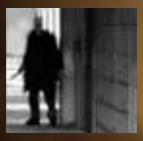
BROWN-BAGGING IT
Are 'plain packaging' proposals the start of a slippery trademark slope?



FULSOME PRISON BLUES
A court has held the State liable for injuries sustained in a prisoner-on-prisoner assault

BREAKING BAD?
The downturn has led to higher numbers seeking to exercise break clauses

LAW SOCIETY
GAZETTE

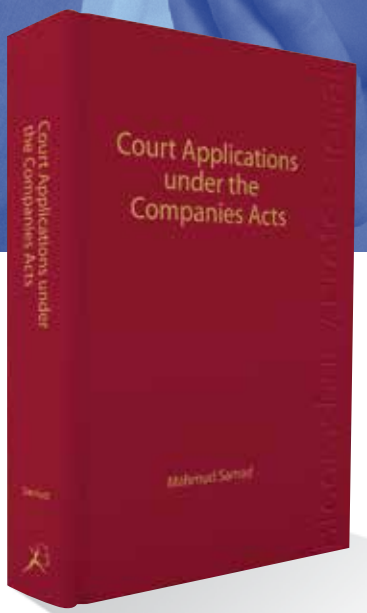
€4.00 **Aug/Sept 2013**

ANONYMOUS?

How the courts can unmask internet users

Court Applications under the Companies Acts

By Mahmud Samad, BCL, LLM (Cantab), Barrister



Format: Hardback

Price: €185.00 + €5.50 P&P

Pub date: Sep-13

ISBN: 9781780432229

About the author

Mahmud Samad is a Barrister-at-Law, having been called to the Bar in 2007. He specialises in commercial law, with a strong focus on company law, corporate and personal insolvency, bankruptcy and debt recovery. Mahmud obtained his law degree from NUI Galway in 2006 and went on to complete an LLM at the University of Cambridge. In addition to practising as a barrister, Mahmud has worked with Herbert Smith LLP, a leading international law firm in the area of commercial litigation. He is also an accredited mediator and has worked as a tutor on the mediation course run by Mediation Forum Ireland. His publications to date include numerous articles published in some of Ireland's leading professional legal journals.

The Companies Acts 1963-2012 contain over 200 court applications, ranging from applications vindicating the rights of minority shareholders to the winding up of companies for failure to pay their debts. The object of this text is to provide a discussion of every application, focusing not only on the applicable legal principles, but on the procedure involved in issuing and prosecuting proceedings. This includes discussion of:

- the proofs for each application
- the necessary documentation (including the content of affidavits, petitions and notices) for every application
- service of proceedings
- time limits
- defences
- costs

The book guides readers through the steps involved in making each court application and, as such, serves as a practical and unique resource to legal practitioners – or indeed anyone else – contemplating litigation under the Companies Acts.

In addition to providing a thorough and up-to-date analysis of the law (covering statutes, rules of court, practice directions and case law from key jurisdictions) and in-depth discussion of practice and procedure, *Court Applications under the Companies Acts* contains a generous collection of detailed precedents for specific applications. The precedents are based on real applications coming before the courts and have been contributed by the author and other legal practitioners. Finally, each chapter sets out the key amendments to be introduced by the Companies Bill 2012 to the applications discussed in that chapter. It is hoped that this will facilitate practitioners in making a smooth transition once the Bill is enacted into law.

Topics covered in the book include:

- Introduction to corporate litigation
- Introduction to Irish companies
- Articles and memorandum of association
- Directors' duties
- Registration of charges
- Minority shareholders' rights and remedies
- Remedies against un-liquidated insolvent companies
- Compromises and schemes of arrangement
- Receivership
- Examinership
- Powers and duties of examiner
- Voluntary winding up
- Compulsory winding up
- Compulsory winding up of insolvent companies
- Committees of inspection
- Power and duties of liquidator
- Examination of certain persons on a winding up
- Reckless and fraudulent trading
- Avoiding certain transactions on a winding up
- Restriction and disqualification of company directors
- Company restorations
- Annulling an order of dissolution after company wound up
- Company inspections and inquiries
- Security for costs
- Applications concerning public limited companies
- Applications concerning the Supervisory Authority under the Companies (Auditing and Accounting) Act 2003
- EU Insolvency Regulation

Bloomsbury Professional

To order this title call +353 1 5009599 or go to www.bloomsburyprofessional.com

PUBLISHING SEPTEMBER 2013

REINVENTING LEGAL SERVICES

I begin this month's message with a very heavy heart, following the passing, at the very untimely age of 62, of Mr Justice Kevin Feeney while on holidays with his family in Ballycotton in Co Cork. Throughout a distinguished career at the Bar, and later during his entire time on the High Court bench, Kevin represented all that is good in a lawyer. He treated everyone equally, and with respect and compassion. I extend my deepest sympathies to his wife Geraldine and the entire Feeney family.

Kevin's passing followed just two weeks after the sad loss by the Society's junior vice-president, Stuart Gilhooly, of his father, the distinguished senior council James Gilhooly. Our deepest condolences also go to Stuart and his family. The fact that Kevin Feeney and James Gilhooly were both guests at the Law Society's annual dinner in Blackhall Place on 12 July 2013 must cause us all to reflect on the frailty and uncertainty of life.

In the July *Gazette*, I referred to some of the concerns that had been expressed at meetings with several bar associations. It will come as no surprise to report that most of the concerns are shared with our colleagues all around the world, and that includes the *Legal Services Regulation Bill* – and how, when ultimately implemented, some of its provisions might be introduced elsewhere.

The one thing that is certain is that we cannot, as a Law Society or as practitioners, stand still. Practitioners and law societies everywhere are using their best endeavours to face up to the challenges of the 21st century. Access to justice issues arise everywhere. Endeavouring to reinvent the delivery of legal services is a topic close to the top of the agenda of every law society or bar association we have consulted with.

Judicial dispute resolution

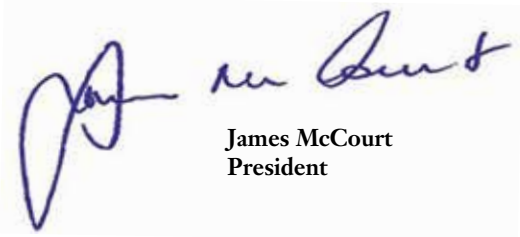
When all practitioners are challenged to find ways of generating income, we must, for example, examine ways of speeding up the resolution of disputes. It may be that some of these changes will be inspired by the judiciary. The growing use of alternative dispute resolution is to be welcomed. At a meeting with Canadian judges in Dublin in August, we learned of 'JDR', or judicial dispute resolution. By this process, parties are encouraged to actively participate and enable a judge to narrow the issues. They do so in good faith and without prejudice.

The process often results in a resolution of the dispute earlier than the litigation or trial process. The positives cannot be overstated, as the parties will have been enabled to move on more quickly. Their lawyers will have been enabled to recover their fees and close their files quickly too.

"Endeavouring to reinvent the delivery of legal services is a topic close to the top of the agenda of every law society"

Finally, I warmly welcome the expansion of the number of members of the Supreme Court and I extend my heartiest congratulations to Ms Justice Mary Laffoy and Ms Justice Elizabeth Dunne on their recent nominations for appointment to that court. We hope that the expansion of the Supreme Court will speed the processing of appeals.

This expansion of the Supreme Court is an interim measure to deal with the completely unacceptable delays of up to four years in hearing High Court appeals. The answer to the problem is the proposed Court of Appeal. Ken Murphy served on the working group, chaired by Chief Justice Susan Denham, that in 2009 produced the excellent report recommending a Court of Appeal as a necessary part of Ireland's justice infrastructure. The Society fully supports this proposal and, naturally, we urge you to vote in support of the measure in the constitutional referendum on 4 October 2013.



James McCourt
President

Law Society Gazette
Volume 107, number 7
Subscriptions: €60/€90

Editor: Mark McDermott FIIC
Deputy editor: Dr Garrett O'Boyle
Art director: Nuala Redmond
Editorial secretaries: Catherine Kearney, Valerie Farrell

Commercial advertising:
Seán Ó hOisín, tel: 086 811 7116,
email: sean@lawsociety.ie

For professional notice rates (wills, title deeds, employment, miscellaneous), see page 60.

Published at Blackhall Place, Dublin 7,
tel: 01 672 4828, fax: 01 672 4877.
Email: gazette@lawsociety.ie
Website: www.gazette.ie

Printing: Turner's Printing Company Ltd, Longford

Editorial board: Michael Kealey (chairman), Mark McDermott (secretary), Mairéad Cashman, Paul Egan, Richard Hammond, Mary Keane, Aisling Kelly, Tracy Lyne, Patrick J McGonagle, Ken Murphy, Andrew Sheridan

LAW SOCIETY GAZETTE

REGULARS


28


36

COVER STORY


16

FEATURES


14

HOW TO REACH US: *Law Society Gazette*, Blackhall Place, Dublin 7.
Tel: 01 672 4828, fax: 01 672 4877, email: gazette@lawsociety.ie

PROFESSIONAL NOTICES: send small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie. **All cheques should be made payable to: Law Society of Ireland.**

COMMERCIAL ADVERTISING: contact Seán Ó hOisín, 10 Arran Road, Dublin 9, tel: 01 837 5018, fax: 884 4626, mobile: 086 811 7116, email: sean@lawsociety.ie

HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

Get more at lawsociety.ie

Gazette readers can access back issues of the magazine as far back as Jan/Feb 1997, right up to the current issue at lawsociety.ie.
You can also check out:

- Current news
- Forthcoming events, including the **JUSTICIA network's EU Criminal Justice Know Your Rights Seminar in the Law Society, on 23 September**
- Employment opportunities
- The latest CPD courses

... as well as lots of other useful information

Nationwide

Compiled by Kevin O'Higgins

Kevin O'Higgins has been a Council member of the Law Society since 1998

DSBA bursary scheme

DUBLIN

A DSBA bursary scheme has been created. The bursary will contribute towards FE-1 fees, law school fees, and living expenses. Further details and application forms are available from www.dsba.ie.

Following the success of recent golf outings at Elm Park and St Anne's, the DSBA Golf Society has announced that its final event of the year (Captain's Prize) will take place on Thursday 12 September at Killeen Castle. (Please note that this outing had originally been scheduled for 5 September.) For those who have already booked for the original date, the society apologises for any inconvenience caused. If you have already booked and cannot make the new date, the golf society will be happy to refund the entry fee. A limited number of places are still available.

Keeping it profitable

DONEGAL

An excellent CPD seminar is planned for the Radisson Hotel, Letterkenny, on Friday 27 September, from 9.30am to 4.15pm. The speakers will include David Rowe and Donal Maher (both from Outsource), John Brennan (O'Leary Insurances), and David Soden (solicitor). Topics will include law firm profitability and practice management, negotiating the PII renewal, and a conveyancing update, with particular reference to property tax.

Golfers swelter at Druid's Glen

WICKLOW

On Friday 19 July, the Wicklow Solicitors' Bar Association held its annual golf and dinner day at the Druid's Glen Golf Resort. After a wonderful round of golf in temperatures that dictated that the sun cream was as important as your driver, dinner and drinks followed in the clubhouse.

Winners included John O'Beirne and Rosemary Gantly, with John O'Beirne being presented with the John T Louth Memorial Cup as overall winner. The 'closest to the pin' competition was won by Michael O'Loughlin, while the prize for longest drive went to Judge Patrick McCartan. Brian Robinson and Conway O'Hara (social committee) organised this wonderful event. A special presentation was made to outgoing president David Lavelle for his exceptional work during his tenure.

Will sets Tara on fire!

MEATH

(From l to r): Ronan O'Reilly, Maire Teehan (former county registrar), Will Ryan BL (overall winner), Mary O'Malley (current county registrar), Oliver Shanley (Meath Solicitors' Bar Association president) and Elaine Byrne (honorary secretary and treasurer)

The annual Meath County Registrar's Golf and Dinner was held at Royal Tara Golf Club during the summer. Elaine Byrne says that the weather remained bright and sunny. Guests included District Court Judge Patrick Clyne, Mary O'Malley (county registrar for Meath), Elizabeth Sharkey (county registrar for Westmeath), Maire Teehan (retired county registrar), Oliver Shanley (bar association president), James Walsh (past-president), Elaine Byrne (honorary secretary and treasurer) and Ronan O'Reilly (committee member). The overall prize was awarded to Will Ryan BL of Kells. The prize for best lady golfer went to Sheila Cooney.

Says Elaine: "A special word of thanks goes to our county registrar, Mary O'Malley, for her continued support of the event and to committee members Ronan O'Reilly and William O'Reilly for their help in organising this event."

Mary O'Malley has recently been nominated as a specialist judge of the Circuit Court. The bar association wishes her well in her new post.

A ball for Barretstown

The president of the Irish Solicitors' Bar Association in Britain, Cliona O'Tuama, has been in touch to inform us that the their 2013 Autumn Ball will be held on Friday 15 November in Claridge's, which proved to be so popular with the ball's loyal supporters in 2011 and 2012. Once again, the beneficiary will be Barretstown. Full details next month.

A bird in the hand…

MONAGHAN

Where would you get a line-up of speakers of the calibre of media doyen Charlie Bird, taxing master Declan O'Neill, DPP Claire Loftus and criminal law expert Dara Robinson other than in Monaghan? Well, Dublin, probably, but still… They can also boast the expertise of Judge Sean McBride, media lawyer Simon McAleese and James Finn of the Wards of Courts Office, among others, all of whom will speak on diverse topics at the all-day event on 11 October. The venue is the Glencarn Hotel, Castleblayney. Seven CPD points will be available, including three management, one regulatory and three general.

All of their speakers are giving of their time freely, with all profits going to the Solicitors' Benevolent Fund. The cost is €70 or €110 if attending the social evening. Certificates of attendance will be provided. For further details and to reserve your place, send a cheque and your details to Justine Carty, Barry Healy & Company, Laurel Lodge, Hillside, Monaghan, Co Monaghan; DX 34 006; or email: justinec@healylaw.ie; or phone 047 71556.

New Supreme Court judges nominated

Two serving High Court judges have been nominated by the Government for appointment to the Supreme Court by President Michael D Higgins. They are Ms Justice Mary Laffoy and Ms Justice Elizabeth Dunne.

The appointments follow the passing of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*, which allows for the extra positions. The two new appointments will bring the total number of Supreme Court judges to ten, including the Chief Justice.

"The appointment of these additional judges will help reduce waiting periods by allowing two divisions of the Supreme Court to sit routinely and facilitating additional sittings of the Court of Criminal Appeal," the Government said.

The proposed establishment of a dedicated Court of Appeal to encompass both civil and criminal jurisdiction will be put to a referendum on 4 October 2013.

In News this month...

Doing the business in Westport

At the launch announcing the symposium were *(l to r)*: Charlie Gilmartin (Gilmartin & Murphy Solicitors), Cllr John O'Malley (cathaoirleach, Mayo County Council), Mary Robinson (UN Special Envoy for the Great Lakes Region of Africa), Paddy McGuinness (WDC chair) and Prof James J Browne (president of NUI Galway)

The third annual US/Ireland Legal Symposium of the Brehon Law Society will take place in Westport, Co Mayo from 25 to 27 September 2013. The theme is 'Doing business in the US/Ireland/Europe – critical legal issues for US and Irish companies'. It will be hosted by the Brehon Law Society of Philadelphia, with the support of the Western Development Commission and Mayo County Council. Those attending will include Irish and American lawyers, business consultants and businesses operating in both Ireland and the US.

Is there a doctor in the house?

Gabriel Brennan, the Law Society's eConveyancing Senior Advisor and Law School course manager, has been awarded a PhD from Nottingham Trent University. Dr Brennan's thesis was entitled *An Exploration of the Impact of Electronic Conveyancing (eConveyancing) upon Management of Risk in Conveyancing Transactions.*

The low-down on 'down under'

An information event will be held on working and qualifying in Australia and New Zealand on Thursday 19 September from 6pm to 8pm in the Green Hall lecture theatre at Blackhall Place. This event is organised by Career Support and is aimed at solicitors considering the move to these jurisdictions.

Speakers will include:

- Susan Kealy, an occupational psychologist specialising in career development,
- Hannah Carney, an Irish solicitor and experienced career development coach,
- Ronan McSweeney, an Irish solicitor working as a lawyer in Australia.

Anyone wishing to book a place should email Malgorzata Rola at: m.rola@lawsociety.ie.

DNA database legislation

Minister for Justice Alan Shatter has said that legislation enabling the establishment of a DNA database is virtually complete. Speaking at the launch of Dublin Rape Crisis Centre's annual report at the end of July, Mr Shatter said that he expected to publish the *DNA Database Bill* in September. It is expected that the database will be operational by next year.

The minister said that a DNA database would revolutionise the detection of sex crime in Ireland. "Our database will hold the DNA profiles of every person convicted of any offence that attracts a sentence of five years or more, which covers rape and most sexual offences," he said. "On top of that, people serving prison sentences when the legislation is enacted will also have their profiles put on the database."

ICDLJ seeks submissions

The *Irish Community Development Law Journal* is now accepting submissions for inclusion in volume 2, issue 2, on the theme of 'housing'. The journal is published twice a year by the Northside Community Law and Mediation Centre in Coolock, Dublin.

Articles, book reviews and case studies should be between 1,500 and 10,000 words in length. The deadline for submissions is 12 September 2013.

If interested, email editor@nclc.ie. To access previous editions of the journal, visit www.nclc.ie/overview/default.asp

Darkness and light as Leinster House discusses LSR Bill

The venerable grey stonework of Leinster House gently reflected the bright morning sunlight. It was one of the warmest days of one of the warmest Julys on record, *writes Ken Murphy*.

As the small Law Society delegation strolled across from the Kildare Street gate and then entered the Millennium wing, we could not but notice an unusual lightness of mood among the public representatives who, as they passed each other, cheerily wished colleagues of all parties in various verbal formulations a "good summer break".

Leinster House's relaxed and rather giddy end-of-summer-term feel on this occasion contrasted with the usual air of political tension and intrigue, such as on the occasions when, a few weeks previously, I had visited to give separate detailed briefings to the opposition justice spokespersons on the bill whose committee stage was about to commence.

It was the second-last sitting day before the Dáil was due to rise for the summer. Deputies seemed surprisingly fresh and jaunty, given that most of them had sat until 5am just two nights previously, as they sought to pass the *Protection of Life in Pregnancy Bill*.

Justice, Equality and Defence Minister Alan Shatter

Fianna Fáil justice spokesperson Niall Collins TD

Sinn Féin justice spokesperson Pádraig MacLochlainn TD

Early exchanges

The summer brightness of the light outside made the lower-ground-floor room, in which the Joint Oireachtas Committee on Justice was sitting, seem dim if not gloomy. Committee chair, David Stanton TD, was anxious to get started as we took our places among the journalists and a handful of others in the public gallery.

Although there were a number of committee members present, this first sitting of the committee stage of the *Legal Services Regulation Bill 2011* was dominated by the voices of three individuals, namely Minister for Justice Alan Shatter, the Fianna Fáil justice spokesperson Niall Collins, and Sinn Féin's justice spokesperson, Pádraig MacLochlainn.

In the early exchanges, Deputy MacLochlainn complained of the committee being "now engaged in a symbolic gathering for an hour-and-a-half before the summer recess" and registered his deep disapproval of the extraordinarily lengthy delay between completion of the bill's second stage in the Dáil on 23 February 2012 and the commencement of the committee stage now on 17 July 2013 – a delay of some 17 months.

It was acknowledged by all involved, however, that even the short time being devoted to the committee stage of the bill that day was highly important. It was proposed to make amendments that would fundamentally alter the composition of the proposed Legal Services Regulatory Authority and, in particular, the manner in which members of that authority would be chosen and appointed.

As Minister Shatter put it: "Several of the proposed amendments to section 8 are intended to increase the actual and perceived independence of the authority from the Government. When the bill was published in 2011, concerns were raised about the issue of how the members of the new authority would be appointed and the independence of that process."

This "copper-fastening and provision of legal clarity" to the independence of the authority from control by the Government, the minister continued, "has been influenced by written and verbal submissions from the Law Society, the Dublin Solicitors' Bar Association, the Bar Council and several other key interested parties from whom we received submissions. It therefore meets most, if not all, of the concerns that lie behind the similar amendments being put forward by the opposition today".

Balance of power

In place of the power of the Government (on the nomination of the Minister for Justice) to appoint all of the lay members of the board (as was provided for in the bill as published), the minister's amendments now provide that a series of independent bodies will nominate the 11 members of the board. These comprise one each from the Citizen's Information Board, the Higher Education Authority, the Competition Authority, the Human Rights Commission, the Institute of Legal Costs Accountants, the Consumers Association of Ireland, the Bar Council, the Legal Aid Board and the King's Inns, together with two nominated by the Law Society.

The minister believed that "the nominating bodies are best suited to the task of finding the right people for the authority. There will still be only 11 members of the authority, six of whom will be lay persons and five of whom will be nominees of the legal professional bodies and their close affiliates".

"In terms of the non-lay members of the authority, I have borne in mind the fact that there are significantly more solicitors than barristers in the State – a factor of five to one. First, I have removed my ministerial entitlement to nominate a member of the authority. Then, rather than simply increase the number of nominees from the Law Society, I have chosen to designate the Legal Aid Board as an additional nominating body and will require it to nominate a solicitor. In addition, I have reduced the Bar Council's nominees from two to one, but I have given the Honourable Society of King's Inns a nominee as a counter balance, following representations from that body."

Query about veto

Niall Collins TD probed this, saying "the initial concern was that the minister, his office or his successor, when we all move on, would have too much influence in the appointing of members. The minister

has gone some way towards addressing these concerns. Can he confirm the minister does not have a veto in terms of the nominees who are being offered by the prescribed bodies?" The minister, in response, did so confirm.

Pressed by Deputies Collins and MacLochlainn on why he insisted on the chairperson of the new authority being a lay member, and why the Government had to appoint that member, the minister responded that he saw this as a matter of "public confidence in the authority" and that there should be "no lobbying or pressure put on people who have only just met each other, as the first members of the authority, to determine who should chair".

