serve to reduce the possibility of delays after the notification is submitted. As the recent HMW/Zavvi case shows (see **panel** above), the authority will do its best to facilitate parties that are anxious to move ahead quickly, provided the relevant transaction does not give rise to competition concerns.

### Careless Wispa

The 'failing firm' defence allows the authority to approve mergers that may otherwise be prohibited. In order to avail of this defence, the proposed transaction must satisfy four strict criteria set out in the authority's *Guidelines for Merger Analysis*.

First, the alleged failing firm must be unable to meet its financial obligations in the near future. Second, there is no possibility that an examiner could rescue this business. Thirdly, there is no less anti-competitive sale available (for example, where other potential purchasers have refused the opportunity). Finally, in the absence of the proposed sale, the target's assets would definitely exit the market.

The authority has recognised that these conditions will rarely be met in practice. Indeed, to date, no merger has been approved on the

basis of the 'failing firm' defence, although it was raised regarding Smart Telecom's acquisition of an insolvent competitor a couple of years ago (see **panel**).

### Nuts, whole hazelnuts

Until recently, Irish merger-control rules did not contain any provisions superseding the competition test where a merger is necessary to preserve the stability of the financial system. This meant that banking mergers designed to avert financial crises might be subject to a lengthy timeframe for review and definitively blocked on competition grounds. Mirroring a similar initiative in Britain, this situation changed with the adoption of the *Credit Institutions (Financial Support) Act 2008* last October.

This emergency legislation allows the Minister for Finance to approve a merger that would otherwise be blocked, where he believes that it is necessary to maintain the state's economic stability, including its financial systems and credit institutions, and that there will be a serious threat to the stability of this system if the merger does not proceed. (Clearly, mergers that satisfy the thresholds under the EC *Merger Regulation* will continue to be notifiable to the European Commission.) The new legislation does not contain any references to timing; this means that, in theory, the minister may issue his approval within a matter of days.

Whether the economic seas are calm or choppy, merging parties must consider whether a notification to the authority is necessary. The parties are allowed to make adjustments to their audited turnover figures where parts of their respective businesses have been shut or sold. Moreover, acquisitions by a receiver or liquidator are not notifiable. Notwithstanding the economic rationale for the planned transaction, the authority will consider whether the relevant proposal gives rise to competition concerns.

Moreover, any delay may also be minimised by engaging with the authority, which has shown a willingness to work with companies anxious to complete transactions speedily. Finally, in certain limited circumstances, transactions that give rise to competition concerns may be approved. **G**

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*Cormac Little is a partner in the competition and regulation unit of William Fry.*

## SMART TELECOM AND THE 'FAILING FIRM' ARGUMENT

In September 2007, Smart Telecom notified its proposed acquisition of E-nvi Communications to the Competition Authority. At the time of the notification, E-nvi Communications was in provisional liquidation. Smart Telecom and E-nvi Communications overlapped in the provision of electronic communications, including packages comprising broadband, telephony and TV services, often referred to as 'triple play'. The authority found

that the transaction did not give rise to competition difficulties because the extent of the overlap between the parties was minimal and, furthermore, there was strong competition in 'triple play' and its individual services sectors.

The parties put forward a 'failing firm' argument but, given the lack of competition concerns arising from this transaction, the authority did not need to consider whether this defence was required.



# ON BORROW

**The Enforcement of Court Orders (Amendment) Act 2009 amended the previous regime to allow for a constitutionally-acceptable method of enforcement of committal orders. Bill Holohan looks at the act from the debtors' perspective**

**T**he legislature moved swiftly to respond to the issues raised in the judgment of Laffoy J in the High Court decision in *McCann v Judge of the Monaghan District Court*. An article in the July 2009 *Gazette* ('Till debt do us part', p29) set out in detail the bases for the court decision, and it is not proposed to rehearse them here. (See also 'One to watch', August/September 2009 *Gazette*, p12.)

The act was passed on 14 July 2009. It replaces section 6 and amends section 8 of the 1940 act so as to ensure that there are certain safeguards introduced on an application for a committal order to ensure that the debtor is given adequate means and opportunity for representation in court, before the court grants an imprisonment order.

Under section 6, a summons issued to a debtor must "contain details of the consequences of the failure to comply with an instalment order and in particular the possibility of imprisonment" and "state that the debtor may be arrested if he or she fails to appear before the District Court as directed". The debtor must be served "by personal service" unless the judge of the District Court directs otherwise.

If the debtor fails to appear "without reasonable excuse" to answer to the summons (subsection 3) then, on the creditor's application, the judge may issue a warrant for the arrest of the debtor or fix a new date for hearing and direct that the debtor be notified.

## Debtor's court appearance

Once arrested, a debtor must be brought before the court as soon as possible (subsection 4) and a date will then be fixed for hearing (subsection 5). The judge must then make clear to the debtor:

- Their entitlement to apply for legal aid,
- The consequences, including imprisonment, of failing to comply with the instalment order, and
- That he or she must attend for the hearing on the date specified for hearing.

Under subsection 7, "on hearing the creditor and the debtor and such evidence, if any, as they may respectively adduce, a judge may, if he or she is

satisfied that the debtor has failed to comply with the instalment order":

- Treat the proceedings as an application to vary under section 5,
- Request the creditor and the debtor to seek resolution by mediation, or
- Make an order fixing a term of imprisonment for any period not exceeding three months, and stay the execution of the order on conditions.

In particular, under subsection 8, a judge must not make an order for immediate arrest or imprisonment, or a postponed order for arrest and imprisonment, unless they are satisfied "beyond reasonable doubt, on the evidence presented, that the creditor has established that ... the failure to pay the sum in respect of which the debtor has made default is not due to his or her mere inability to pay, but is due to his or her wilful refusal or culpable neglect and ... the debtor has no goods which could be taken in execution under any process of the court by which the judgement, order or decree for the debt was given".

The criminal standard of proof therefore applies.

## Imprisonment orders

Assuming that the debtor's circumstances change after the making of the order, to the point where they are no longer able to pay – as distinct from being unwilling to pay – then subsection 9 provides that, in the case of a postponed order with a condition as to payment of the debt and costs by the debtor, then (s)he may, if his/her ability to comply with the terms of the order has changed, apply to the District Court clerk concerned to re-enter the matter and the District Court judge, on notice of the creditor, must then deal with the matter as if it was an application under section 5 for a variation of the instalment order.

Subsection 10 provides that, where a debtor is imprisoned on foot of an order made under subsection 7, the debtor may, if their circumstances have changed, apply to the District Court clerk to re-enter the matter and the judge, on notice to the creditor, must then deal with the matter as if it was a re-hearing of the summons as referred to

## MAIN POINTS

- Debtor's court appearance
- Setting aside imprisonment orders
- Entitlement to legal aid

# ED TIME



Not such a practical pig now, eh?

in subsection 1. Subsection 10(b) provides that the debtor is entitled to be released immediately upon payment by him or her, or on his or her behalf, to the District Court clerk concerned, or to the governor of the prison for the District Court clerk, of the sum of money consisting of the amount of all instalments of the debt and costs that have accrued before, and are unpaid at the date of such order. Subsection 11 provides that all monies paid under the section to the District Court clerk, whether directly or through the governor of the prison by or on behalf of the debtor, are to be paid by the clerk to the creditor on request.

What, then, of a situation where someone has been adjudged to be unwilling to pay and has been imprisoned, and where the circumstances change to the point where they are unable to pay, perhaps simply because of their incarceration?

It would appear that, while they can apply under

section 10, subsection (a) for a “re-hearing of the summons referred to in subsection 1”, they will remain in prison unless “all instalments of the debt and costs which have accrued before and are unpaid” are paid to the District Court clerk or to the governor for the District Court clerk. Presumably, therefore, a belatedly impecunious debtor will languish in jail pending the hearing of the re-entry application.

## Entitlement to legal aid

Perhaps one of the most interesting developments (necessitated by the judgment of Laffoy J in the *McCann* case) was the requirement to provide legal aid. Section 6A now makes provision for an entitlement to apply to the court for a debtor’s legal aid certificate and sets out the circumstances in which it can be granted.



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In the explanatory memorandum to the act, it is noted that: "Entitlement is limited to debtors at risk of imprisonment under section 6 whose means, in the view of the judge, are insufficient to enable him or her to pay for their own representation. Regulations to set the relevant fee will be made by the Minister for Justice, Equality and Law Reform with the consent from the Minister for Finance."

It raises the interesting prospect of lawyers who have signed up for the criminal legal aid panel now dealing with the defence of debtors under the *Enforcement of Court Orders Act*. Given that the judge will have to be satisfied that the debtor's means "are insufficient to enable him or her to pay for their own representation" before granting legal aid, one presumes that thereafter there will be little difficulty in proving that the failure to pay the debt was also due to insufficiency of funds, unless it was considered to be taken as read by the legislature that the threshold of proof that the debtor's means "are insufficient to enable him or her to pay for their own representation" was higher than the threshold of proof that the debtor's means are insufficient to enable him or her to pay the debt.

Section 6A subsection 1 provides that, if it appears to the judge that the debtor's means are "insufficient to enable him or her to obtain legal aid", then, on application by the debtor, the judge can grant a certificate for free legal aid, referred to as a "debtor's legal aid certificate". Under subsection 1(D), in the event of an appeal, the certificate so granted will be referred to as a "debtor's legal aid (appeal) certificate" or, under subsection 1(C), in the event of a case stated to the High Court, any certificate granted will be referred to as a "debtor's legal aid (case stated) certificate".

Under section 6A(2), on the grant of the certificate, the debtor is entitled to have legal representation assigned to him or her for that purpose and, under subsection 3, it is provided that the *Criminal Justice (Legal Aid) Act 1962* and the regulations made under section 10 of that act are, where appropriate and with such modifications as are necessary, to apply for a certificate granted under

## LOOK IT UP

### Cases:

- *McCann v Judge of the Monaghan District Court* (unreported, High Court, 18 June 2009)

### Legislation:

- *Criminal Justice (Legal Aid) Act 1962*
- *Enforcement of Court Orders (Amendment) Act 2009*
- *Enforcement of Court Orders (Amendment) Bill 2009* (Seanad) as initiated and explanatory memorandum

subsection 1 and to such legal aid. Under subsection 4, the minister is entitled to make regulations in relation to the form of certificates, the rate of payment of any fees, costs or other expenses payable, the manner in which legal representatives may be signed pursuant to such certificates, and so on.

There is an interesting provision under section 6A(2)(B), which provides that, where a debtor in respect of whom an order for imprisonment is made is refused a debtor's legal aid (appeal) certificate, he or she may apply for the certificate to the court to which an appeal for imprisonment lies either by:

- Letter addressed to the registrar of that court, setting out the facts of the case and the grounds of the application, or
- To the court itself.

A new informality is thus provided for in terms of the format of the appeal.

The provisions of section 8 of the 1940 act (which deals with maintenance orders) are also amended in similar fashion to the general provisions outlined above.

How the legislation will work in practice remains to be seen. **G**

*Bill Holohan is the senior partner of Holohan Solicitors, Cork and Dublin. The second edition of his book, Bankruptcy Law and Practice in Ireland, will be published in early 2010.*

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# Tipperary Bar Association

The Tipperary Solicitors' Bar Association (TSBA) celebrated the centenary of its founding on 13 November 2009. The association was originally founded in Roscrea (north Tipperary) on 15 November 1909, but being fair minded in all matters, the TSBA decided to hold its centenary celebrations in south Tipperary in the Hotel Minella, Clonmel. On hand to assist with the celebrations was a large gathering of solicitors, their spouses and partners from North Tipperary and South Tipperary, together with TSBA guests from the judiciary, county registrar and the Law Society.

President of the association, Patrick Derivan of Carrick-on-Suir, made the welcoming speech, highlighting the work of the association during its long history. Past-president of the Law Society, Philip Joyce (Killenale), was MC for the night.

## Member of the IBA

The TSBA is one of the oldest bar associations in the country and is the only rural



Members of the TSBA committee (*front, l to r*): John Joy, Suzanna Manton, Maura Derivan, Ken Murphy (Law Society director general), Patrick Derivan (TSBA president), Gerard Doherty (Law Society president), Brendan Hyland, Marcella Sheehy and Pat McDermott. (*Back, l to r*): Ronan Kennedy, Billy Gleeson, Paul Kingston, Joe Kelly, David Hodgins, Dermot O'Dwyer, Mark Hassett, James Meagher and Donal Smyth

bar association anywhere in the world to be invited to be a member of the International Bar Association on its own merits. The association has survived two world wars, depressions, recessions and 'tiger' times.

In more recent years, the TSBA has influenced

legislation by addressing various steering committees of Dáil Éireann, lobbying and making submissions to amend legislation that affects the rights of Irish citizens.

The association has scored other successes during its history, among them the drive to support the modernising

programme of courthouses in Tipperary, which has resulted in the refurbishment and renovation of courthouses to the highest standards in Clonmel, Nenagh and Thurles.

The TSBA claims that its county is unique in having so many upgraded and modern courthouses, due chiefly, it says,



Receiving their new past-president medallions were (*front, l to r*): John Joy (South Tipperary), Paul Malone (North Tipperary), Niall Quirke (South Tipperary), TSBA president Patrick Derivan (South Tipperary), Jim Kelly (North Tipperary), Nicky Shee (South Tipperary), Paul Morris (South Tipperary) and Matt Hassett (North Tipperary). (*Back, l to r*): Billy Gleeson (North Tipperary), Brendan Looby (South Tipperary), Philip Joyce (South Tipperary), Peter Reilly (South Tipperary), Pat McDermott (North Tipperary), Eugene Tormey (North Tipperary), John O'Connor (North Tipperary), John Spencer (North Tipperary), David Morris (South Tipperary) and Brendan Hyland (North Tipperary)



President of the Law Society Gerard Doherty (*right*), congratulates president of the TSBA, Patrick Derivan, seen here wearing the new chain of office at the association's centenary celebrations



# celebrates 100 years



ALL PICS: DENIS BARRY PHOTOGRAPHY

Celebrating at the centenary celebration of the Tipperary Solicitors' Bar Association were (*front, l to r*): Judge Mary Martin, Judge Elizabeth McGrath, Yvonne Chapman, Bernadette Cahill (president, Waterford Solicitors' Bar Association), Patrick Derivan (president of TSBA), Mary Delahanty (county registrar), Helen Teehan, Judge Alice Doyle and Jean O'Donnell. (*Back, l to r*): Judge Tom Teehan, Charles Stanley Smith, Gerard Doherty (president of the Law Society), Judge Michael Reilly (Inspector of Prisons), Ken Murphy (director general of the Law Society) and Judge Tom O'Donnell

to the dedication and support (including financial support) of the solicitors of Tipperary. In the past, they have undertaken litigation on behalf of the people of Tipperary to save the courthouses in Clonmel and Nenagh, which were threatened with closure due to long-standing neglect and disrepair.

## Eye on the past

One interesting facet of the celebrations was the mounting of an exhibition of artefacts from the past, including dress worn by the legal profession in 1909, legal documents, books, old-fashioned quills and pens, and newer technology comprising of 'ye olde' typewriters! A photographic exhibition displayed events from the past, as well as records of the association.

A competition for the most interesting signature using a quill was held and enthusiastically supported. Life



At the centenary celebrations were (*l to r*): Law Society director general Ken Murphy, TSBA president Patrick Derivan and Law Society president Gerard Doherty

was indeed very different for solicitors 100 years ago, and a short sketch was performed that transported members and guests back to 1909.

## New chain of office

To mark the centenary celebrations, a new chain of office was commissioned and

presented to the president by Tipperary's longest-practising solicitor, Niall Quirke, a native of Carrick-on-Suir. The new chain comprises the original crest for the county of Tipperary, which dates back to 1665 and which was not used after 1838, when the county was divided between North

Tipperary and South Tipperary and separate crests were created for both areas.

The original crest was adapted by the association to include the insertion of the traditional Irish harp at the top of the crest, and a figure denoting justice at the bottom, while traditional Celtic script was also incorporated.

At the centenary celebrations, a past-president medallion was presented to all living past-presidents. The silver medallion carries the legal insignia of the Tipperary Solicitors' Bar Association and the name of the past-president and year of service.

Guest speakers on the night included President of the Law Society Gerard Doherty and Judge Michael Reilly, who is Inspector of Prisons, and a proud Tipperary man. Wining, dining and dancing completed the celebrations. The TSBA looks forward to the next 100 years!



# Young eagles brave elements

The exceptionally heavy rain in the third week in November resulted in some of the worst flooding County Cork had ever experienced, *writes Alina Prendergast*. The following weekend was to be the very one that the Society of Young Solicitors' Autumn Conference 2009 would convene in (you've guessed it) Cork. While there were inevitably some last-minute drop-outs, the majority of young legal eagles braved the forecasts and headed to 'Waterworld'. The relief was evident in the faces of the attendees in the bar of the Clarion Hotel on Friday night: not a puddle was to be seen in the environs of the hotel.

The intention of this year's conference was to provide young solicitors with ideas and information on opportunities that are available when faced with redundancy or potential job loss, which was reflected in the speakers and topics chosen.

The first guest speaker on Saturday morning was Gráinne Gleeson of Mason Hayes & Curran, who gave an informative talk on varying contracts of employment and redundancy matters. Max



SYS committee members attending the autumn conference included (l to r): Donogh O'Donovan (McCann FitzGerald), Daniel Mueller (Eversheds O'Donnell Sweeney), Alina Prendergast (McCann FitzGerald), Micheál Grace (Mason Hayes & Curran), Jane Beattie (William Fry) and William McAuliffe (Matheson Ormsby Prentice)



Getting together at the autumn conference were (l to r): Maighread Britton (Matheson Ormsby Prentice), William McAuliffe (Matheson Ormsby Prentice) and John Bermingham (Garrett Sheehan & Partners)



Claire Molloy (A&L Goodbody) and Daniel Mueller (Eversheds O'Donnell Sweeney) at the SYS conference in Cork



Conference speakers included Max Abrahamson (McCann FitzGerald), Alina Prendergast (SYS), David Byrnes (Brightwater Recruitment), Rosemary O'Loughlin (ComReg) and Gráinne Gleeson (Mason Hayes & Curran)

Abrahamson, consultant with McCann FitzGerald, shared some interesting experiences from his career in law, which has spanned more than five decades and a recession or two. He provided real insight and perspective on the current situation being faced by the profession for the young solicitors in attendance.