In response to persistent questioning from Deputy Collins, the minister acknowledged that, in addition to the delay in drafting his amendments for the committee stage, there had also been delay in producing a regulatory impact assessment for the *Legal Services Regulation Bill* (in principle, it should have been produced before the bill commenced its passage through the Dáil). However, he insisted that this "will be made available in advance of the resumption of the committee stage after the summer recess".

Echoing a remark made earlier in the debate by Deputy MacLochlainn, Deputy Collins challenged the minister on the opinion that the minister appeared to be quoting from a Troika report, to the effect that legal fees represent a significant drag on the economy and competitiveness. The Fianna Fáil justice spokesperson expressed contrary views that "nobody in the legal profession is recession-proof" and that "these people are employers who contribute to the economy and the community".

Minister Shatter, however, proceeded to express his absolute agreement with what Deputy Collins had said. He continued: "In the current financial climate, there is absolutely no doubt, in recent years, that various solicitors' practices have found themselves in far more difficult financial times than has been the case in the past." He acknowledged that many solicitors had lost their jobs as firms contracted and that more than 1,000 young solicitors were unemployed.

"Although the Troika had rightly or wrongly formed the view that legal fees, generally, in some areas had not decreased, I am personally aware, as I am sure the deputies are, of firms that have hit hard financial times and have reduced the charges they issued to clients whom they represent," the minister added. He was not suggesting that everyone in the solicitor's profession was doing terribly well. "There are many who are not doing well. There are many in difficulties. There are young solicitors who cannot get jobs at the moment. Providing greater competition, new business models and new opportunities will benefit not just the public, but the legal profession itself."

As is usual, none of the opposition's amendments were accepted by the committee. They were voted down when pressed. Having passed the minister's draft amendments to the first nine sections of the 123-section bill – although the minister has promised numerous additional sections to the bill, such as in relation to creating options for solicitor's firms to adopt limited liability partnerships and limited companies as practice models, in respect of which amendments have not yet been published – the committee ran out of time.

The Dáil record shows that, at 11.05am, the committee adjourned after an hour *sine die*. All who had participated in or observed this piece of law-making in action headed upstairs slowly and out, blinking, into the bright summer sunlight.

An end to scale costs in District Court?

Representatives of the Law Society, unprecedentedly, met with the District Court Rules Committee on 22 July 2013 to discuss changes to the rules that would be necessitated by the major increase in jurisdiction of the District Court following the enactment of the *Courts Bill 2013*. Of primary concern was the need to make the practice of civil law in the District Court both just and economical for all concerned.

The Law Society delegation was led by the president, James McCourt, and included junior vice-president Stuart Gilhooly, chair of the Litigation Committee Eamon Harrington and director general Ken Murphy. The meeting followed on earlier submissions by the Law Society, which had pointed out that the proposed change in the upper limit of jurisdiction of the District Court in civil matters was "utterly transformational". A significant proportion of the Circuit Court's current jurisdiction in civil matters will now be the responsibility of the District Court.

The principles that underpin the administration of justice, in civil law terms, in the Circuit Court will need to be followed, in proportionate terms, to ensure that the quality of justice in the District Court is no less than in other courts.

The District Court, in civil law matters, has traditionally had only the most rudimentary of pleadings. This can no longer be the case when the court is given the proposed enhanced jurisdiction.

Justice requires that fixed scales of legal costs for the parties, as has operated up to now in the District Court, must be superseded by a requirement that legal costs be measured in relation to District Court matters on the same principles as in all other courts. The policy choice, in effect, is between justice and scale costs.

A shorter 'long vacation'?

Do you think that the 'long vacation' of the Superior Courts should be shorter?

At the Law Society's annual conference in Killarney last May, the Minister for Justice, Equality and Defence, Alan Shatter, posed the question.

The Law Society Council has decided to invite views from the profession before adopting a final position on the issue. Please email your views to the Gazette editor at: gazette@lawsociety.ie. A representative selection will be reported in the next issue.

At the Council meeting on 12 July 2013, however, a preliminary Review of Court Sitting Days and Vacations was received from the Society's Litigation Committee.

This was by no means the first discussion of this seasonal issue at the Society's Council. Indeed, more than a decade ago, the Council adopted a pro-reform position very similar to that now suggested by the committee, along the following lines – the two most important factors were the needs of litigants and the desirability of increasing the throughput of business for solicitors.

Subject to wider consultation, it seems reasonable that the Society should seek:

1) The re-naming of the 'long vacation',
2) The curtailment to six weeks of what was formerly known as the 'long vacation',
3) A possible change to the commencement of what was formerly known as the 'long vacation',
4) The abolition of the Whit break,
5) The retention of the Easter and Christmas breaks, and
6) Restructuring to ensure that:
   i) Judges are adequately resourced,
   ii) Judges are allocated non-sitting weeks as necessary,
   iii) Suitable specialist judges are available for urgent business out of term.

Coroner slams closure of Mayo courthouses

Mayo's county coroner, Patrick O'Connor (who is a past-president of the Law Society) says that the decision of the Courts Service Board to close the courthouses in Swinford and Ballyhaunis is "a regrettable, retrograde, reactionary decision that will, in the long-term, have profound consequences for Co Mayo".

Mr O'Connor was reacting to the 1 July decision of the Courts Service Board to approve the recommendation of its Building Committee to close Swinford and Ballyhaunis courthouses.

"Not only will there be job losses in solicitors' offices," he said, "but there will be a serious economic effect on the entire East-Mayo region, of which Swinford has been the principal market town for more than 200 years."

The estimated economic impact to Swinford's economy would be approximately €180,000 per annum, he said. "Offset this against a projected saving, it is understood, to the Courts Service of the maintenance of the courthouse in Swinford of €14,000 per annum. Who is the winner and who is the loser?" he queried.

He added that the decision looked as though it had been "taken in advance by the Building Committee of the Courts Service, who sought a result and then retrospectively produced figures to justify the closure".

'Consultation'

Challenging the Courts Service claim that it had consulted with court users, including An Garda Síochána, lawyers, Courts Service staff and public representatives at national and local level, Mr O'Connor said: "The reality is there was no such consultation."

Submissions had been invited and made to the Courts Service. "However, there was no engagement whatsoever with the individuals and bodies, particularly solicitors, who sought to engage with the Courts Service in relation to the decision taken by it."

The decision to approve the closure of court venues in Swinford and Ballyhaunis means that there are now only four court venues remaining in Mayo, namely: Achill, Belmullet, Ballina and Castlebar. No court venue now exists in South or East Mayo.

Eleven courthouses closed

Since the Courts Service commenced its review of court venues in 2000/02, courthouses in Ballinrobe, Balla, Claremorris, Kiltimagh, Kilkelly, Charlestown, Foxford, Crossmolina and Killala have closed. All of these are located in South and East Mayo.

Cases in the former Charlestown District Court area were transferred across the county boundary to Tubbercurry, Co Sligo (16km away). Cases from Foxford and, more recently, Kiltimagh, were transferred to Ballina and Castlebar respectively.

"One can only conclude that there is now a concerted policy by the Courts Service to centralise all court hearings – District and Circuit – in one court venue in Castlebar," O'Connor continued. "It appears that the other three remaining courthouses (Achill, Ballina and Belmullet) will be closed as venues in the foreseeable future, as will any court office outside of the county town. Of course, this may be denied by the Courts Service and, no doubt, it will state that no decisions have yet been taken! Such was its response a number of years ago in relation to the courthouses in Ballyhaunis and Swinford."

He concluded: "A review of the decision of the Courts Service to close Swinford and Ballyhaunis courthouses is needed."

'A single market for lawyers' conference

The Directorate General for the Internal Market and Services of the European Commission is organising a one-day conference on 28 October 2013 entitled 'A single market for lawyers: valuing achievements, tackling remaining challenges' (see http://bit.ly/w2HBfr).

The Brussels conference will provide participants with the opportunity to discuss a variety of issues of particular interest to the legal profession in the context of the single market.

Commissioner Barnier will open this high-level event, which follows the publication of a study on the operation of the EU legal framework applicable to lawyers. The study has been carried out for the European Commission by the University of Maastricht and Panteia and can be found at http://bit.ly/19ZO0Lt.

European law journal invites submissions

The *Irish Journal for European Law* is pleased to announce its relaunch in electronic format. This new departure for the journal coincides with the 21st anniversary of its establishment. Published in print since 1992, this leading publication on Irish-European legal issues will make its first appearance in e-journal format in early 2014, with one volume to be published annually.

Under new editorial direction, the journal is now double peer-reviewed and boasts greater flexibility in the content and style of submissions, as well as an editorial board that comprises both practitioners and academics.

Long articles (indicative length 8,000 to 12,000 words), shorter articles (3,000 to 4,000 words) and analyses of recent developments (of any length), are invited.

While submissions on Irish-European legal issues are of special interest, the journal welcomes submissions on all areas of European law. In addition to the more traditional form of academic article, comment and opinion pieces on European-Irish affairs, with a legal dimension, will be welcomed.

Submissions should be sent to: ijel.submissions@gmail.com by 1 November 2013 in Word format, size 12 font, single-spaced, referencing style-guide OSCOLA Ireland.

Nationwide networking events for young solicitors

The Law Society is teaming up with bar associations outside of the capital to organise an exciting new 'Network' initiative for young solicitors. Network's aim is to facilitate young practitioners to make contacts and develop their careers by hearing about others' experiences.

The initiative is being organised in three regions – Munster, Connaught/Donegal and Leinster/Cavan/Monaghan. Four Network meetings will be held in each region annually – a total of 12 meetings countrywide each year.

Each Network event will have a guest speaker tell their story. Speakers will not necessarily be lawyers but will be locally based and will have enjoyed significant success in their chosen career. They will speak about their achievements and insights. Each session will provide an opportunity for attendees to meet up with friends and be introduced to new people. Refreshments will be provided.

These meetings are being organised exclusively for solicitors who are qualified for less than six years. Everyone recorded as qualifying in the previous six years and living in the relevant region will be invited. Invitees are encouraged to attend all Network meetings in their region.

Details of each Network event will be circulated by email to bar associations and young solicitors in the autumn. Further information is available by contacting Sinead Travers at: s.travers@lawsociety.ie.

EII tax-relief incentive

The *Finance Act 2011* introduced the Employment and Investment Incentive (EII) scheme, *writes Brian Allen of LK Shields.* This replaced the Business Expansion Scheme (BES) originally introduced in 1984.

The EII scheme is a tax-relief incentive that provides tax relief to private investors for investment in certain corporate trades. The scheme broadly operates by allowing investments (up to a maximum of €150,000 per annum) for new ordinary shares in qualifying companies to qualify as a tax deduction against the investor's taxable income.

It offers investors an initial 30% tax relief on their total income. A further 11% tax relief will be available to investors where it has been proved that employment levels have increased at the investee company at the end of the holding period (three-year minimum) or where evidence is provided that the investee company used the capital raised for expenditure on research and development.

The *Finance Act 2013* introduced two changes to the EII scheme:

1) **The extension of the deadline for investments under the scheme to 31 December 2020 (subject to a commencement order by the Minister for Finance), and**
2) **The extension of the scope of the scheme to companies involved in the operation and management of hotels, guest houses, self-catering accommodation or comparable establishments or managing property used for such trading activities, provided that the company qualifies as a tourist trading undertaking and has prior approval from Fáilte Ireland. (This has effect in respect of shares issued on or after 1 January 2013).**

THERE'S AN APP FOR THAT

Noteshelf improves your handwriting

APP: NOTESHELF **PRICE:** €3.89

***Noteshelf* is my newest favourite app for my iPad, *writes Dorothy Walsh.* It is basically the best handwriting app of the ones I've tried and tested (namely, *Penultimate* and *Notebook+*). It is a paid-for app but, in my view, it is well worth the €3.89.**

Noteshelf allows you to open notebooks on your iPad and write in them as if you were writing on a paper pad. I tried it on my original iPad and found it to be excellent, but was a little worried about how it might perform on the iPad Mini. I was not disappointed – it was just as good on the smaller screen.

One of the advantages of *Noteshelf* is the wrist-protection function, which very successfully prevents your hand from creating errors where one rests one's wrist on your iPad while writing. I found, with *Penultimate*, that my wrist resting on the page would cause the iPad to flick between screens, mark the page or bring up different menus. This is not a problem at all with *Noteshelf*. This app also has a 'type text' function and allows typed content to be added to the handwritten notes. Again, this is a great feature for the likes of reducing settlement terms to writing and having each party sign the document.

There are also various settings within the app that allow you to change the look of the paper (stationery includes yellow legal-pad paper and wide-lined paper). You can add tags (which can be accessed in *Evernote* and can be used to save notes to *Evernote*), share your notebook via email, Facebook or Twitter. You can also add a pass code to the note for added security, add pictures, add emoticons (the use of punctuation marks to draw faces that suggest the tone of an email, such as :-(for instance), and change pen colour and density.

***Noteshelf* is definitely the must-have app for those who want to use their iPad like a paper note-taking pad – without having to compromise on functionality or form.**

NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

Assisted Decision-Making (Capacity) Bill 2013

PROBATE, ADMINISTRATION AND TRUSTS

Mary Condell (chair of Solicitors for the Elderly) and Patricia Rickard Clarke (former commissioner of the Law Reform Commission) write:

Currently, the approach to capacity in Ireland, reflected in an archaic wards-of-court system based on legislation dating from 1871, is the status or 'all-or-nothing' approach based on a medical assessment of the individual.

This, however, has not reflected the research by the Law Reform Commission and discussion that has taken place since 2003 about updating the law relating to capacity – not least so that Ireland can comply with its international obligations, to ratify the *UN Convention on the Rights of Persons with Disabilities*, to give effect to the *Hague Convention on the International Protection of Adults*, and to ensure that there is compliance with constitutional and human rights standards.

The *Scheme of the Mental Capacity Bill* (as it was then entitled and which was based on the bill suggested by the LRC) was published in 2008, but the detailed bill has only now been introduced. Meanwhile, it has been renamed. Its title is now the *Assisted Decision-Making (Capacity) Bill 2013*, presumably as a result of the Joint Oireachtas Committee hearings from interested parties on the bill, which took place in early 2012.

The bill is a complete overhaul of the law in relation to decision-making capacity. It enshrines the functional test for capacity, setting out guiding principles for the assessment of capacity that must be invoked by every person who makes any intervention in relation to the decision-making of others, whether that is in a professional or a private context.

It creates no less than five categories of 'interveners' with regard to decision-making, and changes the law in relation to enduring powers of attorney, as well as the *Mental Health Acts*.

It is new law that it is imperative for every legal and other professional dealing with vulnerable adults to know, understand and put into practice.

The Law Society, in conjunction with Solicitors for the Elderly and supported by STEP, have organised a conference to take place on Thursday 12 September. The content of the new bill will be outlined, as well as practical tips for using the functional approach. Attendees will also have the unique opportunity of hearing from renowned British experts, where similar legislation has been in force since the coming into operation of the *Mental Capacity Act 2005*, about the potential pitfalls and difficulties for practitioners.

Alternative ADR seminar

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

The ADR Committee is hosting a seminar entitled '*Alternative* Alternative Dispute Resolution' on Friday 11 October 2013. This seminar will provide a practical exploration of two valuable but, to date, less commonly used ADR tools in Ireland, namely, adjudication and expert determination.

Experienced practitioners Tony Bingham QC, James Farrell, Siobhan Kenny and James O'Donoghue will outline the characteristics of each process and share examples of how they have effectively deployed them. With adjudication set to become the principal method of determination in construction contracts, this seminar is timely for practitioners. Tony Bingham will speak of his experiences as an adjudicator, while Siobhan Kenny will explain the adjudication provisions in the *Construction Contracts Act 2013*, section by section.

Expert determination has some similar characteristics to adjudication – but also important differences. It is now used to determine an array of dispute areas in England and Wales. James Farrell and James O'Donoghue will address the following areas in relation to expert determination:

- The advantages and disadvantages of using expert determination compared with other forms of ADR,
- Appropriate use,
- Drafting an effective expert determination dispute resolution clause,
- Analysis of the attitude of the courts to expert determination, and
- Cost issues.

The venue is Blackhall Place, Dublin 7, on Friday 11 October 2013 from 1.30pm – 5.30pm. Fee: €95 (members), €120 (non-members). CPD hours: 3.5 hours' professional development

For further information or to book your place, please contact Colleen Farrell, secretary, ADR Committee, Law Society of Ireland, Blackhall Place, Dublin 7; email: c.farrell@lawsociety.ie.

New VHI undertaking and protocol

LITIGATION COMMITTEE

The Litigation Committee has negotiated a new protocol with VHI Healthcare in respect of solicitors' undertakings to the VHI, with an implementation date of 1 August 2013.

It is the view of the committee that the new protocol is workable and is in the client's interest.

The new protocol provides for an increased fee of €450 (inclusive of VAT) to be paid by VHI.

The new undertaking represents an improvement because:

- Solicitors will be able to conclude settlements in instances where previously VHI's prior approval was required, and
- Where a case is settled for a percentage of full value, the payment to VHI of that percentage of the amount due to VHI satisfies the terms of the undertaking.

Members are urged to carefully read the new protocol before providing undertakings, as the usual principles apply to all undertakings:

- A solicitor should be satisfied that he/she is properly authorised to give the undertaking and will be in a position to comply with the undertaking,
- If a client requests that the solicitor gives such undertaking, the solicitor should explain to the client the full effect of the undertaking, and
- If a practitioner decides, after due consideration and discussion with the client, that he/she will provide an undertaking, he/she should be aware of the extent of the personal responsibility that this may entail.

The new protocol and undertaking can be accessed on the Litigation Committee's area of the Law Society's website at www.lawsociety.ie.

Email filing and the Patents Office

INTELLECTUAL PROPERTY LAW COMMITTEE

The Intellectual Property Law Committee has received the following information from the Patents Office.

The Patents Office is prepared to accommodate the filing of notices of opposition and statement of grounds by email. The requirement in the rules that the notice of opposition has to be accompanied by the prescribed fee of €60 can be accommodated by informing the office in the email used to file the notice that the fee has been paid by electronic funds transfer (EFT). The date of the payment, together with sufficient details and a payment reference number that can be used by the office to identify the fee payment, should be included in the email.

The fee can be paid by EFT to the office's bank account at:

- Ulster Bank, 27 High Street, Kilkenny
- A/C number: 11124739
- Sort code: 985880
- IBAN: IE05ULSB98588011 124739
- BIC: ULSBIE2D.

Notices of opposition should not be filed without including in the covering email details of the making of the payment by EFT or such other method of electronic payment that the office may accept in the future.

Guidelines

Note should be taken of the following guidelines regarding email correspondence – particularly with regard to last-minute filings of notices of opposition:

- Email correspondence should be addressed in the first instance to the office mail box (that is: patlib@patentsoffice.ie) and not to an individual.
- The sender should ensure that the subject line contains information regarding the nature of the email, for example, 'Notice of opposition…' The subject line should not be left blank. Any emails that contain a blank subject line will be delayed by the office's mail system. Properly completing the subject line will also facilitate the email being directed to the right section in the office.
- When sending attachments, please note that there is a 5MB maximum size limit on any email with attachments. Any email with a size greater that this will be delayed by the office's mail system. Please use file compression software (for example, WinZip), to reduce the size of the attachment.
- When paying fees by EFT, it is essential to include, in the payment instructions, brief details of what the payment is for and a payment reference number, which will allow the office to associate the payment with the correct case that has been submitted by email.

'Meet your Colleagues Week' in September

GUIDANCE AND ETHICS COMMITTEE

The wonderful weather during the summer cheered us all up! As we begin the new term, why not share some of the good mood with your colleagues by getting involved in a local 'Meet your Colleagues' event? This year, the Guidance and Ethics Committee is promoting a 'Meet your Colleagues Week' during the week beginning 15 September. The idea is to hold an event on any day that week. Some days might suit better than others, locally, and might give an opportunity of tying in with other activities in the area.

Brendan Dillon, chairman of the Guidance and Ethics Committee, suggests that the event be kept local: "Organise a group in your particular district or, if you are in the city, in the suburbs near you." He encourages solicitors to make the event as ambitious or as simple as people wish. "A few solicitors inviting a new colleague to join them could be perfect," he said.

Some groups might like to nominate a charity of their choice to benefit from the occasion. This would also encourage colleagues to support the event.

Finding your colleagues

Colleagues in your area can be located on the Law Society website at www.lawsociety.ie.

To make a search on the homepage:

- Select the 'find a firm' tab at the top of the page,
- Use only the second search box 'location' on the page that opens,
- Enter your exact criteria, for example, 'Dublin 14' or 'Drogheda'.

You will be presented with a list of the firms or other bodies in which solicitors are employed. It will then be an easy matter to get the names of individual solicitors.

Companies Bill 2012

BUSINESS LAW COMMITTEE

The *Companies Bill 2012* was published on 21 December 2012. The bill consolidates the existing *Companies Acts* and introduces a number of reforms. It consists of 25 parts and, according to the Minister for Jobs, Enterprise and Innovation, is the largest bill in the history of the State.

The Business Law Committee carried out an initial review of the bill to identify any anomalies in existing legislation that have simply been replicated in the bill. The committee accordingly made a submission to the Department of Jobs, Enterprise and Innovation in January 2013.

The committee has since analysed the provisions of the bill in further detail and made another submission to the department in June 2013. Copies of these submissions can be found on the Business Law Committee's webpage at www.lawsociety.ie. The committee will continue to monitor the progress of the bill through the Dáil and will keep the profession informed about developments.

The chairman of the committee delivered a presentation on the bill at the Law Society's annual conference. The committee also held a seminar in collaboration with the Law Society's Professional Training team on 17 May 2013, with the aim of demystifying the bill. Further training events will be held closer to enactment of the new legislation.

The committee will also prepare articles/practice notes for the *Gazette* at this stage, outlining the key aspects of the legislation.