The Law Society's career development advisor, Keith O'Malley, emphasised the importance of solicitors' own career management

# for 'Waterworld' weekend



ALL PICS: MICHEÁL GRACE AND DAN BARRY

At the SYS autumn conference were (l to r): Micheál Grace (Mason Hayes & Curran), Killian Kehoe (Institute of International and European Affairs), Padraic Roche (A&L Goodbody), Larry Doyle (A&L Goodbody), Daniel Mueller (Eversheds O'Donnell Sweeney) and David Collins (A&L Goodbody)

and taking charge of one's career path. Rosemary O'Loughlin, who previously worked as a stagiaire in DG Comp in Brussels, shared her experiences of working in the EU institutions, and also talked about other potential opportunities outside Ireland, such as employment in the European Court of Justice. David Byrnes of Brightwater Recruitment (a long-standing sponsor of the SYS conferences) summarised the areas where he saw potential future employment opportunities within the legal sector and gave some tips on interviewing techniques to the audience.

Following the hard work, Saturday evening was reserved for a drinks reception and gala dinner, at which Patrick Dorgan (Coakley Moloney Solicitors) spoke on behalf of the Law Society. This opportunity for socialising with colleagues from different firms around the country constitutes an essential part of the weekend – and socialise they did! After the meal, two representatives from Bank of Ireland – the



SYS chairperson Alina Prendergast was welcomed to the southern capital by Council member of the Law Society Patrick Dorgan

headline sponsors of this year's SYS conference – raffled off a number of tickets for a clinch rugby match, kindly donated by Bank of Ireland. Dancing to the tunes of '90s group Smash Hits, followed by DJ Glen, the fun continued late into the night.

A big thanks to the sponsors of the event, without whom we would not have been able to proceed. We look forward to seeing many more of our colleagues at SYS events in 2010.



Attending the SYS conference reception were (l to r): Claire McLoughlin (Matheson Ormsby Prentice), Donogh O'Donovan (McCann FitzGerald), and Dan Barry (Mason Hayes & Curran)



At the SYS autumn conference in Cork were (l to r): Deirdre Sheehan (Arthur Cox), Julie O'Neill (McDowell Purcell) and Michael Keaveney (Arthur Cox)





This photo of those who qualified just over 50 years ago (the class of 1959) was sent to us by Niall Farrell, solicitor. Among those we have been able to identify are (front): Margaret Casey (third from left), John R Halpin (president), and Con Clancy (far right). (Middle, l to r): Gerard Gannon (far left), Thomas Gannon (third from left) and Thomas Ballagh (fourth from left). (Back, l to r): Edward M Masterson, Patrick J Farrell, Francis Fitzgerald, Thomas D Shaw (fifth from left), Richard Black (seventh from left) and Laurence Branigan

## ON THE MOVE



PI: ROBBIE RENOLDS/CPR

### Four new partners at McCann Fitzgerald

McCann Fitzgerald has announced the appointment of four new partners across its corporate finance, dispute resolution/litigation, information technology and financial services practice areas in Dublin.

The new partners are (from l to r): Darragh Murphy (banking and financial services group), Aidan Lawlor (corporate finance group), John Cronin (chairman), Brian Quigley (dispute resolution and litigation group) and Annette Orange (IT and e-commerce group)



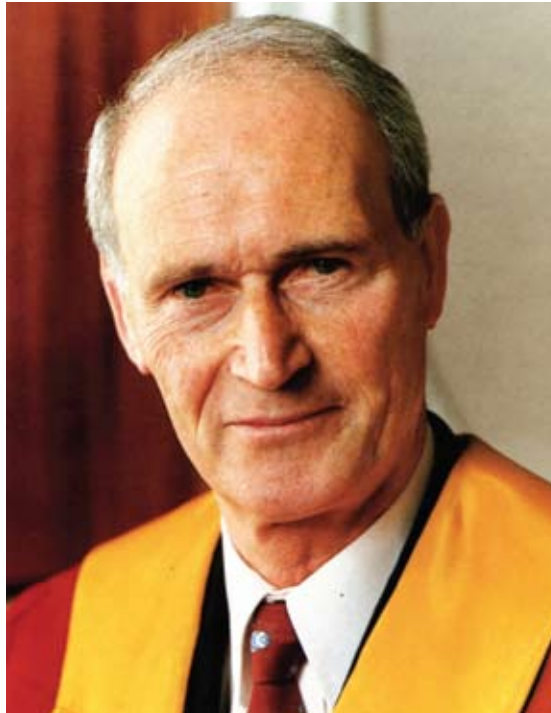
PI: NATHANIEL DOYLE/GMAIL.COM

### Fishburns strengthens Dublin office

Fishburns Solicitors has added new blood to its Dublin office. Providing legal services to the insurance industry for over 30 years, and operating from offices in the IFSC, the firm represents insurers and professionals, including solicitors, accountants, architects, surveyors, financial advisors and brokers in the defence of claims. (From l to r): Sinéad Ryan, Keira-Eva Mooney, Donal Twomey, Aoife Gaughan (partner), Denise O'Connor (partner)



## Laurence Sweeney 1930 – 2009



**P**rofessor Laurence (Larry) Sweeney, who died on 19 December last, was director of training at the Law Society from 1977 to 1992.

Born in Belfast, Larry's early years were spent in the civil service in England. During this time, he took his primary degree in law, following it with a thesis-based MSc that analysed emerging techniques in vocational and professional training.

In the early 1970s, Larry and his wife Catherine moved to Ireland, where his credentials well equipped him to take on the role of training manager with CERT. It was at this time that Larry bought his beautiful home, 'Inglewood', on Hillside Road in Greystones. By the mid 1970s, the Law Society had completed the move to Blackhall Place and was ready to launch its first-ever centrally located training school for solicitors' apprentices. Prior to then, would-be solicitors took various courses in various places from various approved teachers, then sat closed-book law exams. The 'new system' (as for long it was called) was intended to be quite different.

The Law Society advertised for a director of education, stipulating – true to form – that the role required a solicitor. For Larry, this was the job he was born for. Only, he wasn't a solicitor. Not daunted (which was ever the manner of the man), Larry applied – and was appointed. But not as director of education. Instantly recognising Larry's unique blend of experience, qualifications and skills, the Law Society decided it must have a director of training as well. Not long afterwards, Richard (Dick) Woulfe, then law agent with Limerick Corporation, came on board as director of education. Both were appointed professors.

Between them, and a small core of staff, the new law school was made to happen. Its anchor was a cadre of committed practising lawyers who, on a day-to-day basis, instructed and tutored the trainees. The principal training ground was the lecture hall, now the library. If Dick was the law school's chief executive and finance officer, Larry was its architect. Together, they developed the still-extant concept of the 'sandwich system' – a longish foundation course, followed by intensive in-office or 'on-the-job' training, culminating in a shorter completion course. The emphasis was on equipping apprentices to be able

to 'do'. This was achieved through a planned programme of objectives-based training. This meant that each session had to be identifiable by the range of activities participants would be able to carry out at its close.

A significant novel feature was that the later, or 'advanced', course would focus on practice skills not rooted in academic law. Thus was born advocacy and negotiations training, characterised by live-action role-play that was video-recorded and later replayed for group discussion and critique.

From this, it was a short step to devise variants as half-day or day-long refresher courses for solicitors: continuing legal education, or CLE – now CPD. Larry proved both fearless and effective in introducing to a conservative profession the techniques that helped 'to do' rather than just 'to know'. Skills-based CLE became immensely popular. For many years, the weekend residential advocacy course at Bellinter House in Co Meath was an annual high point.

Larry stayed with the Law Society for 15 years. A man of many talents, he played the violin at staff parties and was a frequent lunchtime enthusiast on the tennis court, most often with his friend PJ Connolly, registrar of solicitors. Conscientious to a scruple, he was a sage counsellor to younger colleagues and students.

A man of deep religious convictions who regularly attended early morning Mass at the Franciscan church on Merchant's Quay, Larry was also a consummate gardener and took pride in his luscious tomatoes and 'balls of flour' potatoes. And his hens laid lovely eggs.

In his retirement years, he qualified as a practitioner in the holistic muscle-and-tendon-relaxing system called 'Bowen Technique' and was in frequent demand for his services.

Larry passed away on Saturday 19 December 2009. The grief of his family is shared by many Law Society friends, who fondly remember Larry's unrelenting energy, integrity, commitment, humour and great personal kindness.

Professor Laurence Sweeney will ever hold the unique distinction of having laid the first firm foundation for the training of solicitors in Ireland, which endures as a testament to his vision and drive to this day.

AP



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## student spotlight

## Queuing for a living



It is a Wednesday morning on Bow Street. Just minutes from the Law Library, hundreds of people are queuing outside the Capuchin Day Centre, writes *Nikki Walsh*. They are waiting for food parcels. Inside, young men and women, students of the Law Society, are placing baked beans, Barry's tea bags and tins of biscuits into bags. "We give out anything from 900 to 1,000 parcels," says head chef Ann Kearney. Her kitchen produces up to 3,000 hot meals a week.

In the dining hall, volunteers wipe down tables and take away plates. Last year, the centre fed 150 people at lunchtime – now it is feeding 400. On the menu for today there is baked gammon, potatoes, carrots and parsnips. For dessert, there is Pear Belle Helene.

At a row of tables, young Chinese men eat porridge beside Dubliners in their 60s. Some wear anoraks, others sit straight-backed, in worn suits. At one table, a woman eats toast in a dress coat, a scarf tied around her head. She is not homeless, she tells one volunteer, but she cannot afford to buy her groceries. Another is from down the road. She comes here, she says, to get out of the house.

#### All walks of life

For trainee solicitor Kate Murray, 24, from Malahide, volunteering at the centre has been humbling experience. "I've seen people queuing outside for something as basic as a glass of milk. It really makes you realise what you take for granted." She loves the banter. "Some people keep their heads down, but others are full of chat. They say, you are great to come here, and



PIC: DAMIEN EGGERS

they ask you what you are doing and where you are from. They are from all walks of life. It's hard to believe some of them are homeless."

"I had never met a homeless person before," says Nichola O'Reilly, 25, from Blackrock. "They are just like us. It really makes you think about how you spend your time – generally

there are much more worthwhile things you could be doing with it."

The Capuchin Day Centre was founded by Brother Kevin in the early '70s. "We couldn't do it without the volunteers," says Brother Kevin. "The centre costs €1.1 million a year and, while we receive €450,000 from the government, we have to raise

the rest ourselves. There are just seven paid members of staff."

The arrival of the Law Society volunteers has brought new spirit to the centre. "They set a great example," Brother Kevin says. "They work hard and are pleasant and good-humoured. There is a great atmosphere as a result."

Helping at the centre is part of a larger volunteer programme organised by the Law Society's student development service. "The Law Society holds a strong presence in north inner city Dublin," says TP Kennedy, director of education. "It is important to us that we develop a sense of engagement with our community and that we do not work in isolation. The volunteers are drawn from a wide pool of firms, bringing together a disparate group of people and helping them to see beyond the money-making nature of vocational practice." **G**



Serving lunch in the Capuchin Day Centre, Bow Street





## books

## Taxlaw 2009

**Alan Moore.** Taxworld Ltd (2009), [www.taxworld.ie](http://www.taxworld.ie). ISBN: 978-1-902065-33-5. Price: €135 (hardback, 995pp)

The events of the past year or so have had long-reaching effects, not least on the area of tax law. For the first time that I can recall, the Taxation Committee of the Law Society had to issue two tax summaries to members to keep up with the budgetary changes. Indeed, there was a time when we only seemed to be a month away from a budget.

For those among us who try to make sense of the changes and provide it to us in a cogent, readable and accessible form, the task is really formidable. Alan Moore has done an excellent job in coping with the change in his 2009 edition of *Taxlaw: the Irish Tax Code*.

The wide remit and

complexity of the subject make it difficult to have it accessible to the reader, but having used the text for reference over a number of weeks, I have found it to be an excellent way to access core legislation. While textbooks are very useful for discussing the legislation, it is often not until we drill down into the legislation that we get an answer to a particular problem in practice, and books such as Mr Moore's are invaluable in doing this.

For most practitioners, certain areas of the book will be more relevant than others and, certainly, the stamp duty section stands out for me as an excellent reference point for areas of everyday practice.



Equally the area of VAT on property, which has in the past two years undergone enormous change, is dealt with very nicely in this book and provides an excellent reference point to the area.

The greatest competition these days to a desktop

reference book is, of course, the internet, which contains an inexhaustible supply of reference information. Whether younger generations will, however, be able to get to the stage of dispensing with the printed word, for the rest of us I have always felt that the time saved and convenience afforded in having a text readily available in a format that is easy to access means that the printed word will continue to be the most effective means of access. **G**

*Tom Martyn is chairman of the Law Society's Taxation Committee, vice-chair of the Probate, Administration and Trusts Committee, and is a member of the Taxation Administration Liaison Committee.*

# RUN 2010

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# Regulatory Law in Ireland

**Niamh Connery and David Hodnett.** Tottel (now Bloomsbury Professional) (2009), [www.tottelpublishing.com](http://www.tottelpublishing.com). ISBN: 978-1-84766-254-5. Price: €150.

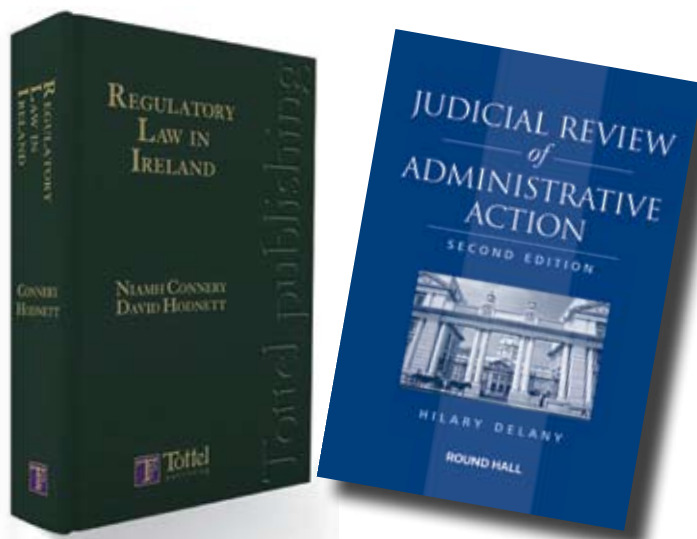
# Judicial Review of Administrative Action (2nd edition)

**Hilary Delany.** Round Hall (2009), [www.roundhall.ie](http://www.roundhall.ie). ISBN: 978-1-85800-533-1. Price: €140.

**R**egulatory Law in Ireland is a welcome addition to an area in which there is (in this jurisdiction) a dearth of textbooks. To date, the main textbook has been the Law Society's own *Regulatory Law Professional Practice Guide*, published in 2004. However, while a very welcome publication at the time, the area of regulatory law moves so quickly that the Connery and Hodnett book could not have come soon enough.

Mr Hodnett is a legal advisor to the Commission for Aviation Regulation and Ms Connery is a legal advisor to the Commission for Communications Regulation. The authors' special expertise and familiarity with the practice area of regulatory law shines through this publication. The book has a very interesting introductory section, explaining the background to regulation, its constitutional position and the reasons for regulation. As someone who works on a daily basis with regulatory law in all its guises, it was very helpful to take a step back and have regulation put in context. Particularly as a litigator, it was beneficial, as it is not uncommon for judges, coming from perhaps very diverse backgrounds in law, to seek to be given, or to adopt, this kind of perspective when dealing with complex questions of statutory interpretation in the area of regulation.

However, let us leave litigation for the moment, as hopefully most practitioners



will want to focus on the earlier chapters of this book. After giving the background information as described above, the authors have selected six regulated areas to consider in greater detail – namely, aviation, financial services, broadcasting, communications, competition and energy.

Given the current climate, I turned immediately to the chapter on financial services regulation. The introduction to this section reflects on recent times in the financial services sector, pointing out that, for example, merger control rules have been all but abandoned in the crisis, citing the sale of Merrill Lynch to Bank of America and the Lloyds TSB bid for HBOS as examples. However, in the (unexpressed) hope that we have returned to more certain financial times, the authors review the relevant legislative framework and the Central Bank and Financial Services Authority of Ireland.

The legislation in this area is very complex, based as it is on various EU directives. Given the likelihood that practitioners will be inundated with queries from clients who are upset about advice given to them by banks, insurance brokers and other financial advisors, this book will be of great assistance in coming to grips with a difficult area in a very short space of time. Sections of the chapter are also dedicated to the role of the Financial Services Ombudsman, who will be the first port of call for many such a disgruntled client.

Turning then to other sectors, the authors deal in great detail, as can be expected, with their own areas of aviation and communications regulation – again, two areas (particularly the latter) in which there is a great deal of legislation and very little guidance to help the uninitiated through the morass. The authors have resolved this by giving clear

and focused descriptions of the roles of the regulators and their respective enforcement powers. This approach is also reflected in the chapters on broadcasting, competition and energy regulation. There is also a chapter on regulatory criminal law enforcement, with the authors pointing out that it is a feature of regulatory law in Ireland that many breaches are criminal offences. The common investigative powers of authorised officers (which can be appointed by most regulatory bodies) are described, together with a discussion of the issues that arise in relation to such criminal offences.

Finally, we return to litigation. The authors devote two excellent chapters to the issues of appeals and judicial review. The authors note that the emergence of regulators has given rise to the emergence of appeal panels, pointing out that appeal panels are not courts but are more akin to tribunals where, in many cases, regulated entities and, in some cases, consumers can attempt to settle their differences with their respective regulators. I would agree with the authors' statement that the use of appeal panels in Ireland is in its infancy and only time will tell if they will prevail against the traditional Irish bias towards court hearings. To date, that does not look to be the case. However, the chapter on appeals is extremely useful, as, while most practitioners will be familiar with the concept and practice of judicial review, the

same cannot be said of appeal panels, even for practitioners working in the area of regulatory law. The chapter details the appeals process in each of the sectors discussed in the previous chapters, which will be an invaluable resource for pressurised practitioners trying to establish quickly whether to advise his or her client to appeal against a decision of a regulator or to issue judicial review proceedings post-haste.

Finally, the chapter on judicial review gives an excellent summary of the issues arising specifically in the area of regulatory judicial review, which more general judicial review textbooks would gloss over (such as the fact that an application for leave to bring judicial review proceedings regarding a determination of the Commission for Aviation Regulation may not be made

*ex parte* but rather on notice and within two months of the date on which notice of the determination was first published).

In summary, then, this is a most welcome textbook, and one can well imagine the section on financial services regulation in particular will be well thumbed in the coming months.

Staying with the area of litigation in general, and judicial review in particular, Hilary Delany's second edition of her book *Judicial Review of Administrative Action* requires no introduction. Clients' appetite for judicial review proceedings seems undiminished, if one is to judge by the length of the judicial review list, and judges' appetite for exploring the issues raised in such proceedings appears equally undiminished, if one can judge by the number and length of judgments now

issued on an almost daily basis. For this reason, no litigator can afford to be without Dr Delany's book, in order at least to attempt to stay on top of current practice and judges' thinking in the area (for example, the final chapter considers significant themes in the development of judicial review of administrative action).

Chapters 2 to 5 deal with the substance of judicial review proceedings, namely jurisdictional error, the control of discretionary powers, legitimate expectations (always a controversial topic) and fair procedures, all chapters containing a superb review of case law, both from home and abroad.

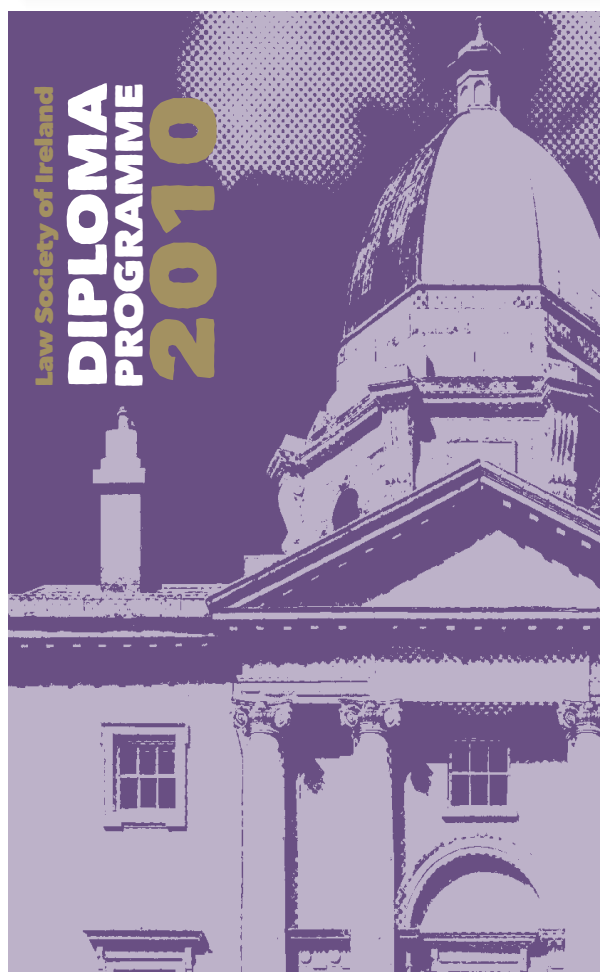
One of the issues that most frequently arises for practitioners in advising clients on judicial review proceedings is the issue of the timing of bringing such proceedings. One

does not want to have to explain to a client that leave to bring proceedings has been refused on the grounds of delay. Equally, one does not want to have to explain that leave has been refused because the bringing of the proceedings was considered to be premature. Dr Delaney considers these issues in detail in Chapter 6.

Chapter 7 has also an extremely practical focus on judicial review procedure itself, the application for leave and the application for judicial review.

In summary, Dr Delaney's book is one that any litigator cannot be without, and which any legal advisor to a body susceptible to judicial review would do well to add to their bookshelf. **G**

*Catherine Allen is a senior associate in the administrative litigation department of Mason Hayes & Curran.*



## Diploma Programme Spring 2010

The Law Society's Diploma Team is pleased to announce their programme for Spring 2010. There are four courses to choose from:

- Diploma in Employment Law – webcast **17 April 2010**
- Diploma in Commercial Litigation – webcast **20 April 2010**
- Certificate in Taxation Law (NEW) **21 April 2010**
- Certificate in District Court Advocacy (NEW) **24 April 2010**

Both the Diploma courses will be delivered using blended learning via webcasting resource. All lectures will take place in the Education Centre in Blackhall Place. However to facilitate those students unable to attend Dublin on a weekly basis, lectures will also be webcast 'live' on our secure internet site. This means that students can decide to attend the onsite lecture or, alternatively, to access the lecture online via the course website. In addition, lectures will be archived within the course website for the duration of the course and can be viewed at a later date on demand by all students.

The fee for Diploma courses is €2,160 and for Certificate courses is €1,180. For further information on these courses, webcast information and application forms, visit the Diploma Programme pages of our website: [www.lawsociety.ie](http://www.lawsociety.ie); contact us by email: [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie) or telephone: 01 672 4802.



## council reports



## Law Society Council meeting, 6 November 2009

### New Council members

The Council welcomed its new members – Conall Bergin, Hilary Coveney, Fergus Long, Aaron McKenna, Michael Mullan, Eamon Murray and Valerie Peart – and wished them well for their term of office.

### Taking of office of president and vice-presidents

The outgoing president, John D Shaw, expressed his thanks and appreciation for the support and encouragement provided to him by the Society's Council, officers, director general and staff during the course of the year. He said that it was a feature of the role of president that it could not be performed without assistance and advice from many involved in the Society, and this had been provided with generosity and without question. He said that it had been the most challenging period of his time on the Council. He acknowledged the conscientious application by the Council of their skills to provide a solution to the professional indemnity insurance issues that had arisen in recent months. He said that the bringing to bear of all the collective knowledge and wisdom of the Council had demonstrated for him its real strength. He took comfort in the fact that the Council's decisions were made after careful consideration of all the issues and with the best interests of the profession in mind.

He noted that his successor, Gerard Doherty, had a long and distinguished career as a Council member. He had great wisdom, was popular across the profession, and he had the most essential attribute for any president – a great love for the solicitors' profession. There would be more hard decisions to be made in the coming year, and Mr Shaw committed his unqualified support to the new officer team in that task.

Mr Shaw said that to have worn the same chain of office as his grandfather and his father was obviously a matter of great personal honour, made all the more special because his father had been at his side during the year.

Mr Gerard Doherty was then formally appointed as president. He said that the solicitors' profession mirrored the difficulties being faced at a national level and he urged that the Society would not allow itself to be overcome by the enormity of the situation, but would face the challenge with commitment and courage. He noted that, for the past year, the Society had been critically examining all items of expenditure, and significant savings had been put in place. There had been an effective embargo on recruitment for more than a year. Regrettably, there had also been redundancies. Salary increases had been frozen, fees paid to third parties had

been reduced, and operational cost-saving measures across the Society had yielded savings of €700,000. Additional demands for resources would have to be met by internal synergies, and the Society would have to be imaginative to ensure efficiencies in all of its functions.

He predicted a need for continuing deliberations of the Council on the issue of professional indemnity insurance and said that the Society would have to look very critically at how and why the current difficulties had arisen and explore ways to ensure that they did not recur.

He urged that the Society would be actively positive on behalf of the profession in these difficult times and would be resourceful in finding ways to progress the case for solicitors at every opportunity. He paraphrased the President of Ireland earlier that morning that "a Council of despair" was no good for the members. He expressed confidence that the Society was well equipped to meet the challenge of providing meaningful support and direction for its members, who were hard working and talented, and he believed that the profession would emerge from the current economic environment as a stronger and more vital profession.

Mr Doherty said the contribution made by the Shaw family to the solicitors' profession was

unique and significant, and he expressed his sincere congratulations to John D Shaw on his achievements in the course of his year as president. He paid tribute also to Moya Quinlan, who had been elected as the first woman Council member 40 years previously in November 1969 and had made an extraordinary contribution to the solicitors' profession since then.

The senior vice-president, John Costello, and the junior vice-president, John P Shaw, then took office and expressed their support for the Council and the president for the coming year.

### Outcome of 2009 AGM

The Council noted with approval that, at the annual general meeting held on the previous evening, the members had passed the following resolution: *"It is proposed that solicitors and legal practices be permitted to incorporate their businesses as limited liability entities."*

### Professional indemnity insurance

The director general outlined to the Council legal advice received in relation to the proposed guarantee of the SMDF's liabilities, which confirmed that the furnishing of such a guarantee was within the statutory powers and functions of the Law Society and did not offend competition law.



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# BRIEFING

## Law Society Council meeting, 4 December 2009

### **Motion: applications from US, New Zealand and New South Wales lawyers**

*'That this Council approve the Solicitors Acts 1954 to 2008 (Section 44) Regulations 2009.'*

**Proposed:** John O'Connor

**Seconded:** Martin Lawlor

The Council approved the regulations, which consolidated existing statutory orders governing applications by solicitors and attorneys from a number of jurisdictions, including New York, California, Pennsylvania, New Zealand and New South Wales, to become solicitors in Ireland.

### **Approval of practising certificate form and fees for 2010**

The Council approved a new shorter practising certificate declaration form, together with the practising certificate fees for 2010, which had been reduced by 5% from the fees that had applied for 2009. This amounted to a reduction of €120 per full practising certificate.

### **PII renewal process**

The Council received an update in relation to the current renewal process and noted that the market was still active. While the majority of solicitors' firms had secured insurance, a minority of firms had not yet received a quote, which was deeply regrettable and intolerably stressful. It appeared that it was administrative delay that had given rise to the situation. The president and director general had met with the chairman of the SMDF, who had expressed regret about the delays and indicated that it was hoped to complete the process within the next few days. The SMDF had indicated that it

planned to issue quotes to all existing members first, before quoting new applicants.

The Council noted that the majority of insurers had declined to confirm that, if a new policy of insurance was put in place by 15 December, the cover would be effective from 1 December, although some had said they would deal with the matter on a case-by-case basis. The Council agreed that the president should issue an e-bulletin to the profession updating them on the current situation.

### **Commercial undertakings**

The Council discussed the fact that, notwithstanding the exclusion of commercial undertakings from the minimum terms and conditions of indemnity cover, some financial institutions were still requesting undertakings in relation to commercial loans. While the Society was aware that some practitioners had obtained separate insurance cover for commercial undertakings, the Council agreed that the profession should be advised in strong terms not to give such undertakings, particularly as there was no agreed form of undertaking or certificate of title for commercial properties. It was acknowledged that the inappropriate provision of undertakings in respect of commercial property was a substantial cause of the current insurance difficulties. It was noted that, even where practitioners had secured separate insurance cover, the terms of such cover could vary from the minimum terms and, as cover was provided on a 'claims made' basis, additional cover would have to be renewed for subsequent insurance periods.

The Council agreed to es-

tablish a small subgroup, to be chaired by John D Shaw, to liaise with the Irish Banking Federation and the various financial institutions. It was also agreed that the president should issue an e-bulletin warning practitioners about the dangers of giving undertakings in commercial loan transactions.

### **Guarantee to be provided to the SMDF**

It was agreed that, once the professional indemnity insurance market had completed its activity for the insurance year commencing 1 December 2009, the Society should inform the profession about the Council's decision to provide a guarantee to the SMDF in order to ensure a competitive market and to avoid the chaos of a potential market failure. It was agreed that the profession should be informed by e-bulletin from the president.

### **Solicitors' Regulation Authority**

The director general briefed the Council in relation to a proposal by the Solicitors' Regulation Authority in England and Wales that would affect the automatic recognition of Irish solicitors' qualifications in England and Wales and could result in the introduction of examinations or assessments for Irish solicitors intending to practice in that jurisdiction. The Society had met with the Solicitors' Regulation Authority and had urged that the current system of automatic recognition should not be changed. The Society had also obtained legal advice on the EU law implications of the proposal.

The Council agreed that the Society should resist the erection of any barriers to transfer

between Ireland and England and Wales, particularly if such a process was likely to be illegal under EU law. It was agreed to write further to the Solicitors' Regulation Authority and to also raise the matter directly with the EU Commission.

### **E-conveyancing**

Dan O'Connor briefed the Council on a report entitled *The Implementation of eConveyancing: a Practical Approach*, which acknowledged the fact that the current economic climate meant it was unlikely that there would be government sponsorship and funding available to implement the previously envisaged all-embracing solution to e-conveyancing. The report represented a rethink of the situation and concluded that there was merit in continuing to progress e-conveyancing, albeit not in the broad manner that had been initially proposed. The report outlined three phases that could be pursued, and it was intended to develop a business case in the New Year to support the recommendations in the report.

### **Criminal Justice (Money Laundering and Terrorist Financing) Bill**

Mary Keane briefed the Council on a submission to government on the *Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009*. She noted that most of the recommendations made by the Society in its meetings and submissions to government had been incorporated in the published bill. However, there were a number of additional points in relation to which it had been suggested that further amendments should be introduced at committee stage. **G**

## practice notes



## NEGATIVE EQUITY

**P**ractitioners acting for vendors of property are reminded that they must not allow the vendor to enter into a contract for the sale of the property, where the vendor only has negative equity in the property, without first making appropriate arrangements either with the vendor's lending institution or the purchaser. It is imperative that the vendor's solicitor ascertain as early as possible whether the purchase price will be sufficient to redeem all charges affecting the property for sale.

The committee recommends

that, as soon as is practicable after the receipt of instructions but, in any case, prior to the coming into being of a binding contract for sale, the vendor's solicitor would obtain redemption figures from the lending institution(s) in question. Where the vendor's solicitor discovers that the monies required to redeem the loan exceed the anticipated proceeds of sale, the vendor should be advised of the position immediately and instructions sought regarding the payment of the shortfall in the redemption monies. Alterna-

tively, the vendor may be able to reach some arrangement with the lending institution. The vendor's solicitor must ensure that any such proposals or arrangements will enable him/her to comply with any undertaking given to the lending institution. Once the solicitor is satisfied in this regard, a special condition, outlining the position, should be inserted into the contract for sale.

In drafting the special condition, the vendor's solicitor should be cognisant that it is the vendor's responsibility to make good

title and the special condition should, therefore, confirm that the vendor's solicitor will, prior to completion, demonstrate that he will, on completion, be in a position to clear all charges on the property. Where a feasible solution is not forthcoming and this would make it impossible for the vendor's solicitor to comply with his/her undertaking to the lending institution, the vendor should be advised that the solicitor is unable to act in the proposed transaction.

*Conveyancing Committee*

## CERTAIN LENDERS' REQUIREMENTS – NOT AGREED

**A**s part of its ongoing role in monitoring the operation of the new certificate of title system (2009 edition), it has come to the attention of the committee that certain lenders are raising certain requirements with borrowers' solicitors that are at variance with what was agreed with the lenders as part of the new system.

These include a requirement by AIB set out in its 'request for funds' form that the borrower's solicitor, by signing the request for funds form, certifies to the bank

that there has been compliance with the special conditions of the loan approval. The certificate of title agreement with the lenders is that the solicitor is responsible only for special conditions that relate to title. Special conditions in a loan approval might include conditions regarding life assurance, property insurance, matters of valuation of the security, and so on – all of which are not matters of title and do not form any part of the certificate of title system. The committee has taken the matter up with the bank's legal

department and has asked that the bank discontinue this requirement on the basis that it breaches the agreement reached with the lenders under the new certificate of title system. In the meantime, the committee recommends that solicitors should delete the relevant certificate from the bank's form before lodging the request for funds.

Solicitors previously reported to the committee a requirement by Bank of Scotland (Ireland) Ltd, set out by way of special condition in some letters of offer, that

a borrower's solicitor certify to the bank that all services to a property are in order. The committee is of the view that this is a matter that solicitors should not certify, as 'services' to a property could include matters to do with sewage, etc, and that solicitors are not qualified or competent to certify such matters. The committee took the matter up with the bank's legal department and it has been confirmed by the bank that this requirement will be discontinued.

*Conveyancing Committee*

## REGISTRATION OF JUDGMENT MORTGAGES

**M**embers should note that, from 1 December 2009 (the commencement date of the *Land and Conveyancing Law Reform Act 2009*), an application to register a judgment mortgage as a burden pursuant to section

116 of that act must be in the prescribed Form 122 of the *Land Registration Rules*. This form replaces the affidavit to register a judgment mortgage and is available at [www.landregistry.ie](http://www.landregistry.ie).

The prescribed form does not

include the amount of the judgment or costs, but must include thereon a certificate that the particulars of the judgment described therein are correct, signed by the proper officer of the court in which the judgment was obtained.

The property and the estate or interest of the judgment debtor in same must also be identified as per rule 119 of the *Land Registration Rules*. An application also requires Form 17 and €125 fees.

*Litigation Committee*



## WHO SHOULD CERTIFY COMPLIANCE IN 2010?

In future, the Conveyancing Committee feels that it is reasonable for solicitors to accept certificates of compliance or certificates of opinion from:

- Persons who are on the register of architects,
- Persons who have been in practice as architects or engineers on their own account for ten years,
- Qualified engineers practising in the construction industry,
- Qualified building surveyors practising in the construction industry,
- Persons from another jurisdiction in the European Union whose qualification is entitled to recognition in Ireland under the *Architects' Directive*.