FAMILY LAW: A DIFFERENT VIEW

The Department of Justice held a consultative seminar on reforming the system of justice for family law in early July, where the keynote speakers were the Minister for Justice and Judge Judith Ryan of Australia. Keith Walsh reports

Keith Walsh is a member of the Law Society's Family Law Committee and practises in Dublin

Minister for Justice Alan Shatter outlined his vision for a new structure for the family courts at a consultative seminar organised by the Department of Justice at Blackhall Place on 6 July 2013. Solicitors, barristers, court officials, court users and their representatives packed the Presidents' Hall to contribute to an informed and interactive discussion.

Reform of the family courts is overdue, a point emphasised by Minister Shatter when he quoted the Law Reform Commission's 1996 report: "The courts are buckling under the pressure of business. Long family law lists, delays, brief hearings, inadequate facilities and over-hasty settlements are too often the order of the day ... Judges dealing with family disputes do not always have the necessary experience or aptitude. There is no proper system of case management. Cases are heard behind closed doors, protecting the privacy of family members but offering little appreciation, criticism, or even realisation, of what is happening within the system. The courts lack adequate support services, in particular, the independent diagnostic services so important in resolving child-related issues."

Minister Shatter pointed out that the situation had not greatly improved since 1996.

Solicitor Muriel Walls called for delegates to be honest about the current system. While case progression and practice directions were a start to reforming the system, they did not go far enough. Radical change to the system was required, she said.

The voice of the child

Judge Michael White pointed out that, while specialist reports on child welfare could be ordered by judges in the Circuit and High Courts in private law proceedings, District Court judges had not yet been granted the power to order reports, except for public law proceedings where a supervision or care order was being contemplated. In Northern Ireland, Scotland, and England and Wales, judges could order reports during proceedings for any reason related to the welfare of the child.

As chair of the Family Law Development Committee of the board of the Courts Service, Judge White stressed the importance of creating awareness for court users of alternative dispute resolution mechanisms. ADR is not a panacea, however, as evidenced by the fact that sections 5 and 6 of the 1995 act and section 20 of the *Guardianship of Infants Act* (which deal with the provision of information and advice regarding ADR) are deemed not to be working in practice. Facilities were needed in the courts to be able to refer litigants to anger-management courses. Skilled people were required to deal with parenting issues and to monitor access.

> ***"One of the potential dangers of relying on the 'narrow perspectives' of specialist judges is the recent decision of the English Supreme Court (re: Prest v Petrodel Resources 2013 3 WLR), which was a good example of the family courts applying rules inconsistent with the principles of law in other areas"***

Gerry Durcan SC saw a lack of coherence in the reasons that govern which family law court has jurisdiction in certain cases. For example, child abduction must be dealt with by the High Court, while childcare cases involving the taking of children into the custody of the HSE are dealt with in the District Court. This division did not make sense, he argued.

He pointed out that practitioners who applied to the Circuit or High Courts in Dublin were likely to be heard by a judge who was familiar with family law matters, while the situation was very different outside the capital.

The Australian experience

Judge Judith Ryan of the Family Court of Australia was in favour of a model similar to that in place in Australia – namely a two-court approach, with a lower and a higher court (see 'From a land down under', June *Gazette*, p36). More complex cases are dealt with in the higher court, and less complex ones in the lower. A great deal of support is provided to family law courts by way of specialist mediators and counsellors. A large number of social workers are on the court staff, and expert evidence is readily available from family consultants.

Specialist judges are appointed to Australia's family law courts, which adopt a less adversarial approach and employ a specific case-management system. Judge Ryan viewed the input of the judge and family law consultants as important in progressing cases.

In order to avoid cases moving too much between the higher and lower courts, Judge Ryan suggested the need for clear legislation delineating the jurisdiction of each court – but it was important to ensure that a case that appeared

to be straightforward, but which subsequently became complex, could be moved to the higher court.

Minister's proposals

The Minister for Justice said that his objective was to establish "a dedicated and integrated family court structure that is properly resourced to meet the particular needs of people at a vulnerable time in their lives".

The new structure of the family courts would consist of a lower family court of limited jurisdiction, and a higher court of unlimited jurisdiction. Both courts would be staffed by specialist judges. The minister felt strongly that the "temperament and common sense of judges sitting in the new family court [would] be as crucial as their fund of legal knowledge".

He proposed making provision for a less adversarial approach by the lower court when dealing with guardianship, custody and access disputes, childcare and protection matters. The minister wondered whether there shouldn't be a greater emphasis on judge-led pre-trial conferencing, the training of family law judges in family mediation, and the use by judges of mediation skills to assist in the resolution of issues at judges' conferences.

The lower court would possess a similar jurisdiction to the current family District Court. It could also deal with matters on consent, where no dispute arose relating to the upbringing and best interests of children, where financial matters had been agreed in judicial separation or divorce proceeding, and where the only evidence required would be the formalities to ensure that court orders could be made.

The higher court would have all the jurisdiction of the current family Circuit and High Courts. Appeals from the lower court would be heard by the higher court, or possibly by the new Court of Appeal. The minister wished to ensure that the specialist ethos of the family courts would be maintained where cases were appealed from the higher court to the new Court of Appeal.

The new family courts are proposed to be located separately from current venues, with sufficient rooms for private consultations, and welfare and assessment services to support public and private law proceedings. Mediation facilities are also proposed to be located in the new family law courthouses.

"Realistically, without ancillary services being available to the courts, such as family law consultants to prepare reports, social workers, mediators and those skilled in ADR, reform will not easily flow."

Proposals not set in stone

The minister said that it was his fervent hope to hold a constitutional referendum in 2014 and to have the legislation in place to implement reforms by the end of 2014.

The final word goes to Muriel Walls, however: "We have had enough talk since 1996 – now we need action on reform." G

All the papers referred to in this article and delivered at the consultative seminar are available at www.justice.ie/en/JELR/Pages/WP13000281

SUPREME COURT DISMISSES ASSISTED SUICIDE APPEAL

On 29 April 2013, the Supreme Court dismissed the appeal in the case of *Marie Fleming v Ireland and the Attorney General*. Joyce Mortimer examines the judgment

Joyce Mortimer is the Law Society's human rights executive

On 29 April 2013, the Supreme Court dismissed the appeal in the case of *Marie Fleming v Ireland and the Attorney General*. The central question was whether the plaintiff, who was in the final stages of multiple sclerosis and physically incapable of ending her own life, had a right to assisted suicide.

The case was heard in the High Court in November 2012. The plaintiff claimed that the blanket ban on assisted suicide breached her constitutional rights and her rights under the *European Convention on Human Rights*. The plaintiff claimed that section 2(2) of the *Criminal Law (Suicide) Act 1993* was incompatible with the Constitution.

The High Court rejected her claim, finding that it was not possible to relax the ban on assisted suicide without profound consequences for the law in general and that, ultimately, the Oireachtas was justified in keeping an absolute ban in place. The plaintiff appealed to the Supreme Court.

Amicus curiae

Before the Supreme Court, the Irish Human Rights Commission (IHRC) made written and oral submissions in relation to the constitutional right to equality as it applies to individuals in the circumstances of the plaintiff, and also the right to autonomy and bodily integrity.

The IHRC commented: "The stark position highlighted on the facts of this case is that, under Irish law, suicide is not a crime, but assisted suicide is. This equates to a right to end one's own life without fear of criminal sanction in the case of an able-bodied person, but not in the case of a person who is so physically disabled as to be unable to complete the act of suicide without assistance."

In its submission, the IHRC explored the implications of the right to personal autonomy and dignity protected under article 40.3.2 of the Constitution, and the right to equality protected under article 40.1 of the Constitution, as they affect the right to life under article 40.3.2 – which is sought to be vindicated through the blanket criminalisation of assisted suicide contained in section 2(4) of the *Criminal Law (Suicide) Act 1993* – in circumstances where suicide itself is no longer criminalised.

> ***"The court stated that, while suicide had ceased to be a crime, 'the fact that it has so ceased does not establish a constitutional right'"***

Establishing a constitutional right

The Supreme Court considered the 'right to commit suicide', as put forward by Ms Fleming. The court stated that, while suicide had ceased to be a crime, "the fact that it has so ceased does not establish a constitutional right". The court stated further that any such right, as was argued by the appellant, would have to be found as part of another expressed right of an unenumerated right. The appellant, therefore, had to identify a right to commit suicide, a right to determine the time and method of death, and to have assistance with the exercise of that right, within the constitution.

In response, the appellant put emphasis on article 40.3.1, which provides: "The State guarantees in its law to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen."

Article 40.3.2 provides: "The State shall, in particular, by its law protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."

The court stated that the appellant had sought support for her case in the express right to life. The court stated, however, that the right to life does not import a right to die.

Commenting on the complexity of the case at hand and the difficult questions of policy, the court stated: "It does not … necessarily follow that the State has an obligation to use all of the means at its disposal to seek to prevent a person in a position such as that of the appellant from bringing her own life to an end."

The court held that the difficulty with this case was that it might be impossible to consider the position of the appellant without also considering the position of other similarly situated (but not necessarily identically situated) persons, whose right to life might also have to be taken into account.

Interestingly, the court left open the possibility of future legislation by the State to deal with cases such as that of the appellant, should the Oireachtas be satisfied that measures with appropriate safeguards could be introduced.

Right of autonomy

Mr Brian Murray SC, for the appellant, submitted that every person has the right of autonomy, including

a right of self-determination resulting in a right to determine the timing and means of one's own death.

The court held: "Thus, insofar as the Constitution, in the rights it guarantees, embodies the values of autonomy and dignity and more importantly the rights in which they find expression, do not extend to a right of assisted suicide."

The appellant sought to rely on article 40.1, in claiming that she was treated unequally in comparison with people who were able to commit suicide without assistance.

The court responded: "It is difficult to succeed in an equality challenge to a law which applies to everyone without distinction, and which is based on the fundamental equal value of each human life."

The appellant also sought to rely on the *European Convention on Human Rights* and claimed for a declaration of incompatability under section 5(1) of the *European Convention on Human Rights Act 2003*. The Supreme Court considered the case of *Pretty v United Kingdom* in its decision-making, but ultimately dismissed the appeal seeking a declaration of incompatability.

The Supreme Court concluded that there was no constitutional right to commit suicide nor to arrange for the determination of one's life at a time of one's choosing. The court commented that it was clear that the appellant was in a most tragic situation; however, the court had to find constitutional rights anchored in the Constitution. The court held that the appellant had made a factual-based argument, which is not a basis upon which a constitutional right may be identified. It stated: "It has not been the jurisprudence of the Constitution that rights be identified for a limited group of persons."

"The court stated that the appellant had sought support for her case in the express right to life. The court stated, however, that the right to life does not import a right to die"

It is accepted that the right to life is a paramount human right, requiring strong safeguards protecting any infringements on that right. It is open to debate, however, how long the existing absolute ban on assisted suicide under Irish law might continue, given that the Supreme Court appears to have left open the possibility of future legislation by the State to deal with cases such as that of the appellant. Unquestionably, the Oireachtas would require guarantees that measures, with appropriate safeguards, would be introduced that would be compatible with upholding the right-to-life protections contained within the Constitution – but that might well be a Pandora's Box that it is unwilling to open. G

STRANGER DANGER?

Over the past five years in Britain, there have been four separate insolvency and run-off issues with unrated insurers in the market. Conor Geraghty urges caution for smaller law firms who might be tempted

Conor Geraghty is professional indemnity specialist (Ireland) at Miller Insurance Services LLP

Although all solicitor practices in Ireland were successful in securing a professional indemnity policy for their firm at last renewal, there remains concern in relation to some qualified insurers in the market – and their long-term intentions.

It is important to check an insurer's rating when seeking PI insurance cover: a rating means that an insurance company has been through an independent process in which a rating agency has assessed its financial strength.

The Irish solicitors' PI market has come a long way in the last four years, with written premium for the market fluctuating dramatically:

- 2009/10 – €42 million,
- 2010/11 – €45 million (up 7%),
- 2011/12 – €33 million (down 36%),
- 2012/13 – €24 million (down 37%).

Other significant effects have been the market exit of more than five insurers (including the SMDF, the leading PI provider to the profession in 2009), the introduction of the special purpose fund in 2012, and claim payment figures for some long-standing insurers exceeding hundreds of millions of euro.

Now, in 2012/13, over 30% of firms in the country have opted to place their PI insurance cover with an unrated insurer.

The renewal season

The 2012/13 solicitors' renewal statistics indicate a competitive market, providing firms with significant choice and competitive premium terms. Overall, market premiums reduced by approximately 37% from net premium written (NPW) of €33 million in 2011 to €24 million in 2012. The number of qualified insurers increased from seven to nine. The NPW in 2010 was €45 million – a 50% drop from 2010 to 2012. We believe this to be unsustainable in the long term.

The main influence for these substantial drops in premium income has been the entry of unrated insurers to the market. In 2010, UK General entered the market for the first time, writing 8% of the premium share, with this percentage rising to 16% in 2011 and falling to 10% in 2012. Similarly, last year, Elite entered the Irish market, writing a 10% share of the premium but, more significantly, over 20% of the firms in the country. Elite now stand as the leading insurer for the Irish profession, covering over 400 firms.

With over 30% of the profession now placed with unrated insurer security, it is important to look at the potential dangers of insuring with an unrated qualified insurer compared with an insurer with a financial security rating.

> ***"Firms need to ask themselves: what is the price of peace of mind?"***

Financial security ratings

The two major rating agencies for insurers are Standard & Poor's and AM Best. Under the Law Society's 'minimum terms and conditions' or 'qualified insurers agreement' (QIA), insurers are required to be transparent about whether they are rated; however, the Society does not stipulate that insurers should meet a minimum level of financial stability: "No later than ten working days following the receipt of a fully completed proposal form … the insurer shall also provide the firm with details of any credit rating that it has from any credit rating agency at that time (or, in the absence of any such credit rating, a statement to that effect)."

The Law Society is responsible for making sure that any insurer wishing to provide PI cover to the profession in Ireland signs up to the minimum terms and conditions via the QIA. These terms *do not* require any qualified insurer to have a financial security rating – they simply are required to disclose whether they do or don't.

Having spoken to a number of firms, we have discovered that there is a general assumption within the profession that, should an 'approved' insurer become insolvent and, therefore, be in a position where it cannot honour claim payments, it is down to the Law Society to provide compensation. However, the Society has clearly stated in previous publications that "the Society is not responsible for policing the financial stability of any insurer. The Society does not vet, approve or regulate insurers".

In other words, a Law Society-approved qualified insurer is an insurer, regulated by the Central Bank of Ireland, who agrees to provide coverage in accordance with the 'minimum terms and conditions'. A direct address from Law Society President James McCourt last November also went on to highlight the function of the Insurance Compensation Fund (ICF) and its purpose of providing a fund from which certain liabilities of insolvent insurers could be met.

Limitations of the ICF

Should an insurer regulated to conduct business in Ireland become insolvent, Irish policyholders should

'I'm Spartacus. No, wait, Batman – I'm Batman'

"The Law Society has clearly stated in previous publications, however, that it is not responsible for policing the financial stability of any insurer. The Society does not vet, approve or regulate insurers"

be able to benefit from the ICF, should the need arise. However, this compensation vehicle is subject to certain limitations.

There are various restrictions placed on the payments that can be made out of the fund. It is important to bear these in mind when considering the protections that may be afforded to your firm and clients in the event of an insolvency of a qualified insurer. Examples of such restrictions include:

- A cap per claim on the amount of any payment, which must not exceed 65% of the amount due under the policy or €825,000, whichever is the lesser,
- No compensation where a client is a body corporate.

Potential implications for the profession

It is estimated that over 30% of the profession in Ireland is covered by an unrated insurer. On average, unrated insurer premium levels are estimated to be nearly 50% cheaper than the average premium offered by the rated insurers.

This statistic is very worrying when you consider the claims that insurers have had to pay over the past five years. The premium levels are unsustainable. Hopefully, what's happening in the British market now won't be visited on the Irish market.

The existing premium levels and the rate at which they are reducing annually are proving to be a significant barrier to entry of the market for potential new rated insurers.

The Law Society is in a difficult position, as competition law prevents it from discouraging firms to purchase cover with unrated insurers. The Central Bank regulations allow EU-regulated entities to trade in Ireland through the 'passport system' – whether they have a financial security rating or not.

It is up to the brokers and, more importantly, the firms in question to ensure that they are fully aware of what kind of insurer they are placing their firm's PII with. If an unrated insurer quotation is on offer compared with a rated insurer quotation, consideration must be given to what guarantees the firm has that their insurer will be in a position to pay claims, should they arise. Firms need to ask themselves: what is the price of peace of mind?

Comparisons with Britain

What's happening in the British market should be seriously looked at by Irish firms insured with an unrated insurer. Albeit a much bigger market, with an estimated net premium written of Stg£239 million, there are parallels and warnings that can be drawn from Britain when reviewing the Irish market.

It is estimated that 30% of Britain's PI market is placed with unrated insurers. Ominously, in April 2013, the Solicitors' Regulation Authority there wrote to all Balva Insurance Company policyholders, warning them that Latvia's Financial and Capital Market Commission had placed a restriction on their passport that prevented them from writing new business in Britain. This was followed by news in June 2013 that the Latvian commission had withdrawn all operating licences of Balva, effectively putting the insurer into run-off.

Balva currently holds a 7% share of solicitors' market premium in Britain, or over 1,300 firms. Depending on how matters develop, firms could potentially be left with no resort but to replace their policies mid-term before renewal or, alternatively, drop in to the assigned risk pool in Britain.

Over the past five years in Britain, there have been four separate insolvency and run-off issues with unrated insurers in the market – Quinn, Lemma, ERIC and now, more recently, Balva. It is only a matter of time before evidence of similar issues begins to appear in the Irish market.

To avoid a repeat of the chaos of the 2010/11 renewal season, firms should look to partner with an insurer and broker they see as a long-term player in the market – not those around to make a quick profit from the profession. Continuity is key, and a firm should be well informed when making the decision as to who their insurer will be. G

'ANACHRONISTIC' SEANAD SHOULD BE ABOLISHED

Martin Lawlor is managing partner in Coghlan Kelly Solicitors, New Ross and Wexford

In response to a viewpoint piece on the future of the Seanad that was published in the July issue, Martin Lawlor argues that the Seanad has no place in a modern Ireland

Over the last number of months, a number of commentators and current and former members of the Seanad have come out in opposition to the proposal to abolish the Seanad. Their argument is that the Seanad should be reformed – not abolished. Some propose to extend the electorate to the various panels. Some want an expansion of its role to provide oversight of EU legislation – a function the Oireachtas already has, pursuant to the *Lisbon Treaty*. Nobody has asked or answered the fundamental question as to why we need Seanad Eireann or any upper house in the first place.

Our current Seanad is based on the 40-member senate proposed in the 1912 *Home Rule Bill* by the then government, and which was never enacted. It is a British proposal from a different era.

The first Seanad in 1922 was constructed so as to ensure "representation for groups and parties not then adequately represented in Dáil Éireann". This had the practical effect that almost half of the membership of the first Seanad was not Roman Catholic, and many belonged to what was called the 'ex-Unionist' community. The framers of the Free State constitution envisaged a situation where the Unionist majority in the North would ultimately be comfortable with the notion of having a say in a bicameral institution, such as a Seanad clearly designed to represent the interests of a homogenous group likely to find itself in a minority in a new Ireland.

However, no such considerations apply today. There are no minorities who do not have a voice, and the people's representatives in the person of TDs reflect the composition of Irish society.

Checks and balances

One of the arguments being advanced against the abolition of the Seanad is the doctrine of 'checks and balances'. However, our Seanad, because of its constitutional lack of power, really has no checks-and-balances role. It was not envisaged that it would have such a role.

In relation to the power of amendment, there is doubt as to what the Seanad could do if the Dáil rejected an amendment. This happened in connection with the *Intoxicating Liquor Bill 1942*, where the Dáil amended a Seanad amendment and, thereafter, the Seanad disagreed with the Dáil amendment. The political solution arrived at was that the Seanad does not insist on its disagreement. In other words, the Seanad accepted the Dáil's pre-eminent constitutional position. Hardly an example of the form of checks and balances that those calling for reform say are possible with a reformed Seanad.

Over half of our legislation now comes via European treaties. That legislation is promulgated by the European Commission, must be passed by the Council of Ministers, where states have their say, and finally passed by the European Parliament, where the citizens of Europe have their say through their representatives. Such legislation is also subject to scrutiny by the Dáil.