If a query arises over the qualification of a person giving a certificate, the solicitor should take care to make it clear that he or she is not making the decision but is advising the purchaser, and that the final decision as to whether or not to accept the certificate proffered is the client's responsibility. Of course, if the solicitor is signing a cer-

tificate of title for a lender, the solicitor will have to make up his or her mind on the issue and advise the client of the implications of that advice because, in that event, the purchaser would have to have clearance from the lender. Most purchasers, particularly those borrowing, will tend to be cautious and accept their solicitor's advice, but some will take a commercial judgement and proceed despite what the solicitor perceives as a potential problem. Obviously, if a client decides to proceed despite the solicitor's concerns, it is best practice for the solicitor to confirm the advice in writing. Solicitors should also bear in mind that, while the committee will assist and advise its members in regard to best practice, none of this can absolve the individual solicitor from his or her responsibility to the client. Each solicitor must look at each individual case on its own merits.

The committee recognises that there may be exceptional cases, involving persons practising as architects whose competence is recognised in their own

locality and whose certificates may be generally acceptable in that locality, even though their qualifications or experience fail to meet one or some of the criteria mentioned above. Having said that, solicitors are cautioned that, on a resale of the property in question, it may be difficult to persuade potential purchasers to accept any departure from the foregoing guidelines.

The committee has consistently advised solicitors to exercise caution in relation to the qualifications of persons from whom they will advise clients to accept certificates of compliance. The reason for this is obvious. The committee takes the view that, if a solicitor advises a client to accept a certificate of compliance in relation to a development (such as a house or a house extension) from a person who is not adequately qualified, the client will have a problem in that the property may not be readily saleable.

When advising a client in the purchase of any property with a building thereon regarding any material point, such as whether

a certificate of compliance relative to a building or extension is in an acceptable form or is given by a person with an acceptable qualification, solicitors usually apply a threefold test:

- 1) In the solicitor's own opinion, is the particular matter in order and in accordance with good conveyancing practice?
- 2) Will it be acceptable under the rules or guidelines of the bank or building society from whom the client is borrowing?
- 3) Will it be acceptable to most other solicitors if the property were to be put up for sale again in the near future?

If the answer to any of these questions is in the negative, the solicitor will normally advise his or her client not to accept the point in question and advise the client not to proceed with the transaction unless the difficulty is resolved.

Lastly, for the avoidance of doubt, these practice notes are for the assistance of the profession and are not mandatory.

*Conveyancing Committee*

## NEW LEASES TO BE IN FORM 111

Practitioners should note that, from 1 December 2009, all leases of registered land should be in the format set out in Form 111 of the *Land*

*Registration Rules*. This will require considerable adaptation of any precedent leases that practitioners have been using up to now.

The committee is in the process of revising its own precedent transfer for building estates, and the revised precedent will shortly be avail-

able in the precedent documentation section of the members' area of the Law Society's website.

*Conveyancing Committee*

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

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*Regulated by the Solicitors Regulation Authority of England and Wales*

# legislation update



## 23 November 2009 – 15 January 2010

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – [www.lawsociety.ie](http://www.lawsociety.ie) (members' and students' 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](http://www.oireachtas.ie) and recent statutory instruments are on a link to electronic statutory instruments from [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

### ACTS PASSED

#### **Appropriation Act 2009**

Number: 42/2009

**Contents note:** Appropriates to the proper supply services and purposes sums granted by the *Central Fund (Permanent Provisions) Act 1965*; makes provision in relation to deferred surrender to the central fund of certain undischarged appropriations by reference to the capital supply services and purposes as provided for by section 91 of the *Finance Act 2004* and makes provision in relation to the financial resolutions passed by Dáil Éireann on 9/12/2009.

**Date enacted:** 20/12/2009

**Commencement date:** 20/12/2009

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

Number: 45/2009

**Contents note:** Provides, in limited circumstances, for the transitional use by certain parent undertakings of internationally recognised accounting standards other than those generally accepted accounting principles and policies used in the state. Amends the *Companies Act 1990*, the *Companies (Auditing and Accounting) Act 2003* and the *European Com-*

*munities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003* (SI 211/2003) (*UCITS Regulations*), and provides for related matters.

**Date enacted:** 23/12/2009

**Commencement date:** 23/12/2009 for ss 1, 2, 3(a) to (h) and 4; commencement order(s) to be made for other provisions (per s 6(2) of the act)

#### **Courts and Court Officers Act 2009**

Number: 36/2009

**Contents note:** Provides for the placement in temporary custody of certain detained persons in order to facilitate their appearance before a court. Provides for the establishment of court offices supporting more than one jurisdictional area ('combined court offices') and extends the categories of persons who may take bail recognisances where bail is granted pending trial or sentence or pending an appeal. Amends the *Courts Service Act 1998*, the *Criminal Procedure Act 1967* and the *Petty Sessions (Ireland) Act 1851*, and provides for related matters.

**Date enacted:** 24/11/2009

**Commencement date:** 4/12/2009 (per SI 477/2009)

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

Number: 35/2009

**Contents note:** Requires that participation by the state in projects and programmes under articles 20 and 21 of the Council Joint Action 2004/551/CFSP of 21/7/2004 on the establishment of the European Defence Agency be subject to the prior approval of the government and Dáil Éireann; requires that participation by the state in permanent structured cooperation, referred to in article 42 of the

*Treaty on European Union*, also be subject to such approval, and provides for related matters.

**Date enacted:** 24/11/2009

**Commencement date:** 24/11/2009

#### **Financial Emergency Measures in the Public Interest (No 2) Act 2009**

Number: 41/2009

**Contents note:** Reduces the remuneration of public servants as a financial emergency measure in the public interest.

**Date enacted:** 20/12/2009

**Commencement date:** Commencement order(s) to be made (per s 10(2) of the act)

#### **Foreshore and Dumping at Sea (Amendment) Act 2009**

Number: 39/2009

**Contents note:** Provides for the transfer of certain functions relating to the foreshore from the Minister for Agriculture, Fisheries and Food to the Minister for the Environment, Heritage and Local Government and for that and other purposes amends and extends the *Foreshore Acts 1933-2005* and provides for the transfer of other functions relating to the foreshore to the Minister for the Environment, Heritage and Local Government. Provides for the transfer of certain functions relating to dumping at sea from the Minister for Agriculture, Fisheries and Food to the Environmental Protection Agency and for that and other purposes amends and extends the *Dumping at Sea Acts 1996-2006*, and provides for related matters.

**Date enacted:** 15/12/2009

**Commencement date:** 15/12/2009 for part 1 (s 1, 'Preliminary and general'); 15/1/2010 for part 2 (ss 2-27, 'Foreshore') and schedule 1 (per s 1(4) of the act);

15/2/2010 for part 3 (ss 28-38, 'Dumping at sea') and schedule 2 (per s 1(5) of the act)

#### **Forestry (Amendment) Act 2009**

Number: 40/2009

**Contents note:** Provides for an increase in the aggregate borrowing limit of Coillte Teoranta. Amends the *Forestry Act 1988* and provides for related matters.

**Date enacted:** 20/12/2009

**Commencement date:** 20/12/2009

#### **Houses of the Oireachtas Commission (Amendment) Act 2009**

Number: 44/2009

**Contents note:** Amends and extends the *Houses of the Oireachtas Commission Act 2003* to provide, *inter alia*, for the commission's funding for the period 2010-2012. Provides for the renaming of the Office of the Houses of the Oireachtas as the Houses of the Oireachtas Service and provides for related matters.

**Date enacted:** 21/12/2009

**Commencement date:** 1/1/2010 (per s 15(3) of the act)

#### **Labour Services (Amendment) Act 2009**

Number: 38/2009

**Contents note:** Amends the *Labour Services Act 1987* to improve the effectiveness and governance of the board of FÁS and strengthen the accountability of the director general of FÁS to the Oireachtas.

**Date enacted:** 9/12/2009

**Commencement date:** Commencement order(s) to be made (per s 13(3) of the act)

#### **Public Transport Regulation Act 2009**

Number: 37/2009

**Contents note:** Provides for the

licensing of public bus passenger services; changes the name of the Dublin Transport Authority to the National Transport Authority; provides for the dissolution of the Commission for Taxi Regulation; amends the *Taxi Regulation Act 2003*, the Dublin Transport Authority Act 2008 and certain other enactments, and provides for related matters.

**Date enacted:** 27/11/2009

**Commencement date:** 27/11/2009, apart from the provisions of the act for which the following orders are required to be made: commencement order(s) to be made for part 2 (ss 5-28, 'Licensing of public bus passenger services') (per s 5 of the act); s 29, 'Amendments to name and functions of Dublin Transport Authority' (per s 29(2)); s 44, 'Amendment of *Planning and Development Act 2000*' (per s 44(2)); s 46, 'Measures to enhance public bus services – traffic-calming measures' (per s 46(9)); 1/12/2009 appointed for the purposes of s 30, date on which the name of the Dublin Transport Authority is changed to the National Transport Authority (per SI 467/2009). Dissolution day order to be made for the dissolution of the Commission for Taxi Regulation (per s 31 of the act). The following commencement orders have been made to date: 1/12/2009 for ss 5, 23, 29(1)(b), (c) (other than paragraphs (e) and (f) of the amendment effected by that paragraph), (e), (g), (h), (i), (j), (k) and 29(2) (per SI 466/2009)

#### **Social Welfare and Pensions (No 2) Act 2009**

**Number:** 43/2009

**Contents note:** Provides for the implementation of certain social welfare measures announced in Budget 2010. Provides for changes in the personal, qualified adult and qualified child weekly rates of social welfare payments. Provides for an increase in the family income supplement weekly earnings thresholds. Provides for changes

in the rates of child benefit and activation measures for recipients of jobseeker's allowance and supplementary welfare allowance aged 20 to 24. Provides for a number of other changes to the social welfare code.

**Date enacted:** 21/12/2009

**Commencement date:** 21/12/2009 for part 1 (ss 1-3, 'Preliminary and general'). Various commencement dates for part 2 (ss 3-20, 'Amendments to *Social Welfare Acts*') – see act for details. Commencement order(s) to be made for part 3 (s 21, 'Amendment to *Pensions Act 1990*') (per s 1(4) of the act)

#### **Statute Law Revision Act 2009**

**Number:** 46/2009

**Contents note:** Repeals private statutes enacted prior to 1751 and local and personal acts enacted prior to 1851 that have ceased to have effect or have become unnecessary. Lists in schedule 1 the unrepealed acts that are being retained and assigns short titles to certain acts to facilitate their citation. Lists in schedule 2 the acts that are being specifically repealed. In effect, publishes for the first time a complete list of the pre-1751 private acts and the pre-1851 local and personal acts applicable to Ireland that are still all or partly in force.

**Date enacted:** 23/12/2009

**Commencement date:** 23/12/2009

#### **SELECTED STATUTORY INSTRUMENTS**

##### **Circuit Court Rules (Case Progression (General)) 2009**

**Number:** SI 539/2009

**Contents note:** Insert a new order 19A, 'Case progression (general)', and associated forms in the *Circuit Court Rules* to facilitate the supervision by the county registrar, through case progression hearings, of the preparation for trial of various categories of Circuit Court proceedings as listed in rule 1(2) of the SI.

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

##### **Circuit Court Rules (Combined Court Offices) 2009**

**Number:** SI 583/2009

**Contents note:** Amend the *Circuit Court Rules* to facilitate the transaction of business in a combined court office established under section 14 of the *Courts and Court Officers Act 2009*.

**Commencement date:** 11/1/2010

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

**Number:** SI 486/2009

**Contents note:** Insert a new order 5C in the *Circuit Court Rules* to prescribe procedures for the operation of the *Defamation Act 2009*.

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

##### **Circuit Court Rules (Statutory Applications and Appeals) 2009**

**Number:** SI 470/2009

**Contents note:** Amend order 15 by the insertion of a new rule 7A and order 27 by the insertion of a new rule 6, and insert new orders 64B and 64C and associated forms to prescribe the procedure for statutory applications and appeals to the Circuit Court.

**Commencement date:** 25/12/2009

##### **Defamation Act 2009 (Commencement) Order 2009**

**Number:** SI 517/2009

**Contents note:** Appoints 1/1/2010 as the commencement date for all sections of the act.

##### **District Court (Combined Court Offices) Rules 2009**

**Number:** SI 581/2009

**Contents note:** Amends the *District Court Rules 1997* (SI 93/1997) by the substitution, in the interpretation of terms provisions, of a new definition of 'clerk' to facilitate the transaction of business in a combined court office established under section 14 of the *Courts and Court Officers Act 2009*.

**Commencement date:** 11/1/2009

##### **District Court (Small Claims) Rules 2009**

**Number:** SI 519/2009

**Contents note:** Substitute a new order 53A, 'Small claims procedure', and associated forms in the *District Court Rules* to include provision for a business small claim by a business purchaser against a business vendor in relation to a contract in respect of any goods or services purchased in the ordinary course of a business.

**Commencement date:** 11/1/2010

##### **Dublin Transport Authority Act 2008 (Dissolution of Dublin Transportation Office) Order 2009**

**Number:** SI 474/2009

**Contents note:** Appoints 1/12/2009 as the date for the dissolution of the Dublin Transportation Office.

##### **Dublin Transport Authority Act 2008 (Part 2) (Establishment Day) Order 2009**

**Number:** SI 459/2009

**Contents note:** Appoints 1/12/2009 as the establishment day for the Dublin Transport Authority, for the purposes of part 2 of the *Dublin Transport Authority Act 2008*.

##### **Dublin Transport Authority Act 2008 (Parts 3, 4, 5 and Section 115(2)) (Commencement) Order 2009**

**Number:** SI 458/2009

**Contents note:** Appoints 1/12/2009 as the commencement date for the following provisions of the act: part 3 (ss 44-76, 'Transport matters') (other than ss 58 and 61), part 4 (ss 77-80, 'Enforcement'), part 5 (ss 81-101, 'Land use provisions') (other than chapter 1 (ss 81-101)), and section 115(2).

##### **European Communities (Capital Adequacy of Credit Institutions) (Amendment) Regulations 2009**

**Number:** SI 514/2009

**Contents note:** Amend the



*European Communities (Capital Adequacy of Credit Institutions) Regulations 2006* (SI 661/2006) to provide for further implementation of Directive 2006/48/EC on the taking up and pursuit of the business of credit institutions (*Recast Credit Institutions Directive*).

**Leg-implemented:** Dir 2006/ 48  
**Commencement date:** 19/12/ 2009 – day after the date on which the publication of the regulations was notified in *Iris Oifigiúil* (per reg 2 of the SI)

**European Communities  
 (Capital Adequacy of Investment Firms) (Amendment)**

**Regulations 2009**

**Number:** SI 515/2009

**Contents note:** Amend the *European Communities (Capital Adequacy of Investment Firms) Regulations 2006* (SI 660/2006) to provide for further implementation of Directive 2006/49 on the capital adequacy of investment firms and credit institutions (recast).

**Leg-implemented:** Dir 2006/ 49  
**Commencement date:** 19/12/ 2009 – day after the date on which the publication of the regulations was notified in *Iris Oifigiúil* (per reg 3 of the SI)

**European Communities  
 (Credit Institutions)  
 (Consolidated Supervision)**

**Regulations 2009**

**Number:** SI 475/2009

**Contents note:** Implement Directive 2006/48/EC on the taking up and pursuit of the business of credit institutions (*Recast Credit Institutions Directive*). Require the Central Bank and Financial Services Authority of Ireland to supervise credit institutions and their subsidiary and associated companies on a consolidated basis, taking account of the entire group activity and relationships, rather than on a single company basis.

**Leg-implemented:** Dir 2006/ 48  
**Commencement date:** 19/12/ 2009 – day after the date on which the publication of the regulations was notified in *Iris Oifigiúil* (per reg 3 of the SI)

**European Communities  
 (Directive 2006/46/EC)  
 Regulations 2009**

**Number:** SI 450/2009

**Leg-implemented:** Dir 2006/ 46, amending dir 78/660 on the annual accounts of certain types of companies, dir 83/349 on consolidated accounts, dir 86/635 on the annual accounts and consolidated accounts of banks and other financial institutions, and dir 91/674 on the annual accounts and consolidated accounts of insurance undertakings.

**Commencement date:** 18/11/ 2009

**European Communities  
 (Directive 2006/48/EC) (Central Bank Acts) (Amendment)**

**Regulations 2009**

**Number:** SI 512/2009

**Contents note:** Amend the *Central Bank Act 1971* to revise certain definitions in line with Directive 2006/48/EC on the taking up and pursuit of the business of credit institutions (*Recast Credit Institutions Directive*) and to revise the criteria by which the Financial Regulator may decide to grant an application for a licence to carry on a banking business. Amend the *Central Bank Act 1989* to provide that, during the performance of his functions, an auditor must also report to the Financial Regulator where the matters covered by art 53(1) of Directive 2006/48/EC involve an undertaking that has close links with the institution being audited.

**Leg-implemented:** Dir 2006/ 48

**Commencement date:** 19/12/ 2009 – day after the date on which the publication of the regulations was notified in *Iris Oifigiúil* (per reg 1(2) of the SI)

**European Communities  
 (Licensing and Supervision of Credit Institutions) (Amendment) Regulations 2009**

**Number:** SI 513/2009

**Contents note:** Amend the *European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992* (SI 395/1992) to

provide for the implementation of Directive 2006/48/EC on the taking up and pursuit of the business of credit institutions (*Recast Credit Institutions Directive*).

**Leg-implemented:** Dir 2006/ 48

**Commencement date:** 19/12/ 2009 – day after the date on which the publication of the regulations was notified in *Iris Oifigiúil* (per reg 1(2) of the SI)

**European Communities (Value-Added Tax) Regulations 2009**

**Number:** SI 520/2009

**Leg-implemented:** Dir 2008/8 dealing with the place of supply (taxation) of services; dir 2008/9 replacing dir 79/1072 and dealing with refunds to foreign traders; dir 2008/117 dealing with anti-fraud measures.

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

**European Grouping of Territorial Cooperation Regulations 2008**

**Number:** SI 513/2009

**Contents note:** Provide for the application in Ireland of Regulation (EC) no 1082/2006 on a European grouping of territorial cooperation (EGTC). Provide for the establishment, registration and administration of an EGTC.

**Commencement date:** 16/12/ 2009

**European Union Act 2009  
 (Commencement) Order 2009**

**Number:** SI 451/2009

**Contents note:** Appoints 1/12/ 2009 as the commencement date for sections 1 to 7 and section 9 of the act.

**Finance Act 2007 (Section 16)  
 (Commencement) Order 2009**

**Number:** SI 447/2009

**Contents note:** Appoints 1/1/ 2007 as the commencement date for section 16 of the *Finance Act 2007*. Section 16 introduces an additional threshold of relief of €20,000 per annum for qualifying leases exceeding ten years' duration.

**Finance Act 2008  
 (Commencement of Section 111) Order 2009**

**Number:** SI 485/2009

**Contents note:** Appoints 26/11/2009 as the commencement date for section 111 of the act. Section 111 of the *Finance Act 2008*, as amended by section 79(2) of the *Finance (No 2) Act 2008*, makes amendments to the *Stamp Duties Consolidation Act 1999* in connection with the e-stamping system to be commenced by the Revenue Commissioners.

**Finance (No 2) Act 2008  
 (Commencement of Section 31) Order 2009**

**Number:** SI 516/2009

**Contents note:** Appoints 15/12/ 2009 as the commencement date for section 31 of the act. Section 31 provides for tax exemption for new start-up companies in the first three years of operation.

**Finance (No 2) Act 2008  
 (Commencement of Section 79(1)) Order 2009**

**Number:** SI 484/2009

**Contents note:** Appoints 26/ 11/2009 as the commencement date for section 79(1) of the act. Section 79(1) makes amendments to the *Stamp Duties Consolidation Act 1999* in connection with the e-stamping system to be commenced by the Revenue Commissioners.

**Finance (No 2) Act 2008  
 (Schedule 5) (Commencement of Certain Provisions) Order 2009**

**Number:** SI 483/2009

**Contents note:** Appoints 26/11/ 2009 as the commencement date for subsections (2)(c) and (4)(c) of section 134A (inserted into the *Stamp Duties Consolidation Act 1999* by paragraph 5(d) of schedule 5 to the *Finance (No 2) Act 2008*) together with any references in section 134A to the said subsections (2)(c) and (4)(c). These are the remaining provisions of paragraph 5(d) of schedule 5 to the *Finance (No*

2) *Act 2008* that had not previously been commenced. They are amendments to the *Stamp Duties Consolidation Act 1999* in connection with the e-stamping system to be commenced by the Revenue Commissioners.

**Finance (No 2) Act 2008 (Section 18) (Commencement) Order 2009**

Number: SI 448/2009

**Contents note:** Appoints 1/1/2009 as the commencement date for section 18 of the act. Section 18 provides for an extension from 1/1/2009 to 31/12/2010 of the general 25% stock relief for farmers and the 100% scheme of stock relief for certain young trained farmers.

**Financial Measures (Miscellaneous Provisions) Act 2009 (Section 17) (Commencement) Order 2009**

Number: SI 455/2009

**Contents note:** Appoints 1/12/2009 as the commencement date for section 17 of the act. Section 17 amends, via the schedule to the act, the *Credit Institutions (Financial Support) Act 2008* to allow mainly for the extension of the period of financial support beyond 29/9/2010.

**Health (Miscellaneous Provisions) Act 2009 (Commencement) (No 3) Order 2009**

Number: SI 543/2009

**Contents note:** Appoints 1/1/2010 as the commencement date for part 6 of the act. Part 6 provides for the dissolution of the Crisis Pregnancy Agency and for the transfer of the agency's employees, liabilities, property etc, to the Health Service Executive.

**Housing (Miscellaneous Provisions) Act 2009 (Commencement) Order 2009**

Number: SI 449/2009

**Contents note:** Appoints 1/12/2009 as the commencement date for various sections of the act – see SI for details. The order commences most of part 1 (ss 1-9, 'Preliminary and general'), all

of chapter 1 (ss 10-13, 'Housing services') of part 2, and section 35 ('Anti-social behaviour strategy').

**Housing (Miscellaneous Provisions) Act 2009 (Commencement) (No 2) Order 2009**

Number: SI 540/2009

**Contents note:** Appoints 1/1/2010 as the commencement date for part 3 (ss 43-49, 'Incremental purchase arrangements'). Appoints 1/2/2010 as the commencement date for chapter 6 (ss 36-42, 'Homelessness action plans') of part 2 and for the amendments to the *Housing (Miscellaneous Provisions) Act 1992* as set out at item 5 in part 4 of schedule 2.

**Land and Conveyancing Law Reform Act 2009 (Commencement) (Section 132) Order 2009**

Number: SI 471/2009

**Contents note:** Appoints 28/2/2010 as the commencement date for section 132 (review of rent in certain cases) of the act.

**Land Registration (No 2) Rules 2009**

Number: SI 456/2009

**Contents note:** Amend the *Land Registration Rules 1972* (SI 230/1972) as follows: provide for new forms 109, 110, 111 and 112; substitute new rules 3, 6, 19, 24, 57, 59, 67, 79, 82, 100, 117 to 122, 128, 153, 188, 225 and substitute new forms 1, 2, 7, 9, 10 to 13, 16, 17, 19, 23, 30, 34, 36, 37, 41, 43, 45 to 48, 53, 55, 61, 63 to 65, 68, 74 to 77; rescind rules 29, 58, 75, 106, 109, 110, 116, 124, 152, 158 to 160, 162 to 165, 168 to 170 and delete forms 6, 24, 32, 39, 49, 51, 56, 58, 60, 62, 73, 94 to 96, and provide for related matters.

**Commencement date:** 1/12/2009 or 1/1/2010 – see SI for details

**National Asset Management Agency Act 2009 (Commencement) Order 2009**

Number: SI 545/2009

**Contents note:** Appoints 21/12/2009 as the commencement date for all sections of the act.

**National Asset Management Agency Act 2009 (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2009**

Number: SI 546/2009

**Commencement date:** 21/12/2009

**National Asset Management Agency Act 2009 (Designation of Eligible Bank Assets) Regulations 2009**

Number: SI 568/2009

**Commencement date:** 23/12/2009

**National Asset Management Agency Act 2009 (Establishment Day) Order 2009**

Number: SI 547/2009

**Contents note:** Appoints 21/12/2009 as the establishment day for the National Asset Management Agency.

**Registration of Deeds (No 2) Rules 2009**

Number: SI 457/2009

**Contents note:** Provide for the registration of a judgment mortgage under section 116 of the *Land and Conveyancing Law Reform Act 2009* and for a new form 16 for this purpose. Provide for the registration of a charging order under section 17 of the *Nursing Homes Support Scheme Act 2009*. Substitute new rules 12 (discharge, release and receipt of mortgage) and 13 (discharge, release and satisfaction of judgment mortgage) in the *Registration of Deeds Rules 2008* (SI 52/2008) and substitute a new rule 4 in the *Registration of Deeds Rules 2009* (SI 350/2009).

**Commencement date:** 1/12/2009

**Rules of the Superior Courts (Combined Court Offices) 2009**

Number: SI 582/2009

**Contents note:** Amend the *Rules of the Superior Courts* to facilitate the transaction of business in a combined court office established under section 14 of the *Courts and Court Of-*

*ficers Act 2009*.

**Commencement date:** 11/1/2010

**Rules of the Superior Courts (Defamation) 2009**

Number: SI 511/2009

**Contents note:** Insert a new order 1B in and amend order 22, order 36 and appendix B, part II of the *Rules of the Superior Courts* to provide for the operation of the *Defamation Act 2009*.

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

**Social Welfare and Pensions Act 2008 (Section 28) (Commencement) Order 2009**

Number: SI 506/2009

**Contents note:** Appoints 1/2/2010 as the commencement date for section 28 of the act. Section 28 amends the *Pensions Act 1990* in relation to trustee training.

**Solicitors (Continuing Professional Development) Regulations 2009**

Number: SI 452/2009

**Contents note:** Update the regulations governing the requirement for a solicitor to undertake continuing professional development in the specified time cycles as a prerequisite to being granted a practising certificate. Revoke and replace the *Solicitors (Continuing Professional Development) Regulations 2007* (SI 807/2007), subject to exceptions in particular circumstances.

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

**Stamp Duty (E-Stamping of Instruments) Regulations 2009**

Number: SI 476/2009

**Contents note:** Make provision for the operation by the Revenue Commissioners of the e-stamping system to stamp instruments through the Revenue Online Service.

**Commencement date:** 30/12/2009 **G**

Prepared by the  
Law Society Library

## NOTICE: THE HIGH COURT

**In the matter of Daniel Coleman, solicitor, formerly practising as Coleman & Company, Solicitors, at Main Street, Ballinrobe, Co Mayo, and in the matter of the Solicitors Acts 1954-2008**

Take notice that, by order of the High Court made on Monday 9 November 2009, the President of the High Court suspended Daniel Coleman, solicitor, formerly practising as Daniel Coleman & Company,

Solicitors, at Main Street, Ballinrobe, Co Mayo, from practice as a solicitor.

*John Elliot, Registrar of Solicitors,  
Law Society of Ireland,  
December 2009*

# 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 John BK Lindsay, a solicitor formerly practising as Lindsay & Company, Solicitors, at 47 Wellington Quay, Dublin 2, and in the matter of the Solicitors Acts 1954-2008 [3483/DT/116/08]**

*Law Society of Ireland  
(applicant)  
John BK Lindsay  
(respondent solicitor)*

On 30 June 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor, John BK Lindsay, guilty of misconduct in that he had:

- Failed to comply with a direction of the Complaints and Client Relations Committee made on 16 April 2008 up to the date of the swearing of the Society's grounding affidavit (on 27 November 2008),
- Failed to respond to multiple correspondence from the Society,
- Through his lack of cooperation with the Society's investigation of the complaint, effectively frustrated the Society in resolving the matter,
- Breached section 68(1) of the *Solicitors (Amendment) Act 1994* in failing to provide the information prescribed by the section,
- Failed to reply to queries about the administration of an estate.

The tribunal ordered that the respondent solicitor:

- Do stand censured,
- Pay a sum of €2,500 to the compensation fund,
- Pay the whole of the costs of the Law Society of Ireland, including witnesses' expenses, to be taxed by a taxing master of the High Court, in default of agreement.

**In the matter of John BK Lindsay, a solicitor formerly practising as Lindsay & Company, Solicitors, at 47 Wellington Quay, Dublin 2, and in the matter of the Solicitors Acts 1954-2008**

*Law Society of Ireland  
(applicant)  
John BK Lindsay  
(respondent solicitor)*

On 30 June 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor, John BK Lindsay, guilty of misconduct in that he:

- Was in serious delay in the administration of an estate,
- Failed to respond to numerous letters from the Society,
- Failed to provide progress reports to the Society as directed by the committee,
- Failed in particular to provide a progress report as specifically directed by the committee on or before 10 January 2004,
- Breached his undertaking

- given to the committee on 24 March 2004 to furnish a response within 14 days,
- Failed to attend the meeting of the committee on 28 April 2004,
- Failed to attend the meeting of the committee on 26 September 2007.

The tribunal ordered that the respondent solicitor:

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

**In the matter of John Martin Carr, a solicitor formerly practising in the firm of William Davis & Company, Solicitors, 74 Old Seamus Quirke Road, Westside Business Park, Galway, and in the matter of the Solicitors Acts 1954-2002 [4214/DT43/08]**

*Law Society of Ireland  
(applicant)  
John Martin Carr  
(respondent solicitor)*

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

- Provided inadequate professional services, chiefly in the form of delay to the complainant, for a period in excess of ten years,
- Failed to reply to the Society's correspondence and, in particular, letters dated 4 December 2006, 25 January 2007 and 9 March 2007, resulting in a direction of the Complaints and Client Relations Committee meeting on 18 April 2007.

The tribunal ordered that the respondent solicitor:

- Do stand admonished and advised,
- Pay the sum of €3,000 to the compensation fund,
- Pay the whole of the costs of the Law Society of Ireland, including witness expenses, as taxed by a taxing master of the High Court, in default of agreement.

**In the matter of Anne Fitzgibbon, a solicitor carrying on practice under the style and title of Fitzgibbon & Company, Solicitors, at The Penthouse, 121/122 Capel Street, Dublin 1, and in the matter of the Solicitors Acts 1954-2008 [5626/DT10/09]**

*Law Society of Ireland  
(applicant)  
Anne Fitzgibbon  
(respondent solicitor)*



On 1 October 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Failed to make contact with her named client on 29 July 2004 to advise her of a settlement proposal made by the state to settle her case,
- b) Refused an offer made by the state to settle proceedings brought by her named client on 29 July 2004 without getting her client's instructions,
- c) Put her own interests in securing her costs before the interests of her client by refusing to accept a settlement offered to her client on 29 July 2004, solely on the basis that her costs could not be fully paid.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €2,500 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 Elizabeth Cazabon, a solicitor practising as Cazabon Solicitors, Atlanta House, Wolfe Tone Bridge, Galway, and in the matter of the *Solicitors Acts 1954-2008* [8142/DT12/09]**

***Law Society of Ireland* (applicant)  
*Elizabeth Cazabon* (respondent solicitor)**

On 6 October 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 March 2008 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (statutory in-

strument no 421 of 2001) in a timely manner or at all,

- b) Through her conduct, showed a disregard for her statutory obligations to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €1,500 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

**In the matter of John Duffy, a solicitor formerly practising as John Duffy & Co, Solicitors, at Main Street, Monasterevin, Co Kildare, and in the matter of the *Solicitors Acts 1954-2008* [7660/DT01/09 and High Court record 2009 no 87 SA]**

***Law Society of Ireland* (applicant)  
*John Duffy* (respondent solicitor)**

On 17 June 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Falsely represented by letter dated 19 February 2007 that a deposit of €7 million had been paid on behalf of a named client to the respondent solicitor to act as a deposit for the sale of the shares in a named limited liability company to the above-mentioned named client in circumstances where no such sum was in fact paid by the named client,
- b) Falsely represented by letter dated 19 February 2007 that a deposit of €7 million had been paid on behalf of a named client to the respondent

solicitor to act as a deposit for the sale of the shares in a named limited liability company to the above-mentioned named client in circumstances where no such sum was in fact paid by the named client and in circumstances where that letter was furnished as security to a named third-party financial institution in order to secure a loan for a named limited liability company in the sum of €8.825 million,

- c) Falsely represented to a named third-party financial institution by email dated 19 July 2007 that he had served a notice on a named client threatening to forfeit the deposit if the sale was not closed by return in circumstances where he had not served such a notice,
- d) Falsely represented, by implication, to a named third-party financial institution by email dated 19 July 2007 that he continued to hold a deposit in the sum of €7 million that had been paid on behalf of a named client to the respondent solicitor to act as a deposit for the sale of the shares in a named limited liability company to the above-mentioned named client in circumstances where no such sum was in fact paid by the named client,
- e) Falsely represented, by implication, to a named third-party financial institution by email dated 7 November 2007 that he continued to hold a deposit in the sum of €7 million that had been paid on behalf of a named client to the respondent solicitor to act as a deposit for the sale of the shares in a named limited liability company to the above-mentioned named client in circumstances where no such sum was in fact paid by the named client,
- f) Falsely represented to a named firm of solicitors, solicitors for a named third-party financial institution,

by letter dated 13 November 2007, that he continued to hold a deposit in the sum of €7 million that had been paid on behalf of a named client to the respondent solicitor to act as a deposit for the sale of the shares in a named limited liability company to the above-mentioned named client in circumstances where no such sum was in fact paid by the named client,

- g) Falsely represented to another named firm of solicitors, solicitors for the receiver, by telephone conversation dated 31 January 2008, that he continued to hold a deposit in the sum of €7 million in his client account, which had been paid on behalf of the same named client to the respondent solicitor to act as a deposit for the sale of the shares in a named limited liability company to the above-mentioned named client in circumstances where he did not hold such funds.

The tribunal directed that:

- i) The respondent solicitor is not a fit person to be a member of the solicitors' profession,
- ii) The name of the respondent solicitor be struck off the Roll of Solicitors,
- iii) The respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witnesses' expenses, to be taxed in default of agreement.

The tribunal directed that the matter be referred forward to the High Court and, on 12 October 2009, the President of the High Court ordered:

- 1) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- 2) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 3) That the Law Society do recover the costs of the pro-

ceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal to include witness expenses as against the respondent when taxed or ascertained.

**In the matter of Joan Quinn, a solicitor formerly practising as Quinn & Co, Solicitors, at 23A The Village Green, Tal-laght, Dublin 24, and in the matter of the *Solicitors Acts 1954-2008* [6646/DT25/09 and High Court Record 2009 no 82 SA]**  
*Law Society of Ireland (applicant)*  
*Joan Quinn (respondent solicitor)*

On 9 June 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Caused and allowed a deficit on the client account to arise in the sum of €918,060 as at 4 February 2008,
- b) Permitted a deficit on the client account to arise due to unallocated transfers to office account of €722,263 and caused and allowed a debit balance in the sum of €195,797,
- c) Caused claims in the sum of

- €937,576.33 to be paid from the compensation fund,
- d) Caused a net sum of €303,076, after taking account of recoveries of €634,500, to be paid from the compensation fund,
- e) Caused and permitted transfers from client account to office account without there being any valid reason or invoice to transfer the said money, and in doing so breached regulation 7(i)(ii) and regulation 7(i)(iii),
- f) Permitted a debit balance to arise on the estate of a deceased named client of €195,797, in breach of regulation 7(2),
- g) Caused a debit balance to appear on the estate of a deceased named client by paying out two cheques in the sum of €225,000 each to an executor,
- h) Caused and permitted fees, not invoiced, to be held in the client account amounting to the sum of €255,038, which were originally not invoiced and posted to the books of account, in breach of regulation 5(2)(c).