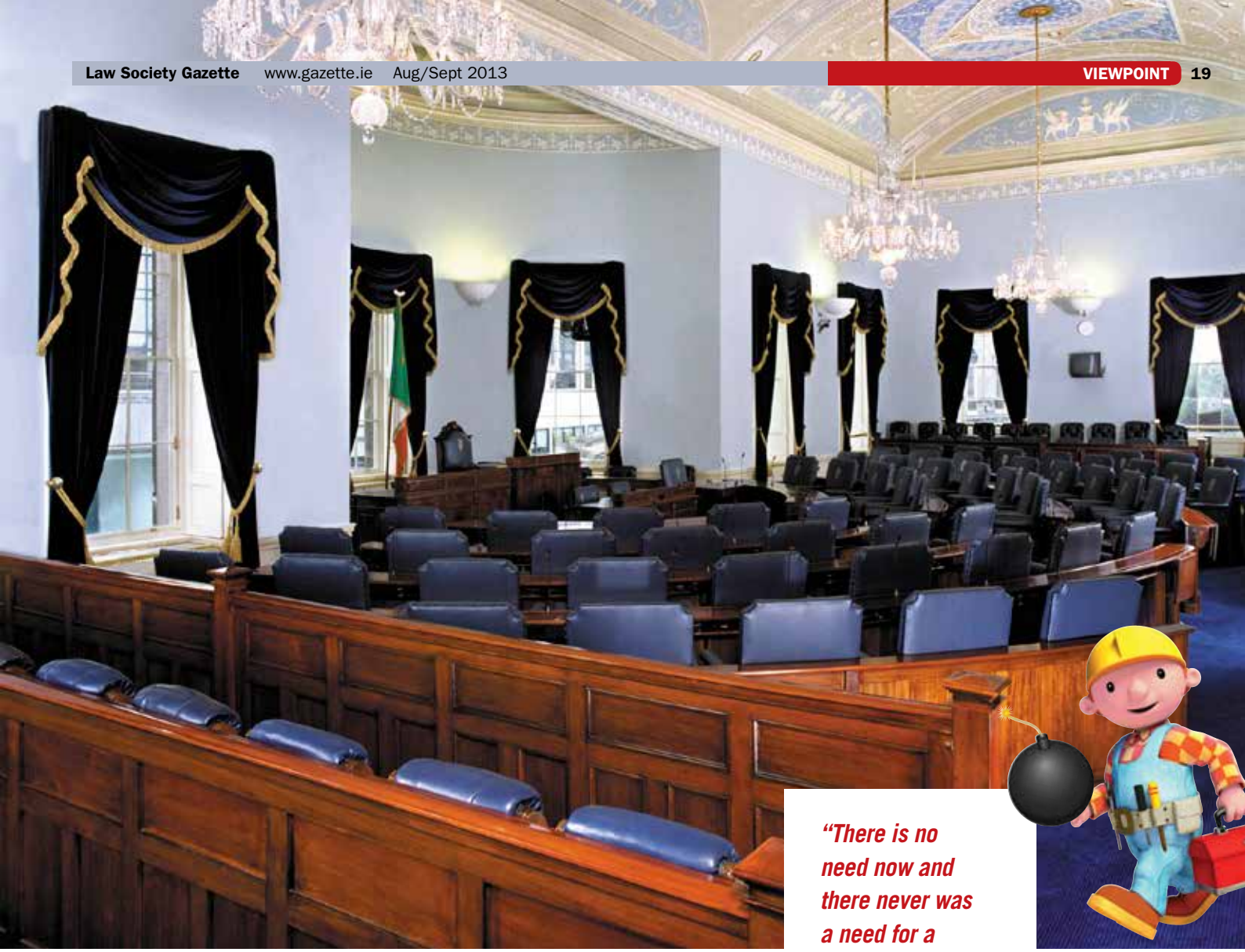
It is sometimes argued that we should retain the Seanad because the standard of debate in the upper house is far greater than that of the Dáil. However, we have long since moved from the era of great debates and wondrous oratory. We now live in the era of Facebook, Twitter, email, text messaging, television, radio and live streaming on the internet. Rarely do law makers have cause to pause for an erudite contribution.

> *"There are no minorities who do not have a voice, and the people's representatives in the person of TDs reflect the composition of Irish society"*

The fact of the matter is that most decisions in Ireland are made by the government of the day, which is elected by the Dáil and answerable only to the Dáil (article 28.4(i)). The Dáil itself is subject to a government-whipped majority. The Seanad is also subject to a government-whipped majority, as the Taoiseach of the day nominates 11 members of the Seanad to guarantee a majority in the Seanad. That will not change with any reform proposal.

It might be better for us to concentrate our efforts on reforming the whip system in the Dáil, where real power lies, rather than seeking to reform an advisory body such as the Seanad.

The current proposal, if passed, will result in a unicameral chamber. These exist where there is no widely perceived need for bicameralism, for example, federations or special minorities to be represented. Unicameralism is a feature of countries with a population of less than ten million and a small geographical area, for example, Iceland,



"There is no need now and there never was a need for a constitutionally toothless second mini-Dáil in this country"

Denmark, Scotland and New Zealand. No case has been made by any of the reformers as to why, in Ireland, we peculiarly need bicameralism. We do not have any significant minority whose interests could be trampled on by the majority. We do not have a range of social classes, ethnic or regional interests or the sub-units of a federation. All of the Scandinavian countries – Norway, Sweden, Finland, Denmark – have become unicameral from the 1970s onwards. The world has not collapsed and democracy has not been trampled upon in these countries.

Straw man

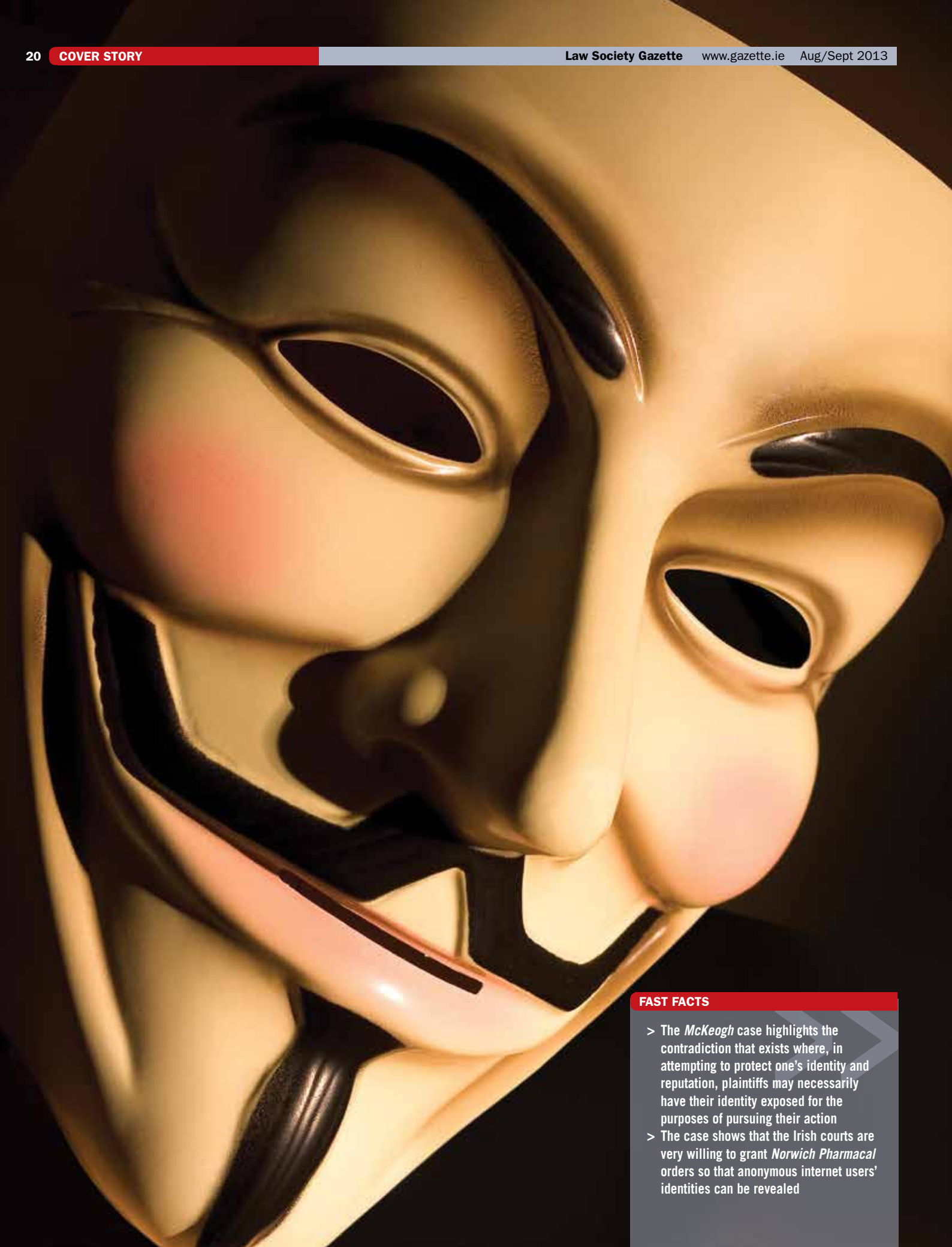
The current abolition proposal has been fancifully described as a grab for absolute power by the executive. The Seanad clearly has, at best, an advisory role, so the Government could have 'grabbed power' long ago. A Seanad with no real mandate from the electorate, and a limited constitutional role, is not going to prevent a mythical grab for power. The electorate, of course, ultimately decides who stays and who goes.

Our Supreme Court, the European Parliament and the Council of Ministers would, and could, prevent such a grab for power. Most importantly, the Dáil, and the electorate to whom the Government is answerable, would prevent it – but not the Seanad, reformed or otherwise, as it simply does not have that role or power.

Some reform proposals suggest that the existing electorate for the five vocational panels be expanded from its current base of councillors to a wider electorate. This would be complicated and difficult to manage in practice. For example, it presumably means that teachers would get to vote on the Educational Panel – but is that registered current teachers and would they have to be Irish citizens? What about third-level students? Would they be entitled to a vote on the Educational Panel, and how does one define 'third level'? These suggestions are totally impractical.

Some reform proposals envisage scrutiny by the Seanad of European legislation – something the Oireachtas does anyway. Are those reformers suggesting that this should rest solely with the Seanad and that the people's representatives in the Dáil should have no role or say? That would not be acceptable. What is wrong with the current scrutiny and where is the evidence that it is inadequate?

There is no need now and there never was a need for a constitutionally toothless second mini-Dáil in this country. We never needed – and no case has been made for – bicameralism. Other countries of our size have survived and prospered without a second chamber. There is no need for further checks and balances, other than those that we currently have in the form of our Constitution, the Supreme Court, judicial review, the Dáil and a free press. It is time to pass on from this anachronistic creation of our colonial past and look to reforms where there is real power – namely our Dáil. G



FAST FACTS

- The *McKeogh* case highlights the contradiction that exists where, in attempting to protect one's identity and reputation, plaintiffs may necessarily have their identity exposed for the purposes of pursuing their action
- The case shows that the Irish courts are very willing to grant *Norwich Pharmacal* orders so that anonymous internet users' identities can be revealed

THE faceless FEW

The *McKeogh* case presents an opportunity to examine how court rules have coped with developments in defamation and privacy law in the internet realm. Can maintaining anonymity ever trump the freedom to report? asks Eva Nagle

Eva Nagle is a practising barrister and lecturer

Social networking websites have become far more potent than merely being a means of posting photos of your holiday online. They can be used to create a buzz around a new business, to organise a protest, or to assist in some amateur detective work – which was at the centre of the Irish 'internet privacy" case of *McKeogh v John Doe 1 (User Name Daithii4u) and others*.

It is axiomatic that these uses of social networks such as Twitter, Facebook and YouTube have serious implications for privacy and defamation law in the online world. Some of the contemporary challenges to privacy law that are posed by such websites are encapsulated in the case of *McKeogh*.

> *"It is axiomatic that these uses of social networks have serious implications for privacy and defamation law in the online world"*

In his decision on the plaintiff's application to restrain media reporting of the case, Mr Justice Peart commented that *McKeogh* had caused a phalanx of "at least a dozen lawyers" to engage in "a lengthy (and costly!) debate on weighty issues such as the right to privacy, the right to freedom of the press to fairly and accurately report court proceedings, and the right to an effective remedy".

The case highlights the contradiction that exists in these cases where, in attempting to protect one's identity and reputation, plaintiffs may necessarily have their identity exposed for the purposes of pursuing their court action to a greater level than had they decided not to pursue the action in the first place. Thus, *McKeogh* presents an opportunity to examine whether and how well court rules relating to identification in court sit with developments in privacy and defamation law in the internet realm, and to examine whether there is ever an instance where maintaining anonymity may trump freedom of the press to report these cases.

Give it back

McKeogh concerned an action for defamation and breach of privacy. It arose from a case of mistaken identification of the plaintiff by an anonymous YouTube user with the pseudonym 'Daithi4U'. The user wrongly identified the plaintiff as the person in a video posted to YouTube that depicted a young man evading paying a taxi fare in Dublin in November 2011. Having brought an application on 11 January 2012 for *Norwich Pharmacal* orders compelling the revelation of the identities of those who had wrongfully identified and defamed the plaintiff on YouTube, he then made a separate, follow-up application (heard on 22 January) to the High Court to prevent newspaper coverage of his case, as he believed this would perpetuate the defamation.

The truth, the troll truth, and nothing but the truth

This follow-up application was directed against parties described in the proceedings as third parties, namely newspapers that had reported on the court proceedings, but which were not named defendants in the original proceedings that McKeogh had initiated. They were not served with the order of 11 January.

Insofar as the orders made by Mr Justice Peart were binding on "any third party having notice of the making of the orders", it was argued, on behalf of McKeogh, that the newspapers that had reported on proceedings were such "third parties" who had notice of the making of the orders. It was argued that, in naming McKeogh in their reporting of the proceedings, the newspapers had breached the terms of the court orders and had helped to exacerbate the defamation of the plaintiff.

It should be noted that McKeogh had not made a specific application to the court on the earlier date for his identity not to be disclosed in reporting of the case. On this point, Mr Justice Peart commented that "there is something counter-intuitive about the idea that a person who seeks reliefs from the court aimed at vindicating his good name, by way of damages or otherwise, would seek to do so anonymously".

Weight of the stone

Mr Justice Peart had to weigh the two sides of the argument that were put forward on behalf of McKeogh and on behalf of the newspapers. Essentially, it was argued on behalf of McKeogh that, while the newspapers are absolutely entitled to report on court proceedings in the public interest in a fair and accurate manner, the identity of the plaintiff himself was not a matter of public interest or concern. He was a private citizen and was entitled to privacy under Ireland's constitutional guarantees.

On behalf of the newspapers, it was argued that they were never intended as the subject of the restrictive injunctive orders, rather it was internet users and/or service providers who had published or facilitated the publication of the defamatory material that were bound by such orders. Furthermore, the newspapers were entitled to report on the proceedings in a fair and accurate manner as this was in the public interest, and they were under no obligation to exercise their discretion not to name the plaintiff in their reporting as he had been named in the proceedings in the first place and justice must be heard in public.

It don't pay

These arguments reveal the plaintiff's predicament in the case. As Mr Justice Peart stated, it is impossible to 'unring' the bell once it has sounded; that is, the plaintiff had to know that, in taking these proceedings against internet users to vindicate his good name, this would lead to him being identified publicly and becoming more widely known than if he had chosen not to do anything about trying to protect his good name. His case was not so exceptional that the court would be compelled to exercise its inherent jurisdiction to order that the plaintiff's identity be protected. As a result, Mr Justice Peart refused the reliefs sought by the plaintiff.

Supply on demand

The internet allows for users to interact and communicate anonymously or through the use of a pseudonym. There are good and bad aspects to this anonymity. As Daly sums it up, "communicating under a pseudonym or anonymously allows individuals to explore their creative side … employees to 'blow the whistle' on harmful corporate practices without the fear of retaliation … and consumers to search for information on sensitive topics. On the other hand, anonymity can encourage wrongdoing and, in particular, create a perception that the user cannot be held accountable for his/her actions or words. It can also be used to mask illegal behaviour".

In the *McKeogh* judgment, Mr Justice Peart commented that, when the Oireachtas enacted the *Defamation Act* in 2009, it did not confer discretion on the courts to hear such proceedings other than in public and it "clearly could have done so". Could a decision such as *McKeogh* act as a disincentive to other potential litigants who might choose not to pursue a case in order to vindicate their rights because, in doing so, they know they would be promptly exposed to the media glare, and this might do more harm than good – or at least might 'dull' the protection of their good name in the first place?

> ***"Could a decision such as McKeogh act as a disincentive to other potential litigants who might choose not to pursue a case in order to vindicate their rights because, in doing so, they know they will be promptly exposed to the media glare?"***

It must be noted that the situation may have been different if McKeogh had been a child. Section 45(1)(c) of the *Courts (Supplemental Provisions) Act 1961* provides that justice may be administered otherwise than in public in, among other things, lunacy and minor matters.

The plaintiff may have been successful in his application had he been able to rely on this provision and had he been able to refer to the decision of Abella J in the recent Canadian cyberbullying case *AB v Bragg Communications Inc*. In this case, Abella J acknowledged that, in Canada, "the critical importance of the open court principle and a free press has been tenaciously embedded in the jurisprudence". However, she also cited *Attorney General of Nova Scotia v MacIntyre*, wherein it was acknowledged that "there are cases in which the protection of social

values must prevail over openness". Here, the freedom of the press was outweighed by the need to protect the privacy of the appellant-victim of cyberbullying.

In her reasoning, Abella J emphasised the "objectively discernable harm" that is caused to cyberbullied children rather than the specific harm to an individual child and that there was an overall public interest in combating this level of cyberbullying in society. She stated that "we must consider the resulting inevitable harm to children – and the administration of justice – if they decline to take steps to protect themselves because of the risk of further harm from public disclosure".

In his blog, *Cearta*, Eoin O'Dell comments that it is "not implausible that an adult victim of cyberbullying might also seek to establish that the objectively discernable harms of cyberbullying identified by Abella J apply just as much to adults as to children". Whether or not an 'objective discernable harm'-style test, as espoused in *AB* would sit easily within Irish privacy and defamation law is up for debate. In *AB*, the court was following an earlier decision, *Warman v Wilkins-Fournier*, wherein the court set out four considerations, aimed at respecting the privacy of internet users, that should be considered by courts in deciding whether to order disclosure of the identities of alleged wrongdoers in the internet context:

- Whether the unknown alleged wrongdoer could have a reasonable expectation of anonymity in the particular circumstances,
- Whether the plaintiff has established a *prima facie* case against the unknown alleged wrongdoer and is acting in good faith,
- Whether the plaintiff has taken reasonable steps to identify the anonymous party and has been unable to do so, and
- Whether the public interest favouring disclosure outweighs the legitimate interests of freedom of expression and the right to privacy of the persons sought to be identified if the disclosure is ordered.

Electric river pools

While the court in *McKeogh* showed itself to be willing to pierce the veil of anonymity through the granting of a *Norwich Pharmacal* order, it would be interesting to see if Irish jurisprudence might benefit from the introduction of guiding principles, such as those set down in *Warman* in these types of internet defamation/privacy cases.

The conflict between online anonymity and the equally privacy-related question of accountability for defamation and breaches of privacy that are perpetrated online is evolving. *McKeogh* presents an apt case study of questions of court procedure and the right to an effective remedy that are at play in this area of the law. The case shows that the Irish courts are very willing to grant *Norwich Pharmacal* orders so that anonymous users' identities can be revealed. Perhaps the courts could look to the 'objectively discernable harm' guide as developed in the Canadian courts in recent times as well. Wrongdoing that is perpetrated online must be pursued without chilling the legitimate and socially valuable communications that social media promotes and celebrates. G

LOOK IT UP

Cases:

- *AB v Bragg Communications Inc* (Supreme Court of Canada, 27 September 2012), 2012 SCC 46
- *Applause Store Productions Ltd v Raphael* [2008] EWHC 1781 (QB); [2008] Info TLR 318 (QBD) (England)
- *Attorney General of Nova Scotia v MacIntyre* [1982] 1 SCR 175
- *B Doe and R Doe v Commissioners of Inland Revenue* [2008] 3 IR 328
- *Bryce v Barber* (English High Court, unreported 26 July 2010)
- *Cairns v Modi* [2010] EWHC 2859 (QB) (QBD) (England)
- *McKeogh v John Doe 1 (User Name Daithii4u) and others* [2012] IEHC 95
- *Re Ansbacher (Cayman) Limited* [2002] 2 IR 517, [2002] IEHC 27
- *Roe v the Blood Transfusion Service Board, the Minister for Health, the National Drugs Advisory Board, Ireland and the Attorney General* [1996] 3 IR 67
- *Totalise plc v Motley Fool Ltd* [2001] E.H.L.R. 20
- *Warman v Wilkins-Fournier* [2010] OJ no1846

Literature:

- Daly, Maureen (2013), 'Is there an entitlement to anonymity? A European and international analysis', *European Intellectual Property Review* (vol 35, p198)
- O'Dell, Eoin (2012) 'Fighting anonymity with anonymity: open justice and cyberbullying', www.cearta.ie
- Sullivan, Eugene R (2002), 'In search of John Doe: piercing the veil of anonymity on the internet', *Entertainment Law Review* (vol 13, no 1)

Book by its COVER?

Alistair Payne is a partner and head of the intellectual property group at Matheson in Dublin

Amy Lawless is a solicitor at Matheson

Does the proposal to introduce plain packaging for cigarette boxes set a precedent for the restriction of rights pertaining to validly registered intellectual property? Alistair Payne and Amy Lawless unwrap the goods

The Cabinet recently endorsed Health Minister James Reilly's proposal to introduce legislation that will severely restrict the use of brands on cigarette packaging. The issue at stake is whether a government should be entitled to restrict rights pertaining to validly registered intellectual property rights, such that those rights cease to function as intended or to be enforceable, and risk being lost altogether.

Although the plain packaging proposals arise in the context of the tobacco industry, brand owners and the trademark community are extremely concerned about the precedential value of this legislation for other industries. If this proceeds, will it mean that the way is open for a similar approach in, for example, the fast-food or alcohol sectors?

This is the first time that legislation having such a draconian effect has been promulgated in Ireland, and it is an issue that, in its broader context, is deserving of proper public debate.