The tribunal directed:

- i) That the respondent solicitor is not a fit person to be

- a member of the solicitors' profession,
- ii) That the name of the respondent solicitor be struck off the Roll of Solicitors.

The tribunal directed that the matter be referred forward to the High Court and, on 12 October 2009, the President of the High Court ordered:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The court made no order as to the costs of the proceedings herein.

**In the matter of Harry McCullagh, a solicitor carrying on practice as Harry McCullagh & Company, Solicitors, Rathmore House, Rathmore Lawn, South Douglas Road, Cork, and in the matter of the *Solicitors Acts 1954-2008* [7428/DT57/09]**  
*Law Society of Ireland (applicant)*  
*Harry McCullagh (respondent solicitor)*

On 3 November 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Was involved in a process of late stamping and updating of deeds totalling €177,523 in 12 files,
- b) Allowed a deed to be updated from November 2004 to May 2007 with stamp duty in the amount of €79,650,
- c) Allowed a deed to be updated from February 2006 to August 2008 with stamp duty in the amount of €17,100,
- d) Allowed a deed to be updated from March 2004 to January 2009, resulting in the underpayment of stamp duty of €2,150,
- e) Allowed a deed to be updated from November 2006 to January 2009, resulting in the underpayment of stamp duty of €4,980,
- f) Allowed a deed to be updated from November 2004 to November 2008, resulting in the underpayment of stamp duty in the sum of €5,500.

The tribunal ordered that the respondent solicitor:

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

## COMPLAINTS ABOUT SOLICITORS

Information on complaints about solicitors published in accordance with section 22 of the *Solicitors (Amendment) Act 1994*. In relation to complaints received by the Society from 1 September 2008 to 31 August 2009.

### Allegations of misconduct

Delay	13
Failure to communicate	80
Failure to hand over	128
Failure to account	105
Undertaking	614
Conflict of interest	32
Dishonesty or deception	19
Witnesses' expenses	2
Advertising	11
Other	134
<b>Total</b>	<b>1,138</b>

### Allegations of inadequate professional services:

Delay	172
Failure to communicate	78

Shoddy work	132
Other	35
<b>Total</b>	<b>417</b>

### Allegations of overcharging:

Conveyancing	25
Probate	37
Litigation	66
Matrimonial	43
Other	28
<b>Total</b>	<b>199</b>
<b>GRAND TOTAL</b>	<b>1,754</b>

### Number of complaints referred to the Solicitors Disciplinary Tribunal

Delay, failure to hand over papers	5
Failure carry out instructions	9
Failure to protect interests of client	1
Failure to comply with direction of CCRC	2
Undertakings	38
Breaches of section 68	1
Dishonesty/deception	6
Delay, failure to account	1

Conflict of interest	1
Counsels' fees	1
<b>Total</b>	<b>65</b>

### Outcome of the investigation of above complaints by the Solicitors Disciplinary Tribunal

- Recommendation of strike-off in ten cases
- Censure, order for restitution of €5,000 and costs
- Censure, €3,000 fine and costs
- Censure, €7,500 fine and costs
- Censure, €2,000 fine and costs
- Censure €8,000 fine, €7,000 restitution and costs
- Censure, €750 fine and costs
- Censure and costs in two cases
- Eight cases withdrawn because solicitor struck off before hearing.

The remaining cases await hearing. (As of December 2009)



News from the EU and International Affairs Committee

Edited by TP Kennedy, Director of Education, Law Society of Ireland

## Public procurement: effective review of decisions under the *Remedies Directives*

**T**he recent opinions of advocate general Kokott in Case C-456/08, *Commission v Ireland* and Case C-406/08, *Uniplex (UK) Ltd v NHS Business Services Authority*, both of 29 October 2009, are important in clarifying the requirements of the *Remedies Directives* 89/665/EEC and 92/13/EEC in relation to the balance to be struck between the requirements of rapid and effective review and, in the context of the new *Remedies Directive* 2007/66/EC, amending those directives due to be transposed by member states by 20 December 2009.

In *Commission v Ireland*, the commission brought proceedings against Ireland in relation to the Dundalk Western Bypass Project tender process on two grounds: (a) that in a specific individual case, the subject of national review proceedings (*SLAC Construction Limited v National Roads Authority* [2004] IEHC 128), the Irish National Roads Authority (NRA), in the course of awarding a road construction project, did not inform the unsuccessful consortium of tenderers of the final award decision; and (b) that the provision of Irish law on the time limits for seeking remedies, as laid down in order 84A(4) of the *Rules of the Superior Courts* is contrary to community law.

Advocate general Kokott found that the commission's first plea, regarding the failure to notify the award decision, was well founded, on grounds, among other things, that the NRA expressly reserved the

right to invite the unsuccessful tenderer to enter into discussions in the place of the selected tenderer at a later date if appropriate.

In respect of the commission's application for a declaration that the time limits in Irish procedural law are contrary to community law, she observed that the essential issue is whether those rules are sufficiently clear to make effective review within the meaning of article 1(1) of directive 89/665 possible.

Article 1(1) of directive 89/665 provides, in the relevant part: "The member states shall take the measures necessary to ensure that ... decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible ... on the grounds that such decisions have infringed community law in the field of public procurement or national rules implementing that law."

Order 84A(4) of the *Rules of the Superior Courts* (hereinafter 'RSC') provides as follows: "An application for the review of a decision to award or the award of a public contract shall be made at the earliest opportunity and in any event within three months from the date when grounds for the application first arose, unless the court considers that there is good reason for extending such period."

The commission referred to lack of clarity in connection with determining the kinds of decisions against which challenges must be brought within

the period laid down by order 84A(4) and as regards the duration of that period.

### Legal certainty

In order to comply with article 1(1) of directive 89/665, the advocate general stated that the member states must make the situation in national law sufficiently precise, clear and transparent for individuals to be able to ascertain their rights and obligations (Case C-361/88, *Commission v Germany* [1991] ECR I 2567, paragraph 24). Only if it is clear beyond doubt that even preparatory acts of contracting authorities or interim decisions start the limitation period under order 84A(4) of the RSC running can tenderers and candidates take the necessary precautions to have possible breaches of procurement law reviewed effectively within the meaning of article 1(1) of directive 89/665.

Even though there was no dispute that, in practice, the scope of order 84A(4) is extended also to include interim decisions, it was incompatible to the requirements of article 1(1) of directive 89/665 for the scope to be so extended without that being clearly expressed in the wording of the provision.

### Time limit

Regarding Ireland's objection that a time limit for challenging interim decisions corresponds to the objectives of directive 89/665, in particular, the requirement to act rapidly, she stated that it should be borne in

mind that directive 89/665 imposes on the member states not only the aim of rapid review but also the aim of effective review of award decisions. A national practice that achieves only one of those aims at the expense of the other is not in harmony with the directive. The extension of the limitation period under order 84A(4) of the RSC to interim decisions may indeed serve the aim of rapid review without this also being made clear in the wording of order 84A(4) of the RSC – however, the practice operates at the expense of legal certainty, and thus ultimately jeopardises the achievement of the aim of effective review. She accordingly found that Ireland's objection must therefore be rejected.

### Common law system

In respect of Ireland's further objection, on the grounds that its national law is a common law system and that in such a system not only statutory provisions but also decisions of the courts are determinative, she stated that it must be observed that a directive leaves it to the national authorities to choose the form and methods for achieving the desired result. What matters, however, is that with such a method of proceeding, the full application of the directive actually is ensured with sufficient clarity and precision.

She stated: "If the position in national law derives from the interplay of statutory provisions and 'judge-made law', that must not take place at the expense of



the clarity and precision of the provisions and rules concerned. That applies all the more where a directive is intended to confer rights on the individual and an unclear or complex legal position with respect to limitation periods could lead to the loss of rights – in the present case, the loss of the right to review of decisions taken by contracting authorities. Foreign tenderers and candidates, in particular, could be deterred from seeking contracts in Ireland by a complex and non-transparent legal situation.”

She found that it was not compatible with the requirements of the directive for a national court to apply the limitation period laid down by law for the right to apply for review (order 84A(4) of the RSC) by going beyond its wording and applying it by analogy also to the review of decisions for which the legislature has not prescribed such a limitation period. The legal position is thereby made less transparent. She accordingly upheld the first part of the commission’s plea regarding uncertainty in the time limits for seeking remedies, as laid down in order 84A(4), as to the kinds of decisions to which the limitation period applies.

#### Length of limitation period

The commission objected to the phraseology of order 84A(4), according to which applications for review must be made “at the earliest opportunity and in any event within three months”. It contended that this provision leaves the tenderers and candidates in question uncertain as to the precise length of the limitation period and makes it disproportionately difficult for them to bring an application for review. Further, it submitted that there is no indication of when an application within three months suffices and when the application must be brought earlier, before the expiry of three months.



Advocate general Kokott

Advocate general Kokott stated that: “If it is the case that the expression ‘at the earliest opportunity’ in order 84A(4) of the *Rules of the Superior Courts* really gives the Irish courts power, at their discretion, to dismiss applications for review as inadmissible even before the expiry of the three-month period, then it does not satisfy the requirements of community law. A limitation period whose duration is at the discretion of the competent court is not predictable in its effects.”

#### Discretion of the national court

Regarding Ireland’s contention that the national courts could, if necessary, extend the limitation period at their discretion, she stated that, while such a possibility of extending time may make it easier for the courts to do justice in the individual case, it is not capable of curing the shortcomings of the order with respect to the requirements of clarity, precision and predictability of the limitation rule.

She stated: “Article 1(1) in conjunction with article 1(3) of directive 89/665 gives any person who has or had an interest in obtaining a particular public contract and who has been or risks being harmed by an alleged infringement an individual right to review of the decisions of the contracting authority. The effective assertion of such a claim cannot be made to depend on the absolute discretion of a national body, not even the discre-

tion of an independent court.”

In *Uniplex*, clarification was sought in relation to the time from which the appropriate limitation periods for review start to run. The referring English High Court essentially sought to know (i) whether it may take the date of the breach of procurement law as the point when time starts running, or must it take the date when the applicant knew or ought to have known of the breach; (ii) whether, in a review procedure, it may dismiss an action as inadmissible if it has not been brought ‘promptly’; and (iii) how it should exercise its discretion with respect to a possible extension of time.

The question arose in the context of a provision of English regulations, pursuant to which the period for bringing applications for review starts to run regardless of the unsuccessful tenderer’s knowledge of the breach of procurement law, and any extension of the period is at the discretion of the national court. The relevant English provision (regulation 47(7)(b)) is identical in effect to the wording of order 84(A)4 of the Irish *Rules of the Superior Courts*.

Uniplex commenced proceedings before the High Court seeking, among other things, a declaration of alleged breaches of procurement law. The High Court was uncertain whether Uniplex had brought its action in time and, if it had not, whether it should exercise its discretion to extend the period for bringing proceedings under the English regulations transposing directive 89/665.

#### Limitation period

Advocate general Kokott stated that the mere fact that a tenderer or candidate has learnt that his tender has been unsuccessful does not yet mean that he knows of any breach of procurement law. Only once the successful tenderer or candidate has been informed of the essential reasons for his being unsuc-

cessful in the award procedure may it generally be presumed that he knew, or in any case ought to have known, of the alleged breach of procurement law. Only from then on is it possible for him sensibly to prepare a possible application for review and to estimate its chances of success.

She observed that directive 2004/18 already lays down in article 41(1) and (2) that contracting authorities must inform unsuccessful tenderers and candidates of the reasons for their rejection. To the same effect, article 2(c) of directive 89/665, as inserted by the new *Remedies Directive* 2007/66, provides for future cases that the communication of the contracting authority’s decision to each tenderer or candidate must be accompanied by a summary of the relevant reasons and that any limitation periods for applications for review may not expire until a certain number of calendar days after that communication.

#### National court’s discretion

NHS Business Services, Britain and Ireland objected that effective legal protection does not necessarily require that the limitation periods for seeking remedies in review proceedings run only from the time when the tenderer or candidate concerned knew or ought to have known of the alleged infringement of procurement law. They submitted that the British transposing provision at issue ensures effective legal protection by giving the national court a discretion to extend, if appropriate, the period for bringing proceedings.

Advocate general Kokott said: “That argument does not convince me. Article 1(1) in conjunction with article 1(3) of directive 89/665 gives any person who has or had an interest in obtaining a particular public contract and who has been or risks being harmed by an al-

leged infringement an *individual* right to review of the decisions of the contracting authority.”

She observed that the transposing legislation under consideration does not give the national court any legal criteria for the exercise of its discretion as regards a possible extension of time. She further noted that all the parties at the proceedings moreover agreed that the applicant's lack of knowledge of a breach of procurement law is only one of several aspects that influence the national court's assessment. Accordingly, lack of knowledge may lead to an extension of the period, but this is not mandatory. It accordingly becomes unpredictable for the person concerned in the individual case whether it will be worth his while to claim a legal remedy.

In relation to the national court's discretion to grant an extension of time, she noted that the referring court essentially wished to know what steps it should take if an unsuccessful tenderer or candidate did not initially know of the alleged breach of procurement law and was not in a position in which he ought to have known of it, so that he could not make an application for review within the three-month period under the English regulations.

As limitation periods for actions for declarations and compensation in connection with public contracts may not start to run until the time when the applicant knew or ought to have known of the alleged breach of procurement law, the referring national court must therefore do whatever lies within its ju-

isdiction to achieve that objective.

She then stated: “Should the [national transposing legislation] not be amenable to such an interpretation, then the referring court would as an alternative have to look, in the context of its discretion to extend the time limit, for a solution that was compliant with the directive. The aim of effective review as prescribed by article 1(1) of directive 89/665 would then lead to the national court's discretion being as it were ‘reduced to zero’. It would thus be obliged to grant an extension of time to an applicant such as Uniplex.”

#### Review promptly

In relation to the requirement in the transposing regulation to apply for review ‘promptly’,

she observed that the application of a limitation period must not lead to the exercise of the right to review of award decisions being deprived of its practical effectiveness. A limitation period such as that under the transposing national legislation, the duration of which is placed at the discretion of the competent court by the criterion ‘promptly’, is not predictable in its effects.

Accordingly, she found that the national courts may not declare an application for review, brought within the three-month period of the transposing national legislation, inadmissible on the ground of lack of promptness. **G**

*James Kinch is a senior executive solicitor in the law department of Dublin City Council.*

## Recent developments in European law

### CONSUMER LAW

Case C-509/07, *Luigi Scarpelli v NEOS Banca SpA*, 23 April 2009. The *Consumer Credit Directive* entitles a consumer to pursue remedies against a grantor of credit where the supplier of goods or services fails to perform its obligations in whole or in part, and makes that right subject to a number of conditions, such as the existence of an exclusive relationship between the grantor of credit and the supplier. In 2003, Mr Scarpelli purchased a car. With the purchase contract, he signed a form (provided by the supplier) applying for a loan from NEOS Banca. After paying the supplier €10,000 and receiving a loan of €19,130, he began to repay the loan by monthly instalments. After making 24 monthly payments, the vehicle had still not been delivered to him. For that reason, he stopped making payments, contested the bank's request for payment of the outstanding balance, and sought reimbursement

of the sums already paid. The Bergamo District Court asked the ECJ whether there must be an exclusivity clause between the grantor of credit and the supplier in order for the consumer to be able to pursue remedies against the grantor of credit and seek the termination of the credit agreement and reimbursement of the sums already paid, where the supplier is in breach of its obligations under the contract. The ECJ pointed out that the directive was adopted with the aim of creating a common market in consumer credit and of protecting consumers taking out such credit. The directive prescribes minimal harmonisation in matters of consumer credit. Member states are therefore free to lay down rules that are more favourable to consumers who should have more extensive rights than standard contractual rights against the grantor of credit. Making the consumer's pursuit of remedies against the grantor of credit subject to the condition that there be a pre-ex-

isting exclusivity clause between the grantor of credit and the supplier would be at variance with the aim of the directive, which is primarily to protect the consumer as the weaker contracting party.

### FREE MOVEMENT OF PERSONS

Case C-544/07, *Uwe Rüffler v Dyrektor Izby Skarbowej we Wrocławiu Orodek Zamiejscowy w Wałbrzychu*, 23 April 2009. The applicant had been living and employed in Germany. Since 2005, he has been permanently resident in Germany as a retired person. He received two pensions paid in Germany – an invalidity pension, which was taxed in Germany, and an occupational pension paid by Volkswagen, which was taxed in Poland. In 2006, he applied to the Polish tax authorities for the income tax to which he is liable in Poland on his occupational pension received in Germany to be reduced by the amount of the health insurance contribution that

he paid in Germany. His application was rejected and he brought an action before the regional administrative court. It asked the ECJ whether the limitation of the right to a reduction of tax is compatible with EC law. The ECJ noted that retired persons who take up residence in another member state are exercising the right under the *EC Treaty* to move and reside freely within the territory of the member states. The opportunities offered by the treaty in relation to movement could not be fully effective if it were possible for a national of a member state to be deterred from availing himself of them by obstacles placed in the way of his stay in the host member state by national legislation penalising the fact that he has availed of those opportunities. The Polish legislation treated resident taxpayers differently according to whether health insurance contributions were paid under a national compulsory health insurance scheme. Only taxpayers whose health insur-

ance contributions are paid in the member state of taxation benefit from the right to a reduction of income tax. Resident taxpayers paying contributions to the Polish health insurance scheme and those coming under a compulsory health insurance scheme of another member state are in objectively comparable situations, as in Poland both are subject to an unlimited liability to tax. Therefore, the taxation of their income in that member state should be carried out in accordance with the same principles and consequently on the basis of the same tax advantages, including the right to a reduction of income tax. The national legislation at issue here places at a disadvantage taxpayers who, like the applicant, have exercised their freedom of movement by leaving the member state in which they have worked in order to take up residence in another member state, such as Poland. The ECJ found that the Polish limitation of the right to a reduction of income tax is a restriction on freedom of movement and residence that is not objectively justified.