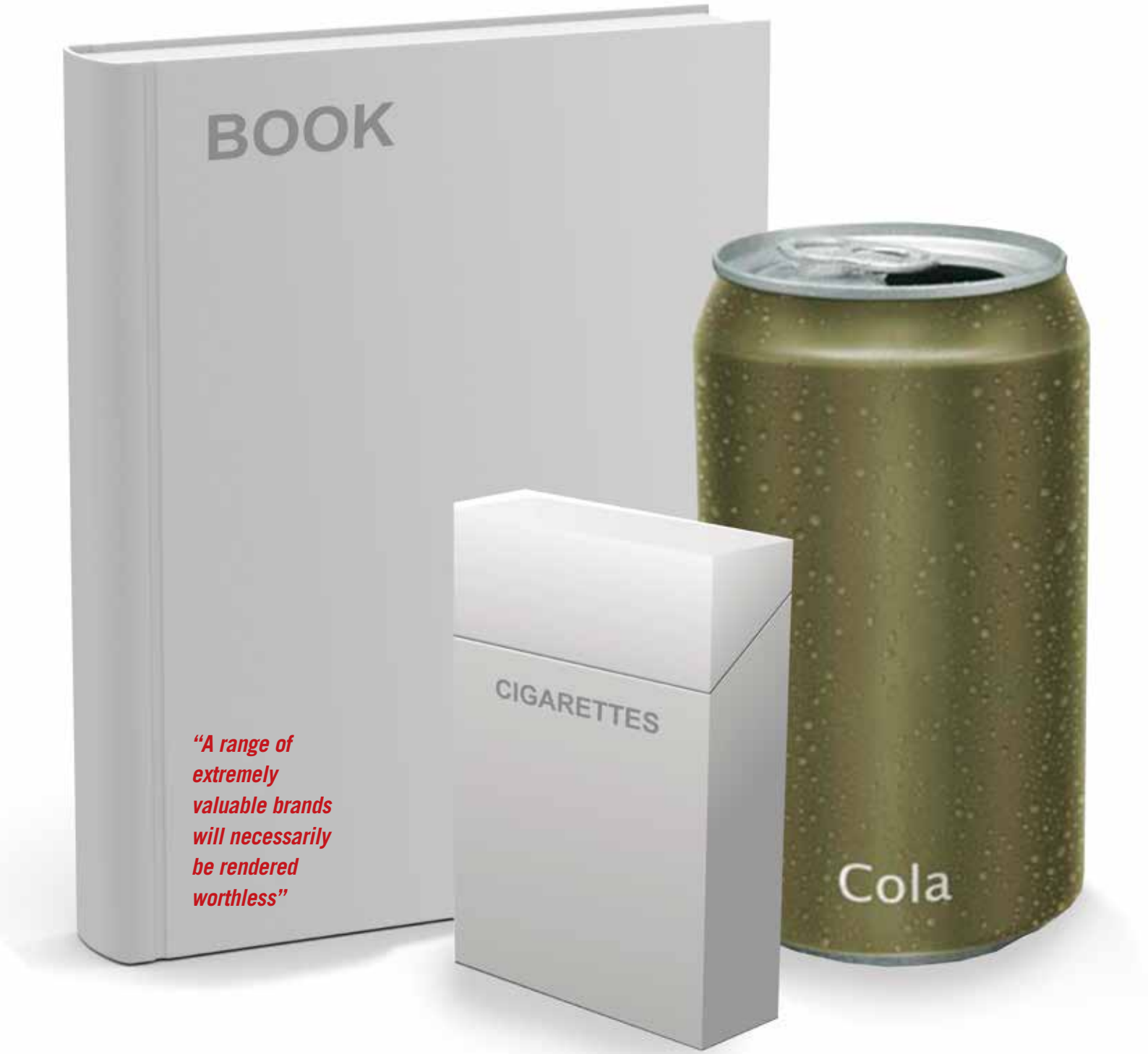
A 'plain packaging' bill would require that cigarettes are sold in standardised packs without featuring any stylised trademarks, logos or colours. Nearly all the packaging would comprise standardised pictorial health warnings and messages, and the only trademarks remaining on the packaging would be the brand owner's house and product marks in very reduced plain font. This means that very well-known logo marks or device marks that are currently used on the product packaging will cease to be used in this way in the future. The aim of such legislation is to standardise the appearance of all cigarette packs, which, according to its proponents, will reduce the uptake of smoking.

> ***"The basic principle is that trademark owners must either 'use it or lose it'. If marks are not used, then they ultimately cease to be distinctive of the trademark owner's products"***

To date, Australia is the only country that has adopted plain packaging, and the Irish proposals follow hot on the heels of that legislation. Britain and New Zealand have recently opted to put similar proposals on hold for the time being, pending the availability of conclusive evidence to support plain packaging and the outcome of ongoing trade disputes concerning Australia, arising from its implementation of plain packaging. The Irish Government held a very short public consultation period over the Christmas holiday period in the context of the *Tobacco Products Directive* but, to date, there has been no proper consultation – and the potential consequences for trademark owners have so far received relatively little media attention.

A threat to trademarks?

The principal function of a trademark is to guarantee the origin of a product by enabling consumers to distinguish the trademark owner's product from all others. If a trademark ceases to be distinctive of the trademark owner's products, then it ceases to fulfil this or other functions, such as guaranteeing product quality. The proposed plain packaging provisions prevent a trademark owner from using any trademarks on packaging, with the exception of bare house



"A range of extremely valuable brands will necessarily be rendered worthless"

and product word marks. This means that other word, logo or pictorial marks may not be used and, over time, they will cease to be distinctive for consumers in relation to the trademark owner's products and, ultimately, will cease to function as trademarks.

The basic principle is that trademark owners must either 'use it or lose it'. If marks are not used, then they ultimately cease to be distinctive of the trademark owner's products. In order to ensure that unused marks are not left to clutter up the register, there are provisions in the *Trade Marks Act 1996* to enable their removal altogether. Provisions in the act (section 51(1)a) and in the *TRIPS Agreement* (article 19) provide that trademarks may not be cancelled without valid reasons. However, these are unlikely to assist trademark owners, as they do not extend to the extraordinary situation where the use of the registered mark itself is unlawful.

The consequence of the plain packaging proposals is therefore that trademark owners will finally lose their registered rights and neither will they be able to rely on being able to protect the goodwill attaching to these marks, as this will dissipate through non-use. Overall, the effect of the proposals is broadly similar to the statutory appropriation of

FAST FACTS

- **A 'plain packaging' bill will require that cigarettes are sold in standardised packs without featuring any stylised trademarks, logos or colours**
- **This is a seismic shift in trademark law that flies in the face of international treaty obligations under the *Paris Convention* and the *Agreement on Trade Related Aspects of IP Rights***
- **The trademark issue has been taken up in affected countries by international organisations**

DATE FOR YOUR DIARY

Law Society of Ireland

Law Society Annual Conference

25th/26th April 2014

Dromoland Castle, Co Clare

private land by the State – but, under the plain packaging proposals, there is no provision proposed for the payment of compensation to affected trademark owners. As a result, a range of extremely valuable brands will necessarily be rendered worthless.

This is a seismic shift in trademark law that flies in the face of international treaty obligations under the *Paris Convention* and the *TRIPS Agreement*, quite apart from the fact that, with the exception of Australia, there is no precedent for such a deprivation of private property rights in modern Western democracies.

Article 7 of the *Paris Convention* and article 15(4) of the *TRIPS Agreement* provide that registration should not be based on the nature of goods. Article 19 of *TRIPS* provides that a registration may be cancelled for non-use unless there exist valid reasons. However, article 19 does not address cases where the use of the mark on lawful goods is prohibited. Article 20 of *TRIPS* states that "the use of a trademark shall not be unjustifiably encumbered by special requirements".

Accordingly, the trademark issue has been taken up in affected countries by international organisations such as INTA (International Trademark Association), MARQUES (European brand-owners' association) and AIPPI (Association Internationale Pour La Propriété Intellectuelle), who are similarly likely to weigh into the debate in Ireland.

Plain packaging in Australia

The equivalent plain packaging proposals in Australia were recently challenged by a group of tobacco companies, who argued that they were entitled to compensation for the deprivation of their trademark rights. Section 51(xxxi) of the Australian Constitution prohibits the acquisition of property by the government without just terms. The majority of the Australian High Court found that plain packaging constitutes a "deprivation" of property, but held that, as the state did not receive any proprietary benefit from the deprivation, the measures did not constitute an acquisition of property under the particular wording of the Australian constitution.

As a consequence, the *Tobacco Plain Packaging Act* came into force in Australia on 1 December 2012. However, it is being challenged before the World Trade Organisation on the grounds that it violates the *TRIPS Agreement*, and also in private investment treaty arbitration on the basis that it constitutes an expropriation of valuable intellectual property rights. The outcome of these challenges will undoubtedly influence the implementation of plain packaging legislation in other jurisdictions.

However, the constitutional position in Ireland is quite different from that in Australia. There is no equivalent requirement under the Irish Constitution or relevant EU law requiring the State to receive a proprietary benefit before compensation is payable.

The Irish Constitution obliges the State to protect property rights. The *Charter of Fundamental Rights of the EU* and the treaties provide similar broad protection to property rights. If an Irish court were to find a deprivation of property rights, as found by the Australian High Court, then there could be a very different outcome.

Compensation for deprivation of property is expressly provided for in article 17(1) of the charter, and the Supreme Court has held that compensation should be awarded in circumstances where the exercise of property rights is restricted. In the case of *Re Article 26 and Part V of the Planning and Development Bill 1999*, the Supreme Court held that "a person who is compulsorily deprived of his or her property in the interests of the common good should normally be fully compensated". Compensation payments for deprivation of intellectual property rights in relation to these very valuable trademarks could be extremely substantial and a huge drain on the public purse at a time when the Irish taxpayer can least afford it. This is all quite apart from any consideration as to whether the restriction on property rights in the proposed plain packaging bill satisfies the proportionality test under the Irish Constitution (article 43.2.2).

> **"The Irish Constitution obliges the State to protect property rights. The Charter of Fundamental Rights of the EU and the treaties provide similar broad protection to property rights"**

Tip of the iceberg?

There is a real concern that the current proposals are just the tip of the iceberg. Could the plain packaging concept be used to restrict and control the sale of other products that, although legal, have fallen out of favour? Trademark owners are very concerned that, eventually, a similar approach might be taken in relation to other products, such as foods or alcohol, with a consequentially dramatic effect on the value of brands and on the ability of brand owners to distinguish their products.

In addition to the technical trademark, international treaty, and deprivation of property issues, there is a fundamental issue of free commercial speech. Should the State be entitled to effectively censure any products that we consume by so severely restricting the manner in which they are packaged or marketed that it becomes difficult for brand owners to communicate attributes and to differentiate their products properly, and for consumers to distinguish between competing alternatives?

Both the Irish Constitution and the *European Convention on Human Rights* guarantee the right to freedom of expression, which extends to commercial speech. To the extent that plain packaging legislation unduly restricts these rights in relation to products that may otherwise be sold legally, there is a strong likelihood that it will be held to be unconstitutional or in breach of the ECHR.

As a society, the bigger policy question must be the extent to which we are prepared to permit the State to restrict the manner and extent in which legally available consumer products – which are not subject to special regulatory regimes (such as pharmaceutical products are) – should be marketed commercially? Implicit in this question is the right to register and use trademarks as product identifiers and communicators and to be able to rely on the investment value of those brands.

While manufacturers must take responsibility for communicating appropriate information and health warnings, should the State be able to restrict fundamental rights of communication and property ownership so severely that they respectively cease to have any meaning or value? Maintaining an appropriate balance is the essential function of a constitution and of international convention obligations. In the case of plain packaging, there is every reason to believe that the Irish Government will have a steep uphill battle on its hands. G

Authors' note: while this article is based on research conducted for Philip Morris International, the opinions expressed are our own.

LOOK IT UP

Cases:

- *British American Tobacco Australasia Limited & Ors v Commonwealth of Australia* [2012] HCA 30
- *Re Article 26 and Part V of the Planning and Development Bill 1999* [2000] 2 IR 321

Legislation:

- *Agreement on Trade Related Aspects of IP Rights*
- *Charter of Fundamental Rights of the European Union*
- *Constitution of Ireland*
- *European Convention on Human Rights*
- *Paris Convention*
- *Trade Marks Act 1996*

Jailhouse ROCK

In June, a man was awarded €150,000 for injuries sustained while he was an inmate in prison. Emma Keane examines the first Irish case in which a court has held that the State can be liable for injuries caused by one inmate to another

Emma Keane is a barrister practising mainly in Dublin

In *Creighton v Ireland and Others*, Peter Creighton sued the State and Wheatfield Prison over an incident in 2003 in which he was slashed in the face and body in an unprovoked attack by a fellow inmate. Mr Creighton gave evidence about the attack by his fellow prisoner, who cut and slit his face from his nose and behind his ear into the scalp, then cut his stomach. He claimed the State and the prison failed to take reasonable precautions for his safety and to ensure he was not exposed to risk of injury. He also claimed the system for bringing prisoners from the cells to receive methadone was dangerous. The defendants denied the claims.

The case came before the High Court in 2009, when Mr Creighton was awarded €40,000 by Mr Justice White, who found that there had been a failure on the part of the prison authorities in their duty of care, particularly in the light of two attacks in the previous six months. The defendants appealed the High Court decision and, in 2010, the Supreme Court ruled that the case should be reheard, on the basis, among other matters, that the first trial judge failed to resolve certain conflicts of fact, thereby not considering the case on its merits.

Failed duty

On 14 June 2013, following a re-hearing before Mr Justice O'Neill, Mr Creighton was awarded €100,000 for the injuries to his face and €50,000 for the injuries to his body. The assault was described by the judge as "extraordinarily vicious". The judge ruled that the authorities failed in their duty by allowing more than 15 prisoners to congregate in an area for receipt of methadone. He found that allowing such numbers facilitated the assault, which would not have occurred if the numbers had been kept to four or less.

"Creighton was also the first case in Ireland in which evidence was given by a prisons expert"

The judge stated: "When there are systems or practices in place which have obvious deficiencies and, at the same time, clearly foreseeable risks to the safety of prisoners, and when the evidence establishes that these systems or practices are readily remediable, it behoves the courts to intervene. In my view, the practice of congregating large number of prisoners in Space B for the purpose of waiting for their methadone is such a practice and, in my view, the adherence to it breached the defendants' duty of care to the plaintiff."

Mr Justice O'Neill also found that the defendants breached their duty by failing to erect netting around the perimeter yard of the prison, preventing items being thrown in from the outside. The judge said that, in all

probability, that is where the knife used in the attack came from. The knife used was described by Mr Creighton as a "kind of Stanley blade". It was distinguished from the sort of improvised weapons that could be made from normal materials found in prison kitchens or bathrooms, such as a razor blade melted into the end of a toothbrush.

Mr Justice Fennelly remarked in the decision of the Supreme Court: "The severity of the lacerations sustained by the plaintiff seems at least consistent with the use of an extremely sharp blade." No weapon was found during a search after the incident. Mr Justice White in his judgment had referred to this as "a fact that astounds me".

This was the first case in Ireland in which it has been held by a court that the State can be liable for injuries caused by one inmate to another. It is quite incredible that, despite the relatively high number of cases taken by prisoners against the State for injuries sustained in an attack while in custody, Mr Creighton was the first person to be awarded damages by the High Court for such injuries.

The State Claims Agency, which handles all personal injury actions lodged against the Irish Prison Service, said it received 174 claims relating to the service last year. *Creighton* was also the first case in Ireland in which evidence was given by a prisons

FAST FACTS

- In 2009, the High Court awarded Mr Creighton €40,000, finding that there had been a failure on the part of the prison authorities in their duty of care
- In June 2013, following a re-hearing, the judge ruled that the authorities failed in their duty and awarded Mr Creighton €100,000 for the injuries to his face and €50,000 for the injuries to his body
- Despite the relatively high number of cases taken by prisoners against the State for injuries sustained in an attack while in custody, Mr Creighton was the first person to be awarded damages by the High Court

LAW SOCIETY PROFESSIONAL Training

To view our full programme visit **www.lawsociety.ie/Lspt**

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
12 Sept	Efficient Reading Techniques Masterclass *Places are limited – early booking advised*	€165	€220	6 Management & Professional Development Skills (by Group Study)
12 Sept	The Assisted Decision Making Capacity Bill (2013) in partnership with Solicitors for the Elderly	€157	€210	3.5 General (by Group Study)
18 Sept	Employment Law Annual Conference	€135	€180	3 General (by Group Study)
25 Sept	Acting for Executors, Trustees and Beneficiaries (STEP)	€170	€225	3.5 General (by Group Study)
27 Sept	Advising the Farmer Conference – Horse & Jockey Hotel, Tipperary	€102	€120	5 General plus 1 Regulatory Matters (by Group Study)
9 Oct	Annual Litigation Update 2013	€135	€180	1 Management and Professional Development Skills plus 2 General (by Group Study)
16 Oct	Property Law Annual Conference 2013	€180	€240	4 General (by Group Study)
11 Oct	Sole Practitioners Forum – Mullingar Park Hotel *Hot Lunch & Evening Networking Reception included*	€102	€136	5 General plus 1 Regulatory Matters (by Group Study)
15 Nov	Essential Solicitors' Update for 2013 – Clarion Hotel, Cork *Hot Lunch & Evening Networking Reception included*	€102	€136	5 General plus 1 Regulatory Matters (by Group Study)
20 Nov	Annual In-house and Public Sector Conference	€135	€180	2 General plus 1 Regulatory Matters (by Group Study)
22 Nov	General Practice Update 2013 – Hotel Kilkenny, Kilkenny *Hot Lunch & Evening Networking Reception included*	€102	€136	5 General plus 1 Regulatory Matters (by Group Study)
(Tbc) Nov	Annual Family & Child Law Conference 2013	€180	€240	4.5 General plus 1 Regulatory Matters (by Group Study)
5 Dec	Cross Border insolvency proceedings - Recent developments and case-law on the European Insolvency Regulation (ERA)	€165	€220	6 General (by Group Study)
5 Dec	Tactical Negotiation Skills *Places are limited – early booking advised*	€105	€140	3 Management & Professional Development Skills (by Group Study)
10 Dec	How to use Blogging, Facebook, LinkedIn and Twitter in the legal sector. *Places are limited – early booking advised*	€180	€240	7 Management & Professional Development Skills (by Group Study)
12 Dec	Tactical Negotiation Skills *Places are limited – early booking advised*	€105	€140	3 Management & Professional Development Skills (by Group Study)
ONLINE COURSES: To Register for any of our online programmes OR for further information email: Lspt@Lawsociety.ie				
Online	The LinkedIn Lawyer: The "How To" Guide	€55		5 hours M & PD Skills (by eLearning)
Online	Facebook for Lawyers: The "How To" Guide	€55		5 hours M & PD Skills (by eLearning)
Online	How to create an eNewsletter	€90		5 hours M & PD Skills (by eLearning)
Online	eRegulation: New Terms of Business – Contract Precedent	€45		1 Hour Regulatory Matters (by eLearning)
Online	Legal Costs Seminar: Recent Decisions and Pending Legislation	€55		1 Hour General (By eLearning)
Online	Microsoft Word – all levels, Powerpoint – all levels Touch typing, Excel	From €40		Up to 5 Hours M & PD Skills (by eLearning)

For full details on all of these events visit webpage www.lawsociety.ie/Lspt or contact a member of the Law Society Professional Training team on:

P: 01 881 5727 **E:** Lspt@lawsociety.ie **F:** 01 672 4890

*Applicable to Law Society Skillnet members. **Please note FIVE hours on-line learning is the maximum that can be claimed in the 2013 CPD Cycle**

THE DUTY OF CARE

In *Casey v Governor of Midlands Prison and Others*, Ms Justice Irvine helpfully summarised the principles relating to the duty of care owed by prison authorities:

"(i) Prison authorities are required to take all reasonable steps and reasonable care not to expose prisoners to a risk of damage or injury, but the law does not expect the authorities to guarantee that prisoners do not suffer injury during the course of their imprisonment (*Muldoon v Ireland* [1988] ILRM 367).

"(ii) The duty of care owed by prison authorities to its prisoners must be tested in the context of the balance to be struck between the need to preserve security and safety on the one hand, and their obligation to recognise the constitutional rights of prisoners and their dignity as human beings on the other hand (*Bates v Minister for Justice & Ors* [1998] 2 IR).

"(iii) In determining what is an appropriate standard of care, regard should be had to the hardship that any proposed system might impose on prisoners and whether any such system would place an excessive burden upon the prison authorities (*Bates v Minister for Justice & Ors* [1998] 2 IR).

"(iv) Cases of assault upon prisoners whilst in custody, in general, are likely to be decided upon by reference to what should have been anticipated by their custodians (*Bates v Minister for Justice & Ors* [1998] 2 IR 81)."

expert. Mr Outram, a retired prison governor from Britain gave expert evidence in the case for Mr Creighton.

Failed cases

All previous cases involving prisoners suing the State for injuries inflicted by other prisoners have failed for varying reasons. For example, *Muldoon v Ireland* involved a plaintiff who was serving a prison sentence in Arbour Hill. While taking a break in the recreation yard, he was attacked by another prisoner. The case was withdrawn from the jury, President Hamilton holding that, while the prison authorities were required to take all reasonable steps and reasonable care not to expose any of the prisoners to a risk of damage or injury, the law does not expect the authorities "to guarantee that prisoners do not suffer injury during the course of their imprisonment".

In *Kavanagh v Governor of Arbour Hill Prison*, the plaintiff was stabbed in the face by another prisoner when walking from the recreation hall to his cell. Mr Justice Morris rejected the plaintiff's claim, noting that the inmates were "to a very large extent sexual offenders", the prison did not cater "for subversives or terrorist prisoners" and, broadly, the prisoners were "settled, long-term prisoners". The judge held, therefore, that the system of searching the prisoners was appropriate to the kind of prisoner accommodated in Arbour Hill.

In *Bolger v Governor of Mountjoy Prison*, the attacking prisoner, named Flynn, had a history of bad behaviour. A bucket of scalding water was thrown over the plaintiff by Flynn, who had six years previously also attacked another prisoner with boiling water. Mr Justice O'Donovan remarked that he did not think that because six years previously, "when he was only 16 years of age", Flynn had attacked another prisoner with boiling water that "it was incumbent on the prison authorities to deny him access to hot water". The judge stated: "To punish an adult prisoner in that way for an offence which he had committed when only a boy would, in my view, be grossly excessive."

"Creighton heralds a significant landmark in the pursuit of prisoners' rights. It is presumed that many cases will now be brought by prisoners against the State, claiming damages for assaults by fellow prisoners in custody"

The assault in *Bates v Minister for Justice* involved an appalling combination of scalding, hitting with a heavy object, and cutting with a blade. The high security prisoners in question were released from their cells for breakfast. They were permitted to make their own tea. The aggressor in *Bates* filled a jug with hot water from the boiler, entered the plaintiff's cell, threw the hot liquid into the plaintiff's face, and carried out the rest of his attack. Evidence was given by the plaintiff in relation to delay by the prison officers in entering his cell. The officers' evidence in relation to this conflicted with that of the plaintiff. In relation to this, Mr Justice Murphy, giving the judgment for the Supreme Court, stated: "It is, however, significant to note that the prison officers were not cross-examined in relation to the evidence which they gave in this regard."

The plaintiff's case, however, was dismissed in both the High Court and the Supreme Court.

Landmark case

Creighton heralds a significant landmark in the pursuit of prisoners' rights. It is presumed that many cases claiming damages for assaults by fellow prisoners in custody will now be brought by prisoners against the State. It remains to be seen, however, whether many or any of these claims will succeed.

It is expected that the absolute necessity of evidence by prison experts will continue to be recognised and that they will be frequently used in these cases. It is hoped that *Creighton* has put an end to the blanket failure of such cases against the State and that other meritorious cases will now succeed. G

LOOK IT UP

Cases:

- *Bolger v Governor of Mountjoy Prison* [1997] IEHC 172 (12 November 1997)
- *Boyd and Boyd v Ireland* [1993] WJSC-HC 1580
- *Breen v Governor of Wheatfield Prison* [2008] IEHC 123
- *Breen v Ireland* [2004] 4 IR 12
- *Casey v The Governor of Midlands Prison and Others* [2009] IEHC 466
- *Creighton v Ireland and Others* [2009] IEHC 257; [2010] IESC 50; High Court, 14 June 2013
- *Howe v Governor of Mountjoy Prison* [2006] IEHC 394
- *Kavanagh v Governor of Arbour Hill Prison* [1993] WJSC-HC 2336
- *Muldoon v Ireland* [1988] ILRM 367
- *Sage v The Minister for Justice and Others* [2011] IEHC 84

Literature:

Binchy, William (2009), 'Prison authorities, attacks on prisoners and the duty of care', 3(4) *Quarterly Review of Tort Law 28*

SHAPE *of things to come*

In the first of two articles, David Rowe looks at how the Irish legal market has changed over the past five years – and predicts the shape of things to come

David Rowe is managing director of Outsource, a company that provides practice management and financial management support to Irish law firms

There is little doubt that the past five years have seen large changes for Irish law firms in terms of how they do business, their profit levels, and how they are managed. The most dramatic changes have been the boom-to-bust economy, professional indemnity insurance issues, the withdrawal of credit facilities by the banks, the high level of personal indebtedness following property acquisitions, and clients increasingly demanding more for less – coupled with transactions taking longer and the resultant pressure on cash flow. For many firms, it has been an extremely tough period and, as we review it now in 2013, the most positive aspect of that period for many is that it appears to be coming to an end.

This period has also seen many changes in law firms – some visible and some less so. One of the more discernable changes is that the profession now seems to operate in distinct layers, with the largest firms appearing to be in a completely different trading world than smaller practices.

Broadly speaking, we can break down firms into the following 'market' types:

- Private client firms,
- Private client firms with a number of niche-value practice areas,
- Medium-sized firms concentrating on a number of different niches,
- Medium-sized firms with a broad presence in all practice areas, and
- Larger firms driven by commercial work.

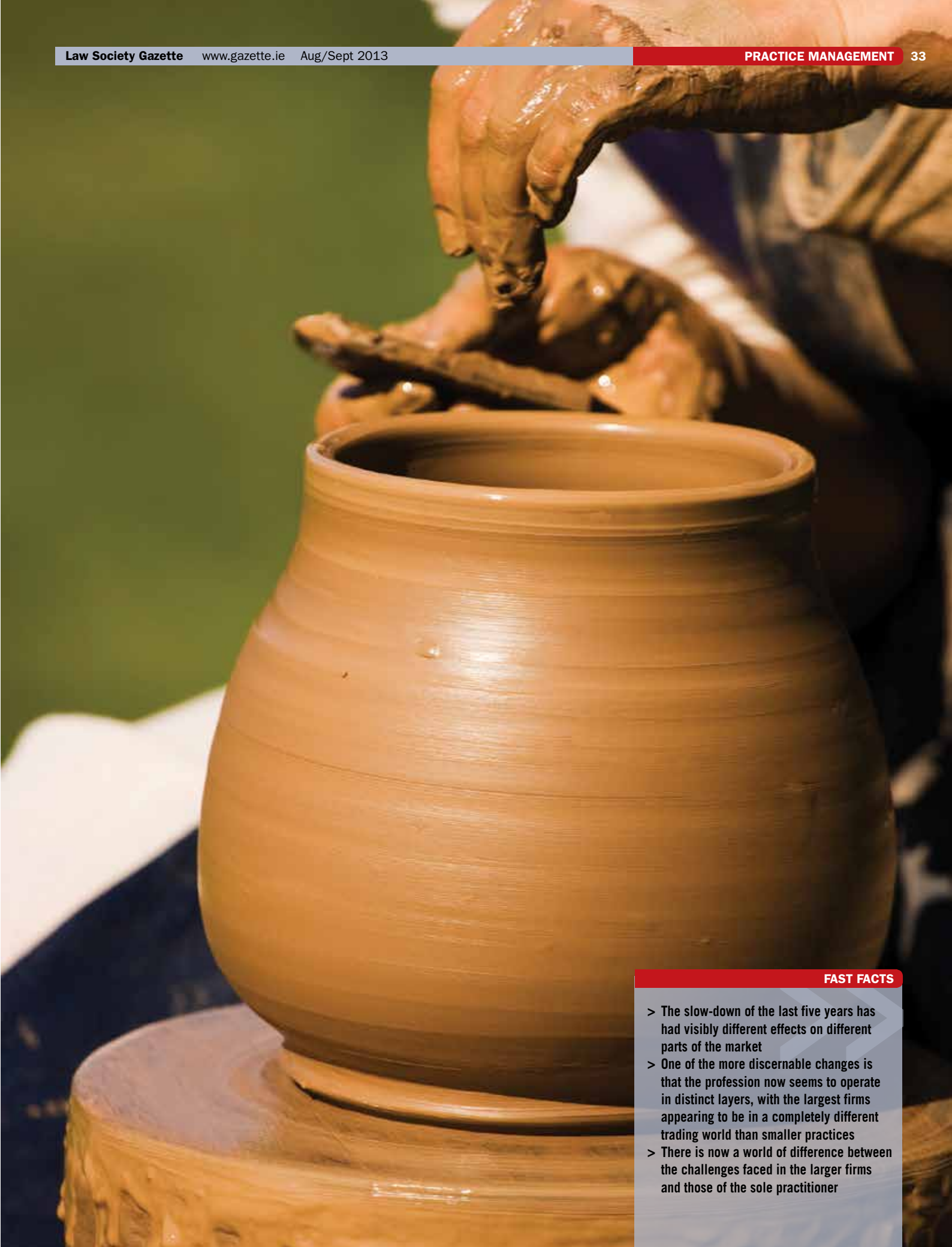
Commentary on the financial health of the market as a whole is now largely redundant, due to firms fitting into specific market types.

"The biggest changes over the period have been in the smaller practice sector. For most, these fall into the one-to-four solicitor category. Turnover may well be down 50% to 60% from peak"

The little things

The biggest changes over the period have been in the smaller practice sector. For most, these fall into the one-to-four solicitor category. Turnover may well be down 50% to 60% from peak. The Law Society's *Annual Report 2011/12* shows that the vast majority of practices in the country fall into this category. The reduction in turnover is largely due to the fall-off in litigation work due to the introduction of PIAB in 2004, which was then replaced by boom-level conveyancing volumes from 2004 to 2008, which subsequently nosedived during 2009. For most private client firms, personal injury litigation and probate has carried them through the last number of years, with evidence of improving conveyancing volumes more recently, albeit at low pricing.

Financial distress and feelings of despair are widespread among small-practice practitioners. The challenge has been to make a living – profit above a basic salary becoming increasingly rare. However, a sizeable number of practices have bucked this trend.



FAST FACTS

- The slow-down of the last five years has had visibly different effects on different parts of the market
- One of the more discernable changes is that the profession now seems to operate in distinct layers, with the largest firms appearing to be in a completely different trading world than smaller practices
- There is now a world of difference between the challenges faced in the larger firms and those of the sole practitioner

out·source

ANNUAL LAW FIRM PROFITABILITY & PRACTICE MANAGEMENT CONFERENCE

Building for the Future

- Are we seeing green shoots for Irish law firms?
- Profitability - how do you compare?
- Mergers - how they can work?
- Buying or selling a firm
- How smaller firms can survive - alternate business models
- Where are salary levels and are they changing?
- Negotiating the PII Renewal
- Rebuilding Banking Relationships
- Managing cashflow successfully - the lifeblood of a business

Key Note Speaker: David Rowe - Managing Director, Outsource

Speakers: John Brennan - Director, O'Leary Insurances
Donal Maher - Director, Outsource
AIB - Regional Business Banking Representative

€90 per delegate
2 delegates from the same firm €150
3 delegates from the same firm €200

CPD Credit – 4 hours (3 Management &1 Regulatory)

Venues & Dates

Dublin - The Davenport Hotel - September 24th & October 8th, 9am to 1pm
Cork - The Clarion Hotel - September 25th, 9am to 1pm
Limerick - The Savoy Hotel - September 26th, 9am to 1pm
Galway - The Courthouse - September 26th, 2pm to 6pm
Letterkenny - The Radisson Hotel - September 27th, 2pm to 6pm
Kilkenny - Hotel Kilkenny - October 1st, 9am to 1pm

In association with local Bar Associations

To book please email: reception@outsource-finance.com or telephone: 01 6788490

sponsored by

AIB

O'LEARY INSURANCE GROUP
www.olearyinsurances.ie

They tend to:

- Be general practices that also specialise in a specific legal field(s),
- Have a reputation of getting results for clients and for having high service standards,
- Have invested back into their businesses,
- Are well connected with other professionals and with institutions in their locality,
- Possess an intolerance of underperformance at all levels of staff,
- Are highly motivated – from the owners to support staff – and actively seek new work and new business.

Stuck in the middle with you

For medium-sized firms, the last five years have posed major challenges also. There has, undoubtedly, been a trend of larger corporate clients, who are often the mainstay of mid-sized firms, migrating to larger firms. This was driven by selective price reductions in the larger firms, the feeling of safety in large firms (partly because of the professional indemnity insurance crisis), and the determination of the larger corporate firms to pick up good-quality work from smaller firms where they felt they had a wider service to offer.

Mid-sized firms came under attack from smaller firms also, who were operating on tighter overheads. Much private client work has now moved from larger and mid-sized firms to be the domain of one-to-four solicitor practices.

While mid-sized firms did face more competition, they have, on average, seen turnover fall about 25% over the period. New types of work have emerged, however, which they too have participated in. This includes different types of banking work, increased litigation and institutional work, which have helped firms in this area to offset the fall in transactional work and the downward pressure on their private client work. Additional light at the end of the tunnel can be seen, due to the likelihood that transaction volumes are set to increase as banks show increasing signs of tackling legacy debt problems. There is evidence, also, that some semi-state/institutional clients are looking beyond top-rank firms where a mid-sized firm can deliver a quality service at a lower price.

Mid-sized firms have also invested heavily in systems over the period. This extends to technology, risk-management systems, accounting and practice-management systems, as well as precedents and know-how. While this was financially challenging (since it was done when turnover and profitability were falling), the firms that made the investment are now reaping the rewards.

The future looks bright for mid-sized firms. Larger firms are likely to become less interested in mid-sized corporate work, and the current cut-throat pricing on tenders has already begun to move upwards. Work has also realigned over the period and, for many mid-sized firms, the challenge is to convince institutional clients that a medium-sized law firm is equipped to do the work without having to rely on a larger firm.

Mr Big

In the larger corporate firms, transactional work reduced substantially as lack of confidence and lack of funding in the economy took a grip. These firms reacted by selectively cutting rates, and a new type of advisory work emerged that, while generally subject to more competitive pricing, compensated in some ways for the lack of commercial and conveyancing transactions.

The profile of work in the larger firms is a mixture of international work and national work, with a very sizeable proportion of the work being international and less affected by the slowdown. Larger firms also saw an increase in commercial litigation, and while this continues, the ability of business to fund it appears to be on the wane. Larger firms, therefore, had to make reasonably significant adjustments, but not at the same scale as medium-size and smaller practices. Turnover was broadly unchanged, but achieved in a different mix. The occasional national media commentary on the financial world within which these firms operate confirms to the average practitioner that they are worlds apart.

I can see for miles

We are set to see even more change over the next five years than we have over the past five. These changes should include:

- An improving economy, predominantly on the east coast, but with some impact nationwide. Dublin and surrounding counties are already seeing evidence of this.
- Work will continue to realign, with large institution and corporate buyers buying services from large law firms; medium-size corporates from medium-size law firms; and private client services continuing to migrate to smaller practices.
- Transactional work will recover steadily.
- Different business structures will emerge. The traditional, stand-alone, single practice will have to be very special to be profitable.
- Pricing will improve in commercial areas and for complex tendered work. It will remain tight in private-client areas.
- Firms will see fee income improve by up to 15% annually.
- Costs will begin to come under pressure, with salaries beginning to move upwards.
- The profession will see a shortage of talent in about three years. An improving market, the large numbers who have left the profession, and current low levels of entry to the profession will create these conditions.
- Smaller practices will have to look at wider options such as overhead sharing, alliances, and mergers as economies of scale become more important,
- Many services will continue to be highly price sensitive. For such services, processes and systems, as well as a low cost base, will be the determining factors on making a profit or not.

> *"The profession will see a shortage of talent in about three years. An improving market, the large numbers who have left the profession, and current low levels of entry to the profession will create these conditions"*

Brothers in arms

The slow-down of the last five years has had visibly different effects on different parts of the market. There is now a world of difference between the challenges faced in the larger firms and those of the sole practitioner. These differences always existed, but have widened further in recent years.

For some smaller and medium-sized firms, survival itself has been an achievement. In some parts of the country, notably Dublin, other larger cities and along the east coast, there are positive signs of better times ahead. Whether any particular firm benefits from this depends on its own competitive armoury – its combination of talent, ability, working ethos, systems, type of services the firm is particularly good at, and the work available in its catchment area.

For other firms, the status quo will not be sufficient to earn a living – even if they are well equipped. Will the profession see different models emerge in how law firms are run? How will the *Legal Services Regulation Bill* affect the options available? When is a merger the right answer, and when is it not? These questions will be explored in the next issue of the *Gazette*.

PRACTICE MANAGEMENT SEMINARS

Outsource is running a series of practice management seminars with local bar associations throughout the country in September. Please refer to www.lawsociety.ie for updates.

Breaking BAD

Michael Walsh is head of property, construction and procurement at ByrneWallace

Aoife Maeve Clarke is a trainee at ByrneWallace

The economic downturn has led to higher numbers of landlords and tenants seeking to exercise 'break clauses' within leases. The dearth of relevant judicial decisions in Ireland has led to practitioners looking to England and Wales for guidance. But breaking up is hard to do, as Michael Walsh and Aoife Maeve Clarke point out

A break option is a clause within a lease that confers on the landlord or tenant – or both – the right to determine the lease before expiration of the term. Although such clauses have appeared in occupational leases for some time, they have become topical in recent years as tenants are increasingly seeking to exercise their break option as a consequence of the economic downturn.

The courts in England and Wales regard the option to break as a privilege to be afforded to the tenant and have therefore interpreted the conditions of break clauses strictly. In the absence of many relevant judicial decisions in this jurisdiction, practitioners are looking to England and Wales for guidance to advise their clients as to their rights and obligations pursuant to the lease if exercising a break.

In order to validly exercise a break option, tenants must comply with the conditions provided for within the break clause. Such conditions commonly require:

- Service of notice of intention,
- Payment of all monies due,
- Vacant possession, and
- Compliance with obligations (including repair).

"In the case of Osborne Assets v Britannia Life Ltd, the use of two coats of paint rather than three as required under the lease deprived a tenant of his right to break"

The current trend in England and Wales is best examined by focusing on cases within these categories. As a preface to this analysis, it is worth noting that the validity of the service of a break option notice will largely be governed by what the terms of the break option state. The case law below indicates a general tendency of the judiciary in England and Wales to strictly interpret the wording of each break option.

Clear and unambiguous

The notice to terminate must be sufficiently clear and unambiguous and leave the reasonable recipient in no doubt as to the tenant's intention to terminate (*Mannai Investment Co Ltd v Eagle Star Assurance*). Additionally, the notice must be served on and by the correct parties, at the correct time, and as the lease prescribes. If only served by one of two

FAST FACTS

- Break options are the subject of strict judicial interpretation in England and Wales
- Awareness and full compliance with break-option conditions are necessary for breaks to be effective
- Those drafting break clauses should take note of the judicial position as a guide to break-option negotiations at the outset
- Advance negotiations prior to the exercise of the break could mitigate against risks associated with strict compliance

co-tenants (*Prudential Assurance Co Ltd v Exel UK Ltd & Anor*), or on only the landlord when the lease requires service, also, on the management company (*Hotgroup Plc v Royal Bank of Scotland Plc*), the notice will be deemed invalid. However, in the recent case of *Siemens Hearing Instruments Ltd v Friends Life Ltd*, the failure to use the prescribed notice wording, although held to be non-compliant with the break clause, was not held to automatically render the notice invalid.

Payment of all monies due

Depending upon the provisions of the lease, this condition may encompass not only rent, but also a sum paid as a break penalty, interest on previous late payments, and insurance and related service charges. The harshness of this condition precedent is evident in the cases of *Avocet Industrial Estates LLP v Merol Ltd & Anor* and *PCE Investors Ltd v Cancer Research UK*. In *Avocet*, the tenant's failure to pay the outstanding sum of Stg£130 accrued as interest on previous late payments invalidated the tenant's right to break, despite the tenant's contention that it was not aware of any outstanding sums and had not received any notice from the landlord demanding payment of any such sum. The apparent failure of the landlord to inform the tenant of this outstanding sum did not estop him from subsequently claiming the notice was invalid, as it could not be proven on the balance of probabilities that the landlord knew of the tenant's mistaken belief before the end of the break date.

Where a break date falls partway through a quarter, unless the lease provides for the contrary, tenants are required to pay the full quarter's rent in advance, even though – if their break is valid – they won't be in possession of the premises for the full period. In *PCE Investors*, the tenant's failure to do so invalidated the break option, regardless of the fact that it requested confirmation that the apportioned payment was correct. In *Canonical UK Ltd v TST Millbank LLC*, the tenants did pay the full quarter's rent, but failed to pay the break penalty as required under the lease. They argued, unsuccessfully, that the balance of the quarter's rent could be attributed to this payment.

Practitioners should therefore advise tenant clients to assess the sums due under the lease carefully, paying particular attention to interest on prior late payments and the break penalty sum. Where a break date falls within a quarter rent period, tenants should be advised to pay the full quarter's rent and enter negotiations later for a refund of the overpayment, as was successfully argued in *Marks and Spencer Plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd & Anor.*

Vacant possession

The meaning of vacant possession was outlined in the case of *NYK Logistics (UK) Ltd v Ibrend Estates BV*, where the court stated that the property must be "empty of people and that the purchaser is able to assume and enjoy immediate and exclusive possession, occupation and control of it". In this case, two days prior to the termination date, outstanding repairs remained and the tenant proceeded to retain workmen on site for a further six days.

The landlord successfully argued that the break was invalid, as vacant possession wasn't delivered in time. As the break was only conditional upon payment of monies due and vacant possession, the court held that the tenant ought to have moved everyone out of the premises on the termination date and returned the keys, and made arrangements later to re-enter to complete the outstanding works.

In the earlier case of *John Laing Construction Limited v Amber Pass Limited*, the tenant had vacated the premises, but had left security barriers and a security guard in place to deal with vandalism and trespass problems that the landlord had repeatedly expressed concerns about. The court assessed whether vacant possession had been given objectively and held that the tenant had clearly expressed his intention to terminate the lease and that the presence of the barriers and guard were not a hindrance to the landlord, who could occupy the premises without difficulty.

Tenants should remove all chattels from the premises and return the keys to the landlord on the vacant possession date. If outstanding repairs are likely to remain on the break date, tenants can enter into advance negotiations to remain on as licensee to complete the remaining works.

Compliance with obligations

Where compliance with conditions precedent to exercising a break exist, compliance with repair obligations cases have resulted in some harsh outcomes for tenants. In *Osborne Assets v Britannia Life Ltd*, the use of two coats of paint rather than three as required under the lease deprived a tenant of his right to break. Also, in *Kitney v GLC Properties* and *West County Cleaners v Saly*, seemingly trivial breaches were held not to fulfil the obligation to repair.

> ***"The test of material compliance was held to be an objective one, assessed by the ability of the landlord to re-let or sell the property without delay or extra expenditure"***

In these cases, strict compliance was required – and nothing short of exact compliance would suffice. Where the lease requires only material compliance, minor breaches subsisting at the break date will not invalidate the tenant's right to break. In *Fitzroy House Epworth Street Ltd v Financial Times Ltd*, the test of material compliance was held to be an objective one, assessed by the ability of the landlord to re-let or sell the property without delay or extra expenditure. Here, the tenant had spent over Stg£1 million on repair, and the landlord had continuously rejected invitations to inspect the works or comment on them. The court held that the extent of outstanding repairs totalling Stg£20,000 would not deter a potential tenant and, as such, the tenant was held to have materially complied with the repair obligations.

If you find your tenant client in the unfortunate position of having to strictly comply with repair obligations as a condition precedent to the break, the settlement agreement approach adopted by the tenants in *Legal & General Assurance Society Ltd v Expeditors International (UK) Ltd* is advisable. The agreement released the tenant from its repair obligations under the lease and was required only to keep the premises in no worse state or repair then it was when a schedule of dilapidations was drawn up. Tenants who have to materially comply with repair obligations are advised to employ a surveyor to assess the remaining works and invite the landlord to assess the premises prior to the break date.

Definitive ruling awaited

The only reported Irish decision on break clauses is *In the Matter of Citi Hedge Fund Services Ltd v Companies Act 1963 to 2012 & Anor*, where a break clause that was expressed to be strictly personal to the original tenant was held not to be capable of assignment to the original tenant's successors in title. It is difficult to extrapolate from this case alone whether the Irish courts are likely to follow their counterparts in England and Wales. The judgment, however, does appear to be consistent with the strict interpretation approach in that jurisdiction.