#### INTELLECTUAL PROPERTY

Case C-59/08, *Copad SA v Christian Dior couture SA, Société industrielle lingerie (SIL)*, 23 April

2009. In 2000, Dior agreed a trademark licence agreement with SIL relating to the manufacture and distribution of luxury corsetry goods bearing the Christian Dior trademark. In order to maintain the repute and prestige of the Dior trademark, SIL agreed not to sell to discount stores outside the selective distribution network without written agreement from Dior. SIL was also to make all necessary provision to ensure that the rule is complied with by its distributors or retailers. SIL was faced with economic difficulties and sold goods bearing the Dior trademark to Copad, a company operating a discount store business. Dior brought an action against SIL and Copad for trademark infringement in the French courts. The resellers pleaded exhaustion of Dior's trademark rights, as the goods had been put on the market in the EEA with Dior's consent. The French Court de Cassation referred a number of questions to the ECJ. It held that the proprietor of a trademark can invoke the rights conferred by the mark against a licensee who contravenes a provision in a licence agreement prohibiting, on grounds of the mark's prestige, sales to discount stores. It must be established that this contravention damages the allure and prestigious image that gives those goods an aura of

luxury. The *Trade Mark Directive* (89/104/EEC) entitles the proprietor of a mark to invoke the rights that the trademark confers on him in respect of a licensee where the licensee contravenes certain provisions in the licence agreement listed in article 8(2), including those concerning the quality of the goods. The quality of luxury goods is not only the result of their material characteristics but also of the allure and prestigious image, which bestows on them an aura of luxury. A selective distribution system seeks to ensure that the goods are displayed in sales outlets in a manner that enhances their value, especially as regards positioning, advertising, packaging as well as business policy. This contributes to the reputation of the goods and therefore to sustaining the aura of luxury surrounding them. It is conceivable that the sale of those goods outside the selective distribution network might affect the quality itself of the goods. In such circumstances, a contractual provision prohibiting such sale must be considered to be falling within the scope of the trademark directive. It is for the national court to determine whether breach of such a provision damages the aura of the luxury goods, thus affecting their quality. A sale in disregard of such a provision

may, for the purposes of the directive, be considered to have taken place without the consent of the proprietor of the trademark where it is established that such a breach contravenes one of the provisions listed in the directive. A licence agreement does not constitute the absolute and unconditional consent of the proprietor of the trademark to the licensee putting the marked goods on the market. The directive enables the proprietor of the mark to invoke the rights the trademark confers on him against a licensee whether the latter contravenes certain provisions in the licence agreement. The directive must be interpreted as meaning that, where a licensee puts goods on the market in disregard of a provision in a licence agreement, this precludes exhaustion of the rights conferred by the trademark on its proprietor for the purposes of the directive if it can be established that the provision is included in those listed in article 8(2) of the directive. Damage done to the reputation of a trademark may, in principle, be a legitimate reason, within the meaning of the directive, allowing the proprietor to oppose the use of his trademark for further marketing of luxury goods put on the market in the EEA by him or with his consent. **G**

## FLORA DUBLIN WOMEN'S MINI MARATHON 2010

### Join FLAC Team 200

Run, jog or walk with us and with your colleagues in the office. The Dublin Mini Marathon is an important fundraiser for legal rights charity, FLAC (Free Legal Advice Centres). We are recruiting a 200-strong team of women to join us for the 10 km challenge on Bank Holiday Monday 7 June 2010.

Picture yourself and your office team crossing the finishing line at St. Stephen's Green having taken part in the biggest all-women's event of its kind in the world. Picture too how you can get fit and healthy as you prepare for the race while helping to promote access to justice for all.

FLAC will provide FLAC Team 200 with every support including a t-shirt, training schedules, sponsorship cards and a post race reception. Please contact Doreen on 01-874 5690 or [doreen.mescal@flac.ie](mailto:doreen.mescal@flac.ie) for assistance with registration and getting started. Join FLAC Team 200 for Mini-Marathon 2010!



## LOST LAND CERTIFICATES

### Registration of Deeds and Title Acts 1964 and 2006

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

*Property Registration Authority, Chancery Street, Dublin 7*

*(published 5 February 2010)*

Regd owner: John Fitzgerald, Kerrykeel, Co Donegal; folio: 16817F; lands: Carrowkeel; **Co Donegal**

Regd owner: Paul Finan; folio: 9121; lands: Knockaroe and barony of Clandonagh; **Co Laois**

Regd owner: Sean Finan and Mary Finan; folio: 6065; lands: Derrin and barony of Clandonagh; **Co Laois**

Regd owner: Liam Butler, Gort, Carrick-on-Shannon, Co Leitrim; folio: 11061; lands: Dernahely More; **Co Leitrim**

Regd owner: Thomas O'Gorman and Angelina O'Gorman; folio: 18803F; lands: townland of Borheenduff and barony of Iffa and Offa East; **Co Tipperary**

### First registration application: lost conveyance dated 30 June 1983 and made between Hanover Mills Limited of the one part and RN Gillespie of the other part

An application has been made in the Land Registry for a first registration over lands at Hanover, Carlow. There is a missing document associated with this registration, which is a deed of conveyance dated 30 June 1983 and made between Hanover Mills Limited of the one part and RN Gillespie of the other part. This document cannot be located and is stated to have been lost or inadvertently destroyed. The application will proceed unless notification is received in the registry within 28 days from the date of publication of the notice that the original deed of conveyance dated 30 June 1983 and made between Hanover Mills Limited of the one part and RN Gillespie of the other part is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the conveyance is being held.

*Date: 5 February 2010*

*Registrar of Titles, Land Registry, Carlow Section, Waterford*

**Schedule:** all that and those the property situate at Bridewell Lane, Hanover, in the town and parish of Carlow and county of Carlow

## WILLS

**Casey, William (deceased)**, late of 301 81st Street, Apt B10, Brooklyn, New York 11209, or alternatively PO Box 150382 Van Brunt Station, Brooklyn, New York 11215, and originally Killashee, Co Longford. Would any person having any knowledge of a will made by the above-named deceased, who died in New York on 18 April 2009, please contact Mary Tunney, solicitor, of JA Shaw & Co, Solicitors, Marlinstown Office Park, Marlinstown, Mullingar, Co Westmeath; tel: 044 934 8721

**Coughlan, Cecelia (otherwise known as Celia, Eileen Cecelia and Ellen Cecelia) (deceased)**, late of St Johns, 58B Albert Road Lower, Sandycove, Co Dublin. Would any person having any knowledge of a will made by the above-named deceased, who died on 12 October 2009, please contact Susan Halpenny, solicitor, of PCL Halpenny & Son, 96 Upper George's Street, Dun Laoghaire, Co Dublin; tel: 01 280 1315, fax: 01 280 1393, email: shalpenny@pcl-halpenny.ie

**Cummins, Martin (deceased)**, late of Knockieran, Blessington, Co Wicklow, who died in Naas Hospital on 18 November 1976. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Kevin M Houlihan & Co, Solicitors, Main Street, Blessington, Co Wicklow; tel: 045 865 651, fax: 045 865 072

**Fogarty, Peter (deceased) and Fogarty, James (deceased)**, both late of Lisdowney, Ballyraggitt, Co Kilkenny, who died in 1997 and 2005 respectively. Would any person having knowledge of a will made by either of the above deceased please contact Maher Broderick Solicitors, 6 The Courts, Main Street, Newbridge, Co Kildare; tel: 045 432 220, fax: 045 434 203, email: stephen.maher@maherbroderick.ie

**Geary, Eugene (deceased)**, late of Ballynulty, Kildorrery, Co Cork, who died on 14 May 2009 at Mallow General Hospital, Mallow, Co Cork. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Sheena Lally, Office of the General Solicitor for Minors and Wards of Court, Court Services, 2nd Floor, Phoenix House, 15-24 Phoenix Street, Smithfield, Dublin 7; tel: 01 888 6231, fax: 01 872 2681

**Haran, Joan (deceased)**, late of 16 Kennelsfort Road, Palmerstown, Dublin 20. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, who died on 13 October 2009 at 16 Kennelsfort Road, Palmerstown, Dublin 20, please contact HC Browne, Solicitors, Malahide Road/Kilmore Road Corner, Artane, Dublin 5; tel: 01 832 7849, fax: 01 832 7852

**Harnett, Maurice and Harnett, Margaret (deceased)**, late of Gurteen West, Ballingarry, Co Limerick. Would any person having any knowledge of wills made by the above-named deceased, who died on 29 July 2009, please contact Donal Houlihan, solicitor, Thornton Solicitors, 88 O'Connell Street, Limerick; tel: 061 315 543, fax: 061 315 503, email: dhoulhan@thorntonsolicitors.ie

**Hayes, Matthew (deceased)**, late of Clonlond Duncannon, New Ross, Co Wexford, who died on 25 December 1998. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Michele Kennedy of VP McMullin, Solicitors, Tircennell Street, Ballyshannon, Co Donegal; tel: 071 985 1187, fax: 071 985 2057, email: mkennedy@pmcmullin.com

**Hudner, Very Reverend James PP (deceased)**, late of Feohanagh, Co Limerick and Adare and District Nursing Home, Adare, Co Limerick, who died on 25 August 2009. Would any person with knowledge of a will made by the above-named deceased please contact Robert M Lee, Lees, Solicitors, Lord Edward Street, Kilmallock, Co Limerick; tel: 063 98003, fax: 063 98582, email: robin@lees.ie

**Looney, Patrick (deceased)**, late of 53 Annadale Drive, Whitehall, Dublin 9. Would any person having knowledge of a will made by the above-named deceased, who died on 14 June 2001, please contact O'Donohoe, Solicitors, 11 Fairview, Dublin 3; tel: 01 833 2204, fax: 01 833 6941

**McHugh, Nora (deceased)**, late of 2 Fairhaven, Whitestrand Road, Salthill, Galway. Would any person having knowledge of a will made by the above-named deceased, who died on 24 November 2009, please contact Adrienne O'Connor, solicitor, Home & Farm Conveyancing, Solicitors, Manorhamilton, Co Leitrim; tel: 071 985 5302, fax: 071 985 5663, email: titles@irishconveyancing.com

**Moreland, Charles (deceased)**, late of 276 Malahide Road, Artane, Dublin 5. Would any person having any knowledge of a will made by the above-named person, who died on 17 November 2009, please contact Anne Stephenson,

solicitor, 55 Carysfort Avenue, Blackrock, Co Dublin; tel: 01 275 6759, e-mail: stephensonsolicitors@eircom.net

**O'Shea, Thomas (deceased)**, late of Derryhasna, Castleconnell, Co Limerick. Would any person having any knowledge of a will made by the above-named deceased, who died on 6 September 2009, please contact Donal Houlihan, solicitor, Thornton Solicitors, 88 O'Connell Street, Limerick; tel: 061 315 543, fax: 061 315 503, email: dhoulhan@thorntonsolicitors.ie

**Power, Mary (deceased)**, late of Mountain Lodge, Slate Cabin Lane, Sandyford, Dublin 18, who died on 9 September 2009. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Eversheds O'Donnell Sweeney, 1 Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ref: MJ/C/24327.12

**Shanahan, Rev Liam (deceased)**, late of Holy Family Residence, Roebuck Road, Dublin 14; formerly of 5 Avondale Crescent, Killiney, Co Dublin; 76 Holmpatrick, Skerries, Co Dublin; 'Cuan Phadraig', South Strand, Skerries, Co Dublin; 15 Dalymount, Dublin 7; and The Presbytery, 87 St Stephen's Green, Dublin 2. Would any person having any knowledge of a will made by the above-named deceased, who died on 3 October 2008, please contact John O'Connor, Solicitors, 168 Pembroke Road, Ballsbridge, Dublin 4; tel: 01 668 4366, fax: 01 668 4203, email: info@johnconnorsolicitors.ie

**Sharples, Richard (deceased)**, late of Templeboy, Co Sligo, widower and pensioner, date of birth: 18 October 1939, who died on 5 January 2010 (age 70). Would any person having knowledge of a will made by the above-named deceased please contact Seamus Monaghan & Co, Solicitors, Teeling Street, Sligo; tel: 071 913 8572, fax: 071 913 8573, email: seamusmonaghan@gmail.com; www.sligo-solicitor.com

## MISCELLANEOUS

### BUILDING ENERGY RATINGS:

Fully accredited, registered and insured to carry out BER assessments of Residential and Commercial buildings, new and old. Pricing is competitive and comes with the added benefit of our exceptional engineering and construction knowledge. Advisory reports will show options for improving energy performance of buildings and getting best value for investments. Nationwide service from long established engineering consultancy firm.

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**Galway city/county. Thinking of winding down your practice or retiring?** We would like to talk to you in the strictest confidence. The current climate has seen a number of challenges thrown at our profession, and you might be thinking 'I've had enough'. We would like to talk to you to arrange a mutually acceptable arrangement to allow for the easy transfer and winding down of your business. Reply in confidence to **box no 0110/03**

**Rosemary Connolly Solicitors, employment and equality law specialists.** Offices in Belfast and Warrenpoint. Established over 15 years and recognised as expert providers in our field. Available for agency work in all employment law related matters in Northern Ireland. Please contact us directly or see our website for further details; 2 The Square, Warrenpoint, Co Down, BT34 3JT; tel: (0044) 0284 175 3121, fax: (0044) 0274 175 3141; Elmwood House, 44-46 Elmwood Avenue, Belfast BT9 6AZ; tel: (0044) 0289 066 0823; [www.solicitorsni.net](http://www.solicitorsni.net)

**Senior legal costs accountant** with over 30 years' experience wishes to semi-retire and work out of office environment on contract, weekly wage plus small commission, drawing costs and will bring existing client portfolio, DX number and small cash flow as part of contract deal; reply – principals only – to **box no 0110/01**

## TITLE DEEDS

**Clarke, Madeleine (deceased),** formerly of 15 Ballygihien Road, Sandycove, Co Dublin. Would any person having knowledge of the whereabouts of the title deeds to the above property, the above-named having died on 9 October 2009, please contact Messrs Maxwells, Solicitors, 19 Herbert Place,

# PROFESSIONAL NOTICE RATES

**RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:**

- **Lost land certificates** – €144 (incl VAT at 21%)
- **Wills** – €144 (incl VAT at 21%)
- **Title deeds** – €288 per deed (incl VAT at 21%)
- **Employment/miscellaneous** – €144 (incl VAT at 21%)

**HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA**

**ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND.** Deadline for March *Gazette*: 17 February 2010. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

## PROFESSIONAL NOTICES ANNOUNCEMENT

The *Law Society Gazette* has found it necessary to increase the price of advertising 'Title deed' notices in the professional notices section. The price will double to €288 per notice, reflecting the significantly greater amount of space that such notices consume (usually four to five times longer than other professional notices).

The price of advertising for all other professional notices will remain unchanged at €144 from January 2010 until further notice.

## IMPORTANT NOTICE:

### Abolition of land certificates and certificates of charge

Section 73(1) of the *Registration of Title Act 2006* provides that the Property Registration Authority (PRA) shall cease to issue land certificates and certificates of charge under the *Registration of Title Act 1964*. The section commenced on 1 January 2007.

The subsection also provides that section 105 of the *Registration of Title Act 1964* (requirement to produce land certificates or certificates of charge) will only apply to certificates issued before commencement, and then only for a three-year period after the commencement of the section.

Section 73(2) of the 2006 act provides that land certificates and certificates of charge issued before commencement of section 73 that are not already cancelled will cease to have force or effect three years after the commencement of the section, that is on 31 December 2009. Until that date, land certificates must be furnished with all applications by the registered owner. Certificates of charge, where issued, must be produced on all releases of charge except where such release is by discharge.

**From 1 January 2010, both land and charge certificates will cease to have any force and effect and should not be lodged with applications.** In the interim, if an application is lodged without the land certificate, where one issued, it will be rejected. If the land certificate is not forthcoming, the application should be held over and relogged after 31 December 2009.

**Registration of lien created through deposit or possession of land certificate or certificate of charge**

Section 73(3)(b) of the 2006 act provides that a holder of a lien may apply to the authority for registration of the lien in such manner as the authority may determine.

The section applies to a person holding a lien. This may include a solicitor's letter of undertaking to lodge a land certificate or certificate of charge.

The application shall be on notice by the applicant to the registered owner and must be accompanied by the original certificate (see section 73(3)(c)).

**The last date for lodgement of applications is 31 December 2009. Applications lodged after that date will not be accepted.** Applicants must therefore ensure that the prescribed notices are served in good time, as the application may only be lodged after the expiration of 26 days from such service.

Where the certificate is claimed to be lost or destroyed, the applicant for a lien must first apply for its production to be dispensed with, pursuant to rule 170(2) *Land Registration Rules 1972*.

This procedure can be lengthy, as the authority must satisfy itself that the certificate has been lost or destroyed and has not been pledged as security (other than in respect of the application before it). Proofs would include affidavits from the applicant and registered owner and notices would be directed in the *Law Society Gazette* and a local or national newspaper.

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**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 Elizabeth Mitchell**

Take notice that any person having any interest in the freehold estate of the following property: all that and those

the premises now known as St Teresa's Nursing Home, 1 Fitzwilliam Terrace, situate in the parish of Bray, barony of Rathdrum and county of Wicklow, together with the dwellinghouse and offices erected thereon.