Until a more relevant case falls to be determined by the Irish courts, practitioners may use the above decisions as guidance when advising clients, not only with regard to the exercise of break options, but also when drafting and negotiating break options.

It should be said that the Irish courts may take a more 'equitable' approach. For example, practitioners may wish to note *Edward Lee & Co (1974) Ltd v N1 Property Developments Ltd*, where the High Court adopted a more equitable approach to notice requirements in the context of a surrender. However, the prudent approach will be to err on the side of caution. G

LOOK IT UP

Cases:

- *Avocet Industrial Estates LLP v Merol Ltd & Anor* [2011] EWHC 3422 (Ch)
- *Canonical UK Ltd v TST Millbank LLC* [2012] EWHC 3710 (Ch)
- *Edward Lee & Co (1974) Ltd v N1 Property Developments Ltd* [2013] IEHC 162
- *Fitzroy House Epworth Street Ltd v Financial Times Ltd* [2006] 1 WLR 2207
- *Hotgroup Plc v Royal Bank of Scotland Plc* [2010] EWHC 1241 (Ch)
- *In the Matter of Citi Hedge Fund Services Ltd v Companies Act 1963 to 2012 & Anor* [2013] IEHC 287 (21 June 2013)
- *John Laing Construction Limited v Amber Pass Limited* [2004] 2 EGLR 128
- *Kitney v GLC Properties* (1984) 272 EG 786
- *Legal & General Assurance Society Ltd v Expeditors International (UK) Ltd* [2007] EWCA Civ 7
- *Mannai Investment Co Ltd v Eagle Star Assurance* [1997] AC 749
- *Marks and Spencer Plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd & Anor* [2013] EWHC 1279 (Ch)
- *NYK Logistics (UK) Ltd v Ibrend Estates BV* [2011] EWCA Civ 683
- *Osborne Assets v Britannia Life Ltd* [1997]
- *PCE Investors Ltd v Cancer Research UK* [2012] EWHC 884 (Ch)
- *Prudential Assurance Co Ltd v Exel UK Ltd & Anor* [2009] EWHC 1350 (Ch)
- *Siemens Hearing Instruments Ltd v Friends Life Ltd* [2013] EWHC (Ch) [2013] All ER (D) 188 (Jul)

Law Society Annual Dinner 2013

At the Law Society's annual dinner at Blackhall Place on 12 July 2013 were *(l to r)*: Circuit Court Judge Mary Ellen Ring, Colonel John Sperrin, Defence Forces, Supreme Court Judge Frank Clarke, Minister for Communications, Energy and Natural Resources, Pat Rabbitte TD and Director General Ken Murphy

President James McCourt, his wife Barbara Cotter and barrister Kieron Wood

PICS: LENSMEN PHOTOGRAPHIC AGENCY

Attorney General Máire Whelan SC, president James McCourt and Circuit Court Judge Gerard Griffin

Junior vice-president Stuart Gilhooly (MC for the evening), Chief Justice Susan Denham, President of the Law Society James McCourt and senior vice-president John P Shaw

Director of FLAC Noeline Blackwell, Law Society executive Colleen Farrell and Chair of the Family and Child Law Committee Carol Anne Coolican

President James McCourt, Director of Public Prosecutions Claire Loftus and Deputy DPP Barry Donoghue

Chair of the Fine Gael Parliamentary Party Charlie Flanagan TD, President of the State Solicitors' Association Frank Nyhan and Council member Brendan Twomey

Junior vice-president Stuart Gilhooly, president James McCourt, Supreme Court Judge Elizabeth Dunne, High Court Judge Michael Peart and senior vice-president John P Shaw

Circuit Court Judge James O'Donoghue, Chair of the Probate, Administration and Trusts Committee Tom Martyn, President of the Circuit Court Raymond Groarke and Circuit Court Judge Keenan Johnson

Senior vice-president John P Shaw, who hails from Clare, and past-president John D Shaw, from Westmeath

Council member Geraldine Kelly, past-president John D Shaw, Attorney General Máire Whelan SC and DSBA vice-president Keith Walsh

Legal Aid Board CEO Moling Ryan and Bar Council Chairman David Nolan SC

Law Society of Northern Ireland President Michael Robinson and Law Society of Scotland President Bruce Beveridge in deep conversation

On the steps of the Law Society of Scotland headquarters in Edinburgh, following a meeting of the leaders of the law societies of Ireland, Northern Ireland, Scotland, England and Wales are *(l to r)*: Ken Murphy (director general, Law Society of Ireland), Michael Robinson (president, Law Society of Northern Ireland), Richard Palmer (vice-president, Law Society of Northern Ireland), Lucy Scott-Moncreiff (president, Law Society of England and Wales), Des Hudson (chief executive, Law Society of England and Wales), Bruce Beveridge (president, Law Society of Scotland), Lorna Jack (chief executive, Law Society of Scotland), Alistair Morris (vice-president, Law Society of Scotland), Alan Hunter (chief executive, Law Society of Northern Ireland) and James McCourt (president, Law Society of Ireland)

Advising the farmer

At the recent Law Society Skillnet Seminar 'Advising the farmer' on 21 June, held in Killarney's INEC, were *(front, l to r)*: John Galvin (president, Kerry Law Society), Jane O'Halloran (secretary, Killarney Bar Association), Eoin Binchy (conference chairperson), Conor Myles (Killarney Bar Association) and Pat Sheehan (treasurer, Killarney Bar Association). *(Back, l to r)*: Lorna Larkin (vice-secretary, Killarney Bar Association), Padraic Courtney, Bernadette Cahill, Anne Stephenson, Tim O'Leary, Katherine Kane and Michelle Nolan. The event was hosted by Killarney Bar Association in conjunction with Kerry Law Society.

Disability Law Summer School focuses on 'voice and choice'

The fifth International Disability Law Summer School was held at NUI Galway from 17 to 22 June. The largest such summer school in the world, its focus is on the UN Convention on the Rights of Persons with Disabilities. Over 100 delegates from 38 countries attended. The theme was on securing a voice and advancing choice for persons with disabilities by means of the UN Convention. The keynote speaker was Professor Rannveig Traustadottir, from the University of Iceland, Reykjavik. Other speakers at the week-long event included Minister of State for Health Kathleen Lynch, Attorney General Ms Máire Whelan and Mr Justice John McMenamin.

The 12th edition of the *Hibernian Law Journal* (HLJ) was launched at the Law Society's headquarters by Mr Justice Michael Peart on 16 July 2013. Established in 1999, the HLJ is one of Ireland's most respected legal journals and is co-ordinated by trainee and qualified solicitors. Members of the editorial committee who attended the official launch on 16 July 2013 included (from l to r): Dannie Hanna, Naomi Barker, Chris Bollard, Carol Eager, Doireann O'Byrne, Donal Hamilton (editor-in-chief) Mr Justice Michael Peart, TP Kennedy (editorial advisor and director of education, Law Society) Jennifer O'Sullivan, Ciara Brady, Eltin Ryle and Thomas Ryan.

Former Attorney General speaks on the art of government

PIC: JOE HANLEY

Kerry Law Society welcomed the former attorney general Paul Gallagher to the first CPD course in its autumn/winter programme on 22 August. Those attending were treated to illuminating commentary on the art of government. Mr Gallagher was welcomed by John Galvin (chairman, Kerry Law Society), Pat Mann (president) and Dave Ramsey (vice-president)

PIC: JASON CLARKE PHOTOGRAPHY

Niall Collins, Fianna Fáil's spokesperson on justice and equality, was the guest speaker at the Law Society's parchment ceremony on 4 July. He is seen here with President of the High Court Nicholas Kearns

Judge Durcan honoured

PIC: FRANK DOLAN

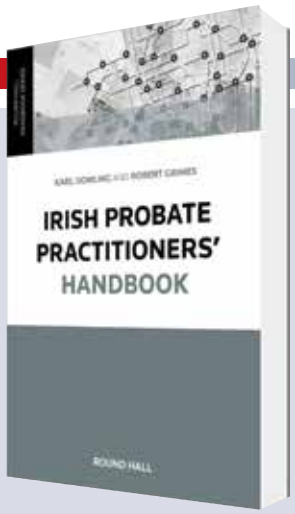
Mayo solicitors held a dinner in honour of Judge Patrick Durcan at Newport House on 29 May. Judge Durcan, a former solicitor, was appointed District Court judge in February 2012. *(Front, l to r)*: Ann Toal, Sheila Ryan, Judge Patrick Durcan, Sara Horan and Gerard Morahan. *(Middle, l to r)*: John Morahan, Caitriona Moran, Bob McArdle, Karen O'Malley, Helena Boylan and James Hanley. *(Back, l to r)*: James Ward, Dermot Morahan, Fintan Morahan, Michael Browne and David Scott

Taking the plunge

Legal firm Eugene F Collins and Smith & Williamson (accountants and investment managers) joined forces recently to take the plunge at the Forty Foot in Dun Laoghaire to raise funds for Our Lady's Hospice and Barnardos. Swapping their business suits for swimsuits were Doug Smith, Terry Leggett, David Hackett, John Olden, Mark Walsh and Barry O'Neill (all Eugene F Collins), Ceddy Cruess Callaghan, Shane O'Reilly, Jonathan Sheahan, John Fisher and Paul Wyse (all Smith & Williamson)

Members of the Family and Child Law Committee hosted a highly successful child law forum at Galway Courthouse on 25 July for Galway practitioners. *(From l to r)*: James Seymour (president, Galway Bar Association), Sinead Kearney, Keith Walsh, David Higgins, Donagh McGowan, Carol Anne Coolican and Colleen Farrell

Irish Probate Practitioners' Handbook



Karl Dowling and Robert Grimes. Round Hall (2013), www.roundhall.ie. ISBN: 978-1-8580-068-57. Price €225.

This is a really useful book. The authors intend this book to complement the existing literature in the subject area; it is not intended to compete with or replace those weighty tomes. Instead, its intent is to provide information and analysis with a distinctly practical focus.

Comprising 15 chapters, it draws together the disparate nuggets of knowledge across a wide panoply of topics. Of particular benefit to many practitioners will be the innovative inclusion of chapters relating to enduring powers of attorney and wards of court. The detailed consideration of the processes for creating and subsequently registering an enduring power of attorney, together with the process for applying for wardship and dealing with post-application issues, are very helpful as an aide-memoire for the experienced practitioner and as a clear guide for the less experienced practitioner.

From a narrow perspective, one could consider that – aside from being up-to-date – there is little distinctly new to be found in the book. Such a conclusion would entirely miss the very pioneering point of the book to distil statutes, cases, practice directions and rules to a clear and practical level. The authors have undertaken an enormous service to practitioners by drawing together, in one user-friendly book, all the essential knowledge for a practitioner across a very wide-range of allied topics. Previously, to gain the same level of comprehension, a practitioner would have had to delve into a number of distinct books and/or access a number of websites, but now they need only keep this book on their desk.

Richard Hammond is partner in Hammond Goode, Mallow.

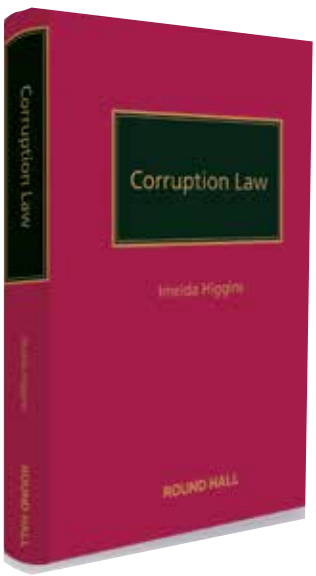
Corruption Law

Imelda Higgins. Round Hall (2012), www.roundhall.ie. ISBN: 978-1-8580-066-97. Price: €195.

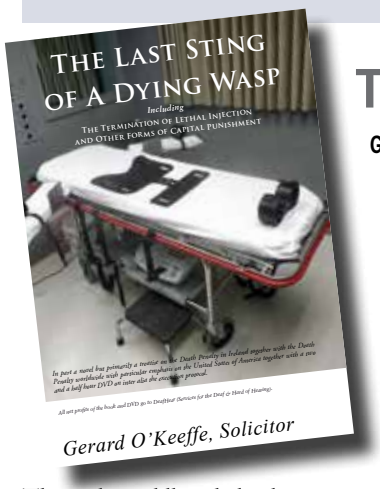
Corruption Law is the first Irish legal textbook to focus on this area as a dedicated topic. It examines (and contextualises) the principal Irish legislation in this area, which has changed significantly over the last two decades. While the textbook is theoretical in parts, this is due to the low level of enforcement of Ireland's corruption laws to date and the consequent dearth of relevant Irish jurisprudence.

The extraterritorial reach of the anti-corruption law regimes in other jurisdictions, in particular Britain and the US, results in Irish practitioners being increasingly asked to advise on Irish corruption law by international corporations that, by default, have in place anti-corruption policies. Corruption (or rather, anti-corruption) is therefore rapidly developing as a corporate compliance issue in this jurisdiction and, against this backdrop, *Corruption Law* will serve as a useful point of reference for practitioners advising on the main legal areas of an effective anti-corruption strategy. As the author notes, there are significant legislative changes coming down the tracks, including the proposed new *Criminal Justice (Corruption) Bill*, which will simplify, modernise and clarify Irish law on bribery and corruption, and the *Protected Disclosures in the Public Interest Bill*, which will improve protection for whistleblowers in both the public and private sectors. The enactment of this legislation will mean that sections of *Corruption Law* will need to be updated. In the meantime, however, it is a much-needed resource for practitioners who are increasingly being asked to advise on this developing area of the law.

Katie Byrne is an associate at A&L Goodbody.



The Last Sting of a Dying Wasp



Gerard O'Keeffe. Original Writing (2012), www.originalwriting.ie. ISBN: 978-1-78237-014-7. Price: €35 (incl P&P).

This rather oddly titled volume is part fiction – a short story, set in a futuristic, US-dominated Ireland, where the death penalty has been restored as part of a package to pay off the national debt – and part non-fiction, being a discourse on capital punishment, hung on the hook of the aforementioned novella. The author, a well-known now-retired West Cork solicitor, hopes soon to extend the story into a full-length novel.

However, the short story amounts to less than a tenth of the book. The remainder consists of a review of the history, operation and philosophy of the death penalty, notably dwelling on Ireland, the USA and China, respectively, for reasons of local history, controversy, and sheer volume. It is an accessible overview of a topic that has divided world opinion for many years. The author credits Wikipedia with much of the material, and most of the subject matter can be found relatively easily online, but this is a compact and useful volume for those who prefer the feel of a real book.

There is real meat in the chapter on the USA. Two-thirds of the states still execute – lethal injection being the sole remaining legal method. Discussion on the philosophy of capital punishment in the USA expands into a critique of US penal policy generally, including the privatisation of prisons, conditions for those incarcerated, the ever-expanding prison population, and the terrible social costs. Japan, Belarus, and the USA share the practice with China – by a vast margin the market leader – Iran, Yemen, North Korea and Saudi Arabia, and many others who do not take the same view as Europe that judicial killing is an idea whose time has come and gone.

Perhaps a suitable epigram on the subject matter might be taken from the light-hearted, if not a little macabre, chapter of 'last words': John Spenkelink, a prisoner in Florida, is reported to have said: "Them without the capital gets the punishment." Famous last words indeed.

Dara Robinson is a criminal defence solicitor at Sheehan and Partners in Dublin.

Dreadlock holiday

Travel law and holiday litigation is a growing area of interest for members. With this in mind, the library has compiled a list of relevant books and articles

Mairead O'Sullivan is executive assistant librarian at the Law Society

Holidays abroad and 'staycations' have never been more popular than in recent years. Unfortunately, the downside of travel can often involve accidents abroad, disputes with tour operators and difficulties involving package holidays. If members are interested in borrowing any of the following books on the subject, or ordering any of the articles listed, please contact the library at library@lawsociety.ie. The usual charges will apply.

Books:

- Buttimore, Jonathan, *Holiday Law in Ireland* (Blackhall Publishing, 1999)
- Crowther, Sarah (ed), *APIL Guide to Accidents Abroad* (Jordans, 2013)
- Doherty, Bernard, Colin Thomann, and Katharine Scott, *Accidents Abroad: International Personal Injury Claims* (Sweet & Maxwell, 2009)
- Grant, David and Stephen Mason, *Holiday Law* (5th ed; Sweet & Maxwell, 2012)
- Nelson-Jones, John and Peter Stewart, *A Practical Guide to Package Holiday Law and Contracts* (3rd ed; Tolley Publishing, 1993)
- Saggerson, Alan *et al*, *Saggerson on Travel Law and Litigation* (5th ed; Wildy, Simmonds & Hill Publishing, 2013)

Articles:

- 'Accidents abroad', *Personal Injury Compensation* (2009, Mar, 9-10)
- 'Accidents abroad: sports injuries sustained on holiday', *Personal Injury Compensation* (2010, Apr, 8-9)
- 'Advertising Standards Authority – airlines – misleading advertising – tour operators', *International Travel Law Journal* (2008, 4, xxvii-xxxi)
- 'Advertising Standards Authority – First Choice Holidays (Advertising Standards Authority; beaches; brochures)', *International Travel Law Journal* (2008, 3, xxiii)
- 'Advertising Standards Authority – misleading advertising – tour operators', *International Travel Law Journal* (2008, 2, ix-xii)
- 'All change for *Rome II*' (Assessment of damages for overseas accidents: Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations)', *International Travel Law Journal* (2008, 4, 161-166)
- 'Damages in holiday law cases', *Law Society Gazette* (2003, 97(2), 43, 45)
- 'Considering the standard of care for tourists', *International Travel Law Journal* (2008, 3, 135-142)
- Danaher, Gerry, 'Accidents abroad and the assessment of damages', *Bar Review* (2012, 17(5), 109-113)
- 'Holiday law – sun, sea, sand and solicitors', *Law Society Gazette* (1998, 95(27), 18-20, 22)
- '*High and Wild Ltd v Travel Counsellors Plc*', *International Travel Law Journal* (2008, 3, 110-113)
- 'Practical guide to package holiday law and contracts', *Journal of the Law Society of Scotland* (1994, 39(6), 199-200)
- 'Recent developments in aviation and travel law' (key cases and legislative reform). *Shipping & Transport International* (2012, 9(2), 34-37)
- 'Recent developments in Italy concerning the regulation of tour guides', *International Travel Law Journal* (2008, 4, 174-180)
- Salih, Gulderen, 'First among equals' (Accidents – choice of law – EC law – foreign jurisdictions.), *Legal Executive* (2009, February, 39)
- *Scaife v Falcon Leisure Group (Overseas) Ltd* (case note [2007] IESC 57), *International Travel Law Journal* (2008, 2, 55-60; damages; package holiday; personal injuries)
- Petts, Tim, '*Accidents abroad: the French connection*', *Personal Injury Brief Update Law Journal* (2007, 1(3), 56-59
- 'Tour guides: a legal perspective', *International Travel Law Journal* (2008, 3, 125-134)
- 'Tour operators fail to overturn imposition of APD – the saga continues', *International Travel Law Journal* (2008, 4, 181-186)

Law Society Council meeting 12 July 2013

Motion: online practising certificate applications

"*That this Council approves the* Solicitors Acts 1954 to 2011 (Practising Certificate) (Amendment) Regulations 2013."

Proposed: Martin Lawlor
Seconded: Garry Clarke

The Council approved amending regulations to introduce online practising certificate applications, which would replace the 'wet signature' on the online form with a declaration, removing the need for solicitors to print the form, sign a visible copy, and submit it to the Society. The requirement for solicitors to log into the members' area of the Society's website in order to access the form would act as an extra identity verification system. The Council noted that online applications would benefit the profession by offering a simpler, easier and more streamlined method of applying for a practising certificate.

Legal Services Regulation Bill

The Council noted the contents of the minister's committee stage amendments to sections 2 to 20 of the *Legal Services Regulation Bill*, which would be commenced in the Dáil on the following Wednesday 17 July. The amendments clarified the proposed composition of the board of the Legal Services Regulation Authority as comprising one nominee from each of the Citizens' Information Board, the Higher Education Authority, the Competition Authority, the Human Rights Commission, the Institute of Legal Costs Accountants, the Consumers Association of Ireland, the Bar Council, the King's Inns, a solicitor nominee of the Legal Aid Board, and two nominees of the Law Society.

Delays in taxation of costs

The Council noted a response from the minister to the president's letter seeking the appointment of a third taxing master. The minister's letter had concluded that "in view of the pending changes in this area, it is not proposed to appoint a third taxing master at this time". Eamon Harrington noted that the matter was one of considerable concern to the Litigation Committee, and a meeting with taxing master O'Neill had been arranged for 30 July.

Increased court jurisdictions

The Council discussed the proposed increase in jurisdictions of the courts and the concerns expressed in the president's letter to the minister that the proposed increase, without a corresponding increase in court resources, would result in inevitable delays. An article in *The Irish Times* of that morning indicated that the Law Society, the Irish Brokers' Association and Dorothea Dowling were all agreed that the proposal was a bad one. However, it was unclear whether the minister would change his mind. An attendant issue in the District Court was the scale of costs. The Society was of the view that an increase in jurisdiction to €15,000 should mean that the District Court should be regarded as a court of full pleading. This position would be put forcefully by the Society to the District Court Rules Committee and the minister.

Cutbacks in the justice system

The Council discussed concerns about cutbacks in the justice system generally and the negative impact on staff resources arising from the recruitment embargo. Public servants who were retiring, were on sick leave, or on holidays were not being replaced, and some judges could not be provided with support staff. At a time when court and other State fees were increasing, staff numbers were reducing and those employed in the justice system were working very hard to try to provide a service with very limited resources. As a consequence, delays were increasing in many court and State offices.

Council election dates 2013

The Council approved Monday 23 September 2013 as the final date for receipt of nominations for the Council election and Thursday 31 October 2013 as the close of poll date.