Take notice that Elizabeth Mitchell intends to make an application to the county registrar for the county of Wicklow for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they

hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Elizabeth Mitchell 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 coun-



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ty of Wicklow for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 February 2010

Signed: Cunningham (solicitors for the applicant), 8 Emily Square, Athy, Co Kildare

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

Any person having any interest in the fee simple estate or any intermediate interest in all that and those that piece or parcel of ground to the rear of 37 and 38 Henry Street in the parish of St Mary and city of Dublin, held with other property under a fee farm grant dated 25 April 1900 made between (1) Evan Lake and others and (2) the Everton and West Derby Permanent Benefit Building Society, which reserved two yearly rents of £36.18.6 (late Irish pre-decimal currency).

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 county registrar for the city of Dublin for the acquisition of

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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 the aforesaid property is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

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

Date: 5 February 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**

Any person having any interest in the fee simple estate or any intermediate interest in all that and those parts of the hereditaments and premises known as 37 and 38 Henry Street in the parish of St Mary and city of Dublin, held with other property under a fee farm grant dated 15 August 1859 made between (1) Anne Worthington and (2) Fanny Susanna Shury Daniel, Eliza Stanton Daniel and Emily Gould Sams, subject to the perpetual yearly rent of £13.16.11 thereby reserved with sixpence in the pound receiver's fees (pre-decimal currency) and to the covenants on the part of the grantees and conditions therein contained.

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 county registrar for the city of Dublin 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 the aforesaid property is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

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

Date: 5 February 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**

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 48 Upper O'Connell Street in the parish of St Thomas and city of Dublin, being part of the property comprised in folio DN173953F, held under a fee farm grant dated 2 October 1862 made between Anna Maria Boucicault (otherwise Boursiquot), Mercy Glenny, William Irwin and Bithea Irwin of the

one part and Clarinda Ellen Bilton of the other part, subject to the perpetual yearly rent of £50.15s.5d, late pre-decimal currency.

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 at Aras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the said property is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as maybe 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: 5 February 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**

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 61 Upper O'Connell Street in the parish of St Thomas and city of Dublin, being the property comprised in folio DN174200F held under a fee farm grant dated 15 July 1907 made between Charles James Hill, Josephine Gaven and Richard Edward Maunsell of the one part and Caroline Welland of the other part and subject to the perpetual yearly rent of £55.14s.5d late pre-decimal currency.

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 at Aras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the said property is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such direc-



tions 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: 5 February 2010*

*Signed: William Fry (solicitors for the applicant), Fitzwilliam 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 Mary Maharaj (acting by Margaret McGreevy as committee of her estate under the direction of the President of the High Court)**

Any person having a freehold estate or any intermediate interest in all that and those number 62 John Street, Kilkenny, the subject of an indenture of lease dated 8 October 1935 between John McEnnis, Lily Ashby and May McGrath of the one part and John Finn of the other part for a term of 99 years from 1 May 1934 at a rent of £10 per annum.

Take notice that Mary Maharaj (acting by Margaret McGreevy as committee of her estate under the direction of the President of the High Court) intends to apply to the county registrar of the county of Kilkenny to vest in her the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, the said Mary Maharaj (acting by Margaret McGreevy as committee of her estate under the direction of the President of the High Court) 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 such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

*Date: 5 February 2010*

*Signed: W A Smithwick & Son (solicitors for the applicant), 43 Parliament Street, Kilkenny*

**In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by St Laurence O'Toole Diocesan Trust in the matter of the property known as the Presbytery, Glencullen, Sandyford, Co Dublin**

Take notice that any person having an interest in the freehold estate or any superior interest of the following property: all that and those the hereditaments and premises known as the Presbytery, Glencullen, Sandyford, Co Dublin and related lands held under lease for 999 years from 1 November 1855, subject to maxi-

mum yearly rent of £12 under lease dated 9 February 1856, Christopher FitzSimon and Christopher O'Connell FitzSimon to Andrew Walsh, Philip Maguire, Laurence McNancy, Patrick Linehan, James Quigley and Christopher Dwyer.

Take notice that the applicant, St Laurence O'Toole Diocesan Trust, intends to apply to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforesaid property to the below named within 21 days from the date of this notice.

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

*Date: 5 February 2010*

*Signed: Mason Hayes & Curran (solicitors for the applicant), South Bank House, Barrow Street, Dublin 4; our ref: DDP078.3/DR*

**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 Frank Ormsby**

All that and those the dwellinghouse and premises known as 91 Cabra Road in the parish of Grangeegorman, Dublin 7, being the premises comprised and held under indenture of lease dated 25 April 1895 and made between Robert Matthews on the one part and William Thomas Dinnage on the other part; the premises was demised to the said William Thomas Dinnage for a term of 250 years at a rent of £50 per annum.

Take notice that Frank Ormsby, 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 Frank Ormsby 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: 5 February 2010*

*Signed: Adrian Shanley & Company (solicitors for the applicant), Navan Road, Dunboyne, Co Meath*

**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**

Take notice that any person having any interest in the freehold estate of the following property: number 111 Lower Dorset Street, Dublin 1.

Take notice that the applicant, Mary Bermingham, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

*Date: 5 February 2010*

*Signed: Frank Ward & Company (solicitors for the applicant), Equity House, Upper Ormond Quay, Dublin 7*

**In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of certain lands and premises comprising St Michael's Estate, part of Goldenbridge Estate and the former Christian Brothers' school known as St Michael's National School, all situate at Goldenbridge in the parish of St Jude, Dublin 8: an application by Dublin City Council**

Take notice that any person having an interest in the freehold estate in the following property: all that, that part of the town and lands of Kilmaham conveyed by a fee farm grant dated 24 April 1852, made between the Right Honourable Valentine Lawless Lord Baron Cloncurry (1) and William Stewart (2) and formerly described as comprising by a late survey 14 acres, one rood and 18 perches late Irish plantation measure, be the same more or less bounded on the north by the Turnpike Road leading from Rathcool to Dublin, on the south by petty cannon ground formerly in the possession of William Smith, on the east partly by a part of the estate of Richard Bowles, formerly in the occupation of the representatives of George Goold or their under-tenants and partly by the representatives of Edward Cusack, and on the west by another holding of the said William Smith, all of which said lands and premises are situate, lying and being in the barony of Upper Cross in the county of Dublin and are now known as St Michael's Estate, part of Goldenbridge Estate and the former

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Christian Brothers' school known as St Michael's National School, Goldenbridge, Dublin 8, held with other lands subject to the perpetual yearly fee farm rent of £120.18s.7d (€153.55) and the covenants and conditions contained in the said fee farm grant, should give notice of their interest to the undersigned solicitor.

Take notice that Dublin City Council (as statutory successor to the Right Honourable Lord Mayor, Aldermen and Burgesses of Dublin) intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest therein is called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

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

*Date: 5 February 2010*

*Signed: Terence O'Keeffe (law agent, Dublin City Council), Civic Offices, Wood Quay, Dublin 8*

**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 William Killion and in the matter of premises situate at rear of 87 Jamestown Road, Finglas, Dublin 11**

Take notice that William Killion intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the property known as rear of 87 Jamestown Road, Finglas, Dublin 11,

and any party asserting that they hold a superior interest in the aforesaid properties is called upon to furnish evidence of title to the aforementioned properties to the below-named solicitors within 21 days from the date of this notice.

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

*Date: 5 February 2010*

*Signed: Sean Ó Ceallaigh & Co (solicitors for the applicant), The Old Bank, Phibsborough, Dublin 7*

**In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) No 2 Act 1978 and in the matter of an application by Patrick Maxwell and Marie Maxwell and in the matter of premises situate at rear of 98 Lower Drumcondra Road, Drumcondra, Dublin 9**

Take notice that Patrick Maxwell and Marie Maxwell intend to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the property known as rear of 98 Lower Drumcondra Road, Drumcondra, Dublin 9, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below-named solicitors within 21 days from the date of this notice.

In particular, such persons who are entitled to the interest of George Fottrell Junior, pursuant to lease dated 17 May 1882 and made between George Fottrell Junior of the one part and James Derwin and George Boyland of the second part for a term of 500 years from 1 May 1882 in the property known as 98 Lower Drumcondra Road, Drumcon-

dra, Dublin 9, should provide evidence of their title to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Patrick Maxwell and Marie Maxwell 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 city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

*Date: 5 February 2010*

*Signed: Sean Ó Ceallaigh & Co (solicitors for the applicant), The Old Bank, Phibsborough, Dublin 7*

**In the matter of the Landlord and Tenant Acts 1967-1984 and in the matter of an application by Irish Nationwide Building Society, applicant.**

**Notice of intention to acquire fee simple:** Take notice that the applicant, being the person entitled under the above-mentioned acts, proposes to purchase the fee simple in the lands described in paragraph no 1.

**1. Description of land to which this notice refers:** All that and those the lands and premises known as 251 Crumlin Road, Dublin 12, being the lands comprised in an indenture of lease dated 15 July 1935 made between Peter McGough of the one part and John Joseph Murphy and Elizabeth Mary Murphy of the other part, and more particularly described therein as "all that and those that piece or plot of ground

being part of the lands of Crumlin fronting to Crumlin Road with the dwelling-house, shop and premises erected thereon, and known or intended to be known as number 251 Crumlin Road, situate in the barony of Upper Cross and county of the city of Dublin (formerly county of Dublin), containing the measurements and bounded as shown on the map endorsed hereon and thereon coloured red" and more particularly delineated on the map attached thereto.

**2. Particulars of applicants' lease:**

The applicant herein holds lessee's interest in the said premises under and by virtue of the lease dated 15 July 1935 made between Peter McGough of the one part and John Joseph Murphy and Elizabeth Mary Murphy of the other part for a term of 490 years from 29 September 1934, subject to the yearly rent of £12 reserved by the lease.

*Date: 5 February 2010*

*Signed: Maura Madden (solicitor for the applicant), Nationwide House, Grand Parade, Dublin 6*

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## NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE LAW SOCIETY GAZETTE

Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO recruitment advertisements will be published that include references to years of post-qualification experience (PQE).**

The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

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## COMPANY SECRETARY – JAMES HARDIE INDUSTRIES

James Hardie is a building products industry leader that strives to stay ahead with constant innovation and growth. It is a fast paced, performance-driven organization looking for passionate people to continue driving it forward and to help establish our new Dublin office. It is currently based in Amsterdam but is changing its corporate domicile to Dublin. James Hardie is traded on both the Australian and New York stock exchanges.

The Company Secretary is primarily responsible for ensuring that the corporation complies with all corporate governance, statutory and regulatory requirements and that the Board of Directors is informed of all issues to do with such governance.

### The Role:

- Ensure compliance with all Irish statutory and legal requirements for all entities resident in Ireland
- Oversight of best practice regulatory and compliance posture for all James Hardie entities globally
- Attend all Board meetings and advise directors of their duties and responsibilities
- Advise the General Counsel on legal and commercial issues under Irish law

### The Person:

- The successful candidate is likely to be at Senior Associate, Partner or equivalent level
- A strong knowledge of Irish Company Law
- Expertise in legal, regulatory and commercial matters of interest to the Board of Directors of a major corporation
- The ability to work with, and support, directors located in multiple jurisdictions
- Knowledge of listed company requirements
- An ability to quickly learn the skills required to manage the company secretarial function of company quoted on major international stock exchanges.

### Remuneration:

- Basic Salary €110,000 - €130,000 + Bonus + Benefits

Please contact

Brendan Murphy, Managing Director, Osborne Recruitment, Dublin.

**Brendan.Murphy@Osborne.ie**

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**+353(0)1-6384400**

# POSITION AVAILABLE



**Want to  
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Contact Seán OhÓisín

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Mobile: 086 8117116

Email: [sean@lawsociety.ie](mailto:sean@lawsociety.ie)

## The Right Move...



- Partners
- Asset Finance, Corporate, Finance, Litigation, Investment Funds & Tax
- International law firm

Our client is a leading international law firm with an unparalleled reputation for quality and excellence.

With a focus on high quality premium work, the firm provides its clients with enduring value and practical capability on a broad range of matters.

The firm is entering the Irish market with a clear strategic vision – to build a pre-eminent law firm leveraging on their international brand and strong global network.

Opportunities exist for lawyers practicing in the following areas:

- ◆ Asset Finance
- ◆ Corporate
- ◆ Finance
- ◆ Litigation
- ◆ Investment Funds
- ◆ Tax

In addition, partners specialising in associated fields where they can demonstrate a strong business case will also be considered.

*If you would like to consider these opportunities further please contact Sharon Swan in confidence.*

# Adventure. Change. Leadership.

## A new departure in Legal.



### Outstanding Opportunities for:

#### - Law Graduates and Junior Associates

#### Dublin

Our Client is one of the world's most respected and innovative brands and most sought-after employers. Active in almost all segments of the technology and business services markets, it operates in more than 170 countries, including throughout Europe, the Middle East, Africa (EMEA), has approximately 400,000 employees, and recorded over \$100 billion in revenue in 2008.

They are now looking to establish a Legal Centre of Excellence (COE) in Dublin. The CoE will provide comprehensive contract and commercial related support to business professionals and Attorneys across the EMEA region. The remit will be challenging and broad, encompassing a wide variety of technology agreements including the development, negotiation, analysis and red-lining of software, hardware, financing, business partner and other agreements for the business throughout the region. This will necessitate working closely and effectively with other members of the EMEA and Global Legal Department.

This new organisation will consist of a combination of high calibre law graduates and junior level associates. You may have graduated or qualified in any European jurisdiction and prior technology experience is not a requirement as successful candidates will receive in-depth training.

In addition to a strong academic background, fluency in English and at least one of the following languages is strongly preferred: German (DE, AT, CH); Danish; Finnish; Swedish; Norwegian; Turkish; Arabic; Dutch; French; Spanish; Portuguese; Russian; Polish; Czech; Slovakian or Hungarian. International experience or advanced legal training (LLM) would be an advantage.

This is a unique opportunity to become part of a new, exciting, dynamic and truly multicultural team of lawyers from throughout EMEA who will be working together to deliver world-class legal services.

To find out more information about these roles please contact:

Portia White | Managing Consultant

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e: [portia.white@laurencesimons.com](mailto:portia.white@laurencesimons.com)

Kate Coughlan | Consultant

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## **DUBLIN OPPORTUNITIES**

### **SENIOR COUNSEL AVIATION** €150K + Benefits

A leading global aircraft leasing entity is now looking to recruit a senior in-house lawyer. Primary responsibilities will be to deliver in-house legal advice, management, guidance and support to the company in the execution and administration of aircraft acquisitions and sales, aircraft operating leases, and associated finance transactions. People management experience essential for this role. Excellent salary and benefits on offer. **Ref: S1445**

### **CORPORATE PARTNER** Equity

Are you looking for a leading firm that is going places? Our client has an outstanding reputation within corporate and associated areas. As an experienced corporate partner with a proven skill for client management and business development you will be given full autonomy to develop your own reputation in the market alongside securing the reputation of the team as a whole. The firm is highly profitable and equity is on offer for the right individual. **Ref: S1195**

### **FAMILY LAW PARTNER** Salaried/Equity

Our client is a leading provider of legal services across a range of matters. An opportunity has arisen for a family law partner to join this growing firm. You will have a proven reputation in the marketplace and have experience advising in divorce, judicial separation, custody & access and maintenance. As part of the senior management you will play an integral role in the development of the firm. **Ref: S2001**

### **MEDICAL NEGLIGENCE LAWYER** Excellent Salary

Hugely successful law firm welcomes applications from accomplished medical negligence lawyers. You will work on high quality work in a supportive environment with real prospects for progression and professional development. Particular interest will be shown to lawyers able to handle large scale files and to deal with cases sensitively while at the same time adopting a pragmatic approach. **Ref: C2025**

### **JUNIOR IP LAWYER**

An exciting role has opened up for a junior lawyer who is serious about making their career in the IP area. Our client is looking for someone with a chemistry/science background at an undergraduate level and with the interest and ability to assist in a mixed contentious/non-contentious practice. You will work alongside recognised lawyers and will gain exposure to some of the most interesting IP cases and transactions in this jurisdiction. **Ref: S2026**

### **PROFESSIONAL NEGLIGENCE** Salaried/Equity

This specialist firm is looking to recruit an ambitious partner who has experience in the professional negligence market particularly with regard to solicitors. You will be familiar with dealing with insurers and the insured alike and will adopt a commercial approach to cases handled by you. You will have gained experience within a well established law firm in Dublin and are in a position to bring a book of business with you. **Ref: C2024**

### **COMMERCIAL CONTRACTS** Negotiable

Our client has a very strong commercial contracts/IT department and is seeking to recruit a qualified solicitor who will be involved primarily in drafting, review and negotiation of commercial contracts including pharmaceutical, manufacturing, IT and the hospitality arena. You will form part of a dynamic team and there will be particular emphasis on outsourcing, manufacturing, franchising, agency and distribution of products. **Ref: C2025**

### **LITIGATION ASSOCIATE** €80K+

Our client is a leading firm and now wishes to recruit an associate to join its growing litigation team. Ideally you will have experience in contentious construction matters or equally experience in commercial litigation matters. You will also be expected to work on a major arbitration case. This is a varied role offering a clearly defined path to partnership. **Ref: S2028**

# True Pedigree



## *Assistant Solicitor Positions - Private Practice*

**Banking:** A Leading Dublin practice is seeking an experienced banking practitioner to join the team.

**Litigation/ Professional Indemnity:** Top rated practice searching for an experienced Professional Indemnity specialist.

**Litigation/Insolvency:** A high calibre practice with an excellent client base is searching for a first class Insolvency practitioner.

**Corporate/Commercial:** First class Dublin practice searching for a high calibre lawyer with strong academics to join a busy Corporate department.

**Commercial Contracts:** Top tier law firm requires a Commercial Contracts lawyer with proven drafting and negotiation skills and commercial nous.

**Intellectual Property:** Top ranking practice seeks an excellent junior practitioner with a scientific background.

## *Partnership - Private Practice*

Our clients are searching for first rate practitioners in the following practice areas:

**Banking; Insolvency; Funds; Litigation; Employment.**