New VHI undertaking

The Council approved a revised form of VHI undertaking for dissemination to the profession. G

BRIEFING

Practice notes

Ten steps to business growth

GUIDANCE AND ETHICS COMMITTEE

1) Encourage everyone in the firm to promote the business. Solicitors are not natural sales people and shy away from selling themselves and their products. Lead by example from the top down – principals/partners, fee-earners and support staff.
2) Identify and assess your customer profile. Who are currently your best clients? What kind of relationship do you have with them and how can you improve that relationship? How can you ask them about their needs?
3) Have a marketing plan. A marketing plan gives focus to your efforts to increase business. It cannot be made up of generalities. For example, it is not enough to state that you will take part in a networking event, take a potential client for lunch, write an article or make a presentation. The plan should be specific. Identify the networking opportunity, the person you will bring to lunch and when that will be, the publication for which you will write an article, and the group to whom you will make a presentation and the topic you will address for them.
4) Make cross-selling part of your interaction with your clients. Remind your clients of all the services you offer. For example, if you are handling a personal matter for a client, you may wish to give the client a brochure tailored to the work you could do for them in their business. If you come across something that you think might be of interest to a client, email it to them, or phone, or write to them to inform them of the matter. They may be interested in legislation that will affect them and also in relevant upcoming events. The simple question to the client, "Is there anything else we can help you with?", before the client departs your office might yield surprising results.
5) Build on local knowledge. Become more active in local and regional organisations. Look in front of you; new opportunities may be very local.
6) Recognise that finding new clients is priority work. Finding new clients should be viewed as having the same priority as actually working on a file. Do not say "I am really busy now and I don't have time to look for new clients". Make time.
7) Review your website. Your website may be the only way that prospective clients who are not known to you can learn about your services. Many of them may never have previously used the services of a solicitor's firm. Review accessibility to the website, prominence and search-engine priority. Identify areas where further or updated material is needed.
8) Make sure the services you deliver are user-friendly. If you are easy to do business with, your current clients are more likely to recommend you to others, and to return in the future. Keep language with your clients straightforward and succinct and avoid legalese. The service you deliver must match your marketing blurb. You may not have the opportunity to deliver something different and unique to other solicitors' firms, but you can demonstrate that you deliver what you do, well.
9) Encourage your clients to recommend you. If you have done a good job for a client, encourage your client to tell others.
10) Seek feedback from your client. Never underestimate a good follow-up and feedback system, to ensure your client is satisfied with the work you have done. If they are not satisfied, it is most important that you know about this and have an opportunity of correcting the matter.

NOTICE

Notice to all solicitors: undertakings

From the volume of complaints the Law Society continues to receive from lending institutions, it is clear that there are still numerous overdue solicitors' undertakings. Many of these undertakings go back some considerable time, and many can be easily complied with. Some solicitors have files in their offices that have not been completed because stamp duty has not been paid, applications have not been made to the Property Registration Authority, or ancillary issues such as certificates of compliance with planning permissions have not been addressed. Unfortunately, too many solicitors are only attending to these issues after a complaint has been made.

The experience of the Law Society's investigating accountants is that many solicitors have outstanding balances on the client ledger, representing stamp duty and registration fees. It is the view of the Law Society that if solicitors were to review their client ledgers on a regular basis and take action to clear these balances, it would lead to fewer complaints about overdue undertakings.

A breach of an undertaking is a matter of professional misconduct, and failing to comply with an undertaking can result in a referral to the Solicitors Disciplinary Tribunal. The tribunal can make a recommendation to the High Court to strike a solicitor off the Roll of Solicitors, and a number of solicitors have been struck off the roll for breach of undertaking. In all cases, a complaint to the Law Society will impact negatively on the solicitor's practice, at the very least in terms of management time and the risk of an increase in the cost of professional indemnity insurance.

The Law Society therefore urges all solicitors to check whether they have any overdue undertakings to lending institutions and, if there are any, to comply with those undertakings as a matter of urgency. All firms should keep a register of undertakings for ease of identifying and complying with overdue undertakings. In the case of firms that do not have a register at the present time, the Law Society recommends that a register is drawn up.

Please ensure that when a letter of enquiry is received from a lending institution, a response is given within a reasonable time to reduce the chances of a complaint to the Law Society.

John Elliot,
Registrar of Solicitors
and Director of Regulation

Complaints by solicitors about financial institutions

CONVEYANCING COMMITTEE

The Conveyancing Committee is aware that many solicitors have had difficulty in making complaints about lending institutions and about the manner in which they deal with solicitors on various matters. Part of this difficulty has been that it is not easy to identify by whom and what section in the Central Bank are solicitors' complaints considered. Following recent enquiries, the committee has been advised that the Financial Regulation section of the Central Bank is the section that regulates credit institutions, but that, because many sectors are regulated, it is often difficult to pinpoint who to contact. The committee has been advised that, if its members are unsure of where to go, they can send their concerns to the team at nppfeedback@centralbank.ie. This is the section that is dealing with the national payment plan project. They have indicated that they may not be able to deal with solicitors' query directly, but they will be able to locate the right person or section in the Central Bank to refer solicitors to.

BRIEFING

Sales of property where NAMA is the chargeholder

CONVEYANCING COMMITTEE

Practitioners have sought guidance as to the practices to be adopted where a property in sale is the subject of a charge or mortgage that has been transferred to NAMA (NAMA-charged property) pursuant to the *National Asset Management Agency Act 2009* or where a property is subject to a charge or mortgage granted directly in favour of NAMA. In that respect, it should be noted that all such transfers were made to National Asset Loan Management Limited (a 'NAMA group entity' for the purposes of the *NAMA Act*) and not to NAMA itself. As such, all discharges and releases will be executed by National Asset Loan Management Limited (NALM).

Approval of proposed sale by NAMA

A vendor of NAMA-charged property will require the prior approval of NAMA before proceeding with any proposed sale. Applications for such approval should be made by the vendor to their usual contact in NAMA or the relevant participating institution dealing with their NAMA loans.

Such applications should, among other things, set out the net proceeds of sale that NAMA can expect to receive on completion of the sale after deduction of taxes and professional and other costs (the net sale proceeds), with a breakdown of those proposed deductions. These must all be approved of by NAMA. NAMA may also set out other conditions that must be adhered to on a case-by-case basis (the commercial conditions). This will include confirmation that NAMA's policy in relation to sales being on an arm's-length basis to non-connected parties has been adhered to (section 172 condition). Compliance with the section 172 condition will be a matter for either the vendor's selling agent or, if appointed, a receiver. Vendors of NAMA-charged property are made aware of terms of this policy directly by NAMA.

Sale approved – next steps by vendor's solicitor

A practitioner acting for a vendor should obtain a copy of the conditions imposed by NAMA or a participating institution in relation to the sale from the vendor. They should then contact the relevant solicitor in NAMA or the participating institution dealing with the matter (if not known, the vendor should confirm this with their NAMA contact) who will issue confirmation of the terms on which a release will be provided (this will be done by way of a standard terms of release letter).

Contract terms

In view of the foregoing, practitioners should discuss with the vendor the advisability of entering into a contract for sale prior to obtaining NAMA approval or to the inserting of a provision making the contract conditional upon the obtaining of such approval.

NAMA has advised that it will require that proceeds are to be split separately to allow net sale proceeds be paid directly to the participating institution or NALM. A practitioner advising a vendor should include a special condition in the contract allowing for any necessary split of the sale proceeds to facilitate the foregoing, if a requirement.

Approval of release

The deed of discharge or release of the relevant charge or mortgage should be prepared in advance of completion of the sale by the vendor's solicitor. In that respect, NAMA has developed a suite of template discharges and releases (which have been approved by the Property Registration Authority) that must be used in all cases. The vendor's solicitor should contact the relevant solicitor in NAMA or the participating institution dealing with the matter to obtain a copy of the relevant template, when contracts are in place and in advance of completion.

In approving a release prepared by a vendor's solicitor, NAMA's solicitor will require confirmation from the vendor's solicitor that: (i) a NAMA standard release or discharge format has been used; (ii) in the case of a partial release, that only the relevant property in sale is included; (iii) that the vendor's solicitor has been instructed by the vendor or the vendor's selling agent/surveyor/engineer (who should be named) that any maps appended to the release properly identify the property in sale; (iv) that the vendor's solicitor has been instructed by the vendor or the vendor's selling agent/surveyor/engineer (who should be named) that any relevant rights or easements that are necessary for the remainder of the property (insofar as it is secured in favour of NAMA) have been reserved over the property in sale.

As practitioners will be aware, the transfer of ownership of charges to NAMA occurs pursuant to the operation of the *NAMA Act* without the need for a formal instrument in writing to be registered in either the Land Registry or the Registry of Deeds, although NAMA are working with the Land Registry office of the Property Registration Authority with a view to entering the ownership of charges (which are registered as burdens and have been transferred to NALM) on a subsidiary register maintained under section 8(b) of the *Registration of Title Act 1964*, as amended.

Where a release relates to security that NALM has acquired (rather than security it has taken in its own name), it is the practice of NAMA to insert a recital in the release dealing with the transfer of ownership of the relevant security (being released) to NALM, pursuant to the *NAMA Act*. Of specific import to practitioners is that NALM certifies, pursuant to section 108 of the *NAMA Act*, that the relevant security (being released) is an 'acquired bank asset' for the purposes of the *NAMA Act*. Practitioners should note that, once so certified by NALM, they do not need to investigate NALM's rights to the relevant security or their being the appropriate party to release same any further.

Confirmation of compliance with commercial conditions

In advance of completion, the vendor's solicitor should obtain a copy of the confirmation given to the vendor by NAMA or the participating institution that the commercial conditions (other than the payment of the net sale proceeds) have been complied with.

Practitioners are advised to deal with any legal conditions (other than those that can only be dealt with at completion) in advance of completion so that, ideally, the only outstanding condition by completion should be the furnishing of the net sale proceeds to NAMA or the participating institution.

Letter of confirmation from NAMA (or a participating institution) for completion purposes

On satisfaction of the above, NAMA or the participating institution will issue a letter addressed to the vendor's solicitor and, if known, the purchaser's solicitor (the letter of confirmation) confirming that, on receipt by NAMA or the participating institution of the net sale proceeds, they will furnish a release in the agreed format, executed by NALM.

Where a participating institution is the primary contact for a vendor, NAMA have confirmed that the participating institution is authorised to act on its behalf in relation to the matters set out in this practice note. However, as all releases will only be executed by NALM, they must ultimately all be presented to and executed within NAMA itself.

As NAMA is a State body and a participating institution is acting for and on behalf of NAMA (in accordance with the *NAMA Act*) in relation to these matters, the committee is of the view that practitioners acting for both vendors and purchasers should accept a letter of confirmation from NAMA or a

participating institution for completion purposes. NAMA expects that this will apply in the vast majority of sales in which it involved and, in particular, residential sales. Other than in exceptional circumstances, as set out below, practitioners should not require that NAMA or a participating institution furnish an executed release (regardless of whether it is to be held on trust or subject to the vendor's solicitor's undertaking or otherwise) in advance of compliance with the conditions set out in the letter of confirmation.

In line with the above, NAMA have advised that they will no longer issue executed releases to be held on trust or subject to an undertaking by a vendor's solicitor in advance of completion and receipt by it of the net sale proceeds.

In exceptional cases, NAMA have advised they will facilitate 'three-way' closings by arranging that a solicitor acting for NAMA or a participating institution be available at completion to exchange an executed release on receipt of the net sale proceeds by way of bank draft or e-transfer only. This will apply for high value sales and, while NAMA has not specified any *de minimis*, it is expected that this will only arise in significant commercial transactions or sales of particularly valuable properties. NAMA has confirmed it will also facilitate a 'three-way' closing where it is joining in as mortgagee in the deed of assurance, which accordingly must be furnished to the purchaser's solicitor on completion. NAMA will confirm its position in this regard on a case-by-case basis. All of the requirements set out above will apply in these cases too.

Releases will be executed under seal by NALM in the usual format for a limited company.

NAMA's interest in unregistered lands

Practitioners should be aware that there is currently no 'searchable' means of establishing whether a mortgage or charge granted to a participating institution over unregistered lands has been transferred to NAMA. The committee

APPENDIX 1

Terms of release letter – on participating institution (PI) notepaper[1]

[Address to vendor's/borrower's solicitors]
[Date]
[Borrower connection NAMA ID and vendor/borrower's name (the Vendor)[2]]
[Description of property being sold/released] (the Property)

Dear Sirs
We refer to the proposed sale of the above Property and the approval previously issued by us to the Vendor in that respect (the Approval). We are acting as service provider to National Asset Loan Management Limited (NALM) and are authorised to issue this letter on its behalf.

As you may be aware, the Property is the subject of security which has been transferred to National Asset Loan Management Limited (NALM, a 'NAMA group entity') pursuant to the *National Asset Management Agency Act 2009*. Accordingly, any discharges and/or release will be executed by NALM.

We confirm that, subject to:

i) Compliance with all conditions included in the Approval,[3] as confirmed in writing by us to the Vendor;
ii) Our approval of the draft Deed of Discharge or Release (the Release), prepared by your firm. [This should be in a NAMA standard format, which we can provide to you on request, subject to your clarifying whether title is registered or unregistered for that purpose];[4] and
iii) Payment by your firm of the agreed Net Sales Proceeds of [insert amount] to us[5] in accordance with the Approval

we will furnish you with the agreed form Release, duly executed by NALM.

Please note that, in approving the Release, we will require your confirmation that:

i) Only the Property is included;
ii) That you have been instructed by the Vendor or the Vendor's selling agent/surveyor/engineer (who should be named) that any maps appended to the Release properly identify the Property; and
iii) That the you have been instructed by the Vendor or the Vendor's selling agent/surveyor/engineer (who should be named) that any relevant rights or easements which are necessary for the remainder of the property (insofar as it is secured in favour of NAMA) have been reserved over the Property; and
iv) That you are satisfied that the security from which the Property is to be released is set out in the draft Release.

Yours faithfully[6]

Footnotes
1. Include the PI's standard NAMA strapline. This letter should be adapted by the PI, as appropriate, for sales outside of ROI.
2. This will need to be adapted for Receiver sales.
3. Note: this should include compliance with s172(3) per Guidance 2011 35.
4. ROI and NI sales only.
Insert details of the PI's account into which the proceeds should be lodged, if known.
5. Insert PIs usual sign-off for NAMA related matters.
6. Insert PIs usual sign-off for NAMA related matters.

APPENDIX 1B

Agreement to furnish release[1] – on participating institution (PI) notepaper[2]

Address to vendor's/borrower's solicitors and, if known, purchaser's solicitors]
[Date]
[Borrower connection NAMA ID and vendor/borrower's name (the Vendor)[3]]
[Description of property being sold/released] (the Property)

Dear Sirs,
We refer to the proposed sale of the above Property and the approval previously issued by us to the Vendor in that respect (the Approval). We are acting as service provider to National Asset Loan Management Limited (NALM) and are authorised to issue this letter on its behalf.

As you may be aware, the Property is the subject of security which has been transferred to National Asset Loan Management Limited (NALM, a 'NAMA group entity') pursuant to the *National Asset Management Agency Act 2009*. Accordingly, any discharges and/or release will be executed by NALM.

We confirm that, subject to payment by your firm of the agreed Net Sale Proceeds of [insert amount]) to us[4] in accordance with the Approval, we will furnish you with the agreed form Release, duly executed by NALM.

It is in order to furnish a copy of the enclosed to the purchaser's solicitor.

Yours faithfully[5]

Footnotes
1. Note: as this agreement to provide the executed release is conditional only on the provision of the net sale proceeds, it should be provided if any other commercial or legal conditions are outstanding (unless it is agreed with the borrower's solicitors that such conditions remain in this letter.
2. Include the PI's standard NAMA strapline. This letter should be adapted by the PI, as appropriate, for sales outside of ROI.
3. This will need to be adapted for receiver sales.
4. Insert details of the PI's account into which the proceeds should be lodged, if known.
5. Insert PIs usual sign-off for NAMA related matters.

has made enquiries of NAMA as to whether it would be possible to provide some notification of the fact of a transfer against the relevant entry on the Register of Deeds for that mortgage or charge. However, given the significant exercise that this would entail, involving resources on both NAMA's and the Property Registration Authority's part, the committee has been advised that this is simply not practicable. NAMA have also advised that, arising from both their general banker's and statutory obligations of confidentiality, they cannot confirm their ownership (or otherwise) in relation to any particular security (or property provided as security) directly to any person, without the written consent of the relevant debtor.

Releases by participating institutions of non-NAMA charged property

The committee is aware that some practitioners are seeking confirmation from participating institutions that the relevant security being released has not transferred to NAMA. Notwithstanding the foregoing, but having regard to the separation of the participating institutions' NAMA loan management functions from their non-NAMA functions, the committee considers, at this juncture, that it is unlikely that a participating institution could incorrectly continue to act as the party beneficially entitled to a mortgage or charge that has been transferred to NAMA. Therefore, unless the practitioner is specifically on notice otherwise (for example, their client has instructed them that the relevant security has transferred to NAMA), it is not necessary to seek any additional verification in that respect in accepting a release or discharge from a participating institution.

If or when matters change, the committee will issue further recommendations as may be necessary.

Anti-money-laundering measures and existing clients

A number of queries seeking further information and clarification have been received by the Society following the publication of the *eZine* article of March 2013 entitled 'AML – no exemption for existing clients'.

The intent of the article was to broadly remind members that, where a firm provides an AML regulated service, they must carry out statutory AML client due diligence (CDD). It had come to the attention of the Law Society that some firms mistakenly believed that, if a client was an existing client or was personally known to the solicitor, then there was no need to carry out any AML CDD at all (that is, any of the four general CDD duties, including verification of identity).

This note is intended to complement the *eZine* article – to clarify and reiterate in greater detail that there is no exemption for existing clients from the AML statutory regime.

The *Criminal Justice Act 1994*, as amended

In the *Criminal Justice Act 1994*, as amended, there was no explicit provision stating that existing clients were exempt from the AML requirements of the 1994 act. Section 32 of the 1994 act set out the statutory AML obligations to be undertaken by designated bodies and, in respect of the identification of clients, section 32(3) stated: "A designated body shall take reasonable measures to establish the identity of any person for whom it proposes to provide a service of a kind mentioned in subsection (2) of this section."

The use of the term 'reasonable measures' in section 32(3) – a term that was not clarified or expanded upon elsewhere in the 1994 act –– along with the non-retrospective application of the provisions, led to the widely accepted interpretation that existing or known clients were excluded from the statutory requirement of taking reasonable measures to establish the identity of clients. This interpretation arose from the particular manner of implementation of the AML provisions contained in the 1994 act (sections 31, 32, 57, 57A and 58), whereby the general elements of the statutory requirements were set out in the 1994 act, but the details of how to implement the requirements were set out in non-legally binding *Money-Laundering Guidance Notes* issued by the Money-Laundering Steering Committee (MLSC), which was chaired by the Department of Finance.

The *Guidance Notes for Financial Institutions* issued in May 2003 by the MLSC clearly stated at paragraph 36: "A credit institution is not expected to retrospectively establish the identity of persons who were already customers on the 2 May 1995. Credit institutions should, however, note that, on the good practice principle of 'know your customer', it is expected that they will be aware of who it is they are dealing with as customers."

This approach was generally accepted across all relevant sectors of designated bodies subject to these obligations, including solicitors. The AML statutory regime as set out in the 1994 act was applied to solicitors from 15 September 2003 (SI 242 of 2003).

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

A different approach to the prevention of money laundering is evident in the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*. This act repealed the relevant money-laundering sections of the 1994 act and introduced a comprehensive statutory AML regime in their place. In contrast to the 1994 act, the 2010 act sets out in extensive detail what measures must be taken in carrying out statutory measures of what is now termed 'customer due diligence' – see sections 33 to 39 of the 2010 act.

In respect of the statutory requirement of 'identification and verification of customers and beneficial owners', there is no exemption for existing or personally known clients contained in the detailed steps set out in sections 33 to 39 or elsewhere in the 2010 act. In further contrast to the relevant provisions of the 1994 act, there are clearly defined exemptions from the identification requirements in respect of a 'specified customer or specified product' to be found in the 2010 act, all of which are listed in detail in section 34, that is, simplified CDD – but none of these exemptions relate to 'existing' or personally known clients.

The guidance notes issued by the Department of Finance in February 2012 for credit institutions in respect of the 2010 act emphasise the need for acquiring and/or updating CDD information in respect of existing clients, stating (at page 21): "Designated persons must carry out CDD before establishing a business relationship with a customer. In effect, designated persons should have reliable CDD information for an existing customer prior to carrying out any service for such a customer. Designated persons should monitor their dealings with existing customers, keep CDD information up to date as warranted by the overall knowledge the person has of the customer, the nature of the business relationship, and the risk of money laundering or terrorist financing."

As there is no exemption in the 2010 act (either by way of explicit provision or otherwise) from the application of AML CDD to 'existing clients' or to those clients personally known to the solicitor, the Society believes that solicitors are obliged under the 2010 act to undertake AML CDD (the four standard obligations of CDD, including identification and verification) in relation to these clients. This means that, for all new instructions relating to AML regulated legal services, even where the client is personally known to the solicitor or the solicitor may have acted for the client in the past, AML CDD should be applied.

The Society's guidance notes for solicitors (in relation to the 2010 act)

The guidance set out at paragraph 3.9 (referring only to the ongoing

monitoring process and verification of identity on a risk-sensitive basis for existing clients who were previously exempt from identification) relates to the immediate period of time after the commencement of the 2010 act on 15 July 2010. At that point in time, there may have been ongoing AML regulated transactions that had started before the 2010 act commenced (between September 2003 and July 2010), and which involved clients falling within the old exemption of being personally known or 'existing'. For this very specific type of transaction, it was considered that the ongoing monitoring of the legal service that was in the process of being provided would generally prove sufficient. The majority of these kinds of AML regulated transactions (commenced prior to July 2010) are presumably completed by this time. It is not intended that retrospective verification of identity of this category of 'existing client' should be undertaken for past and completed transactions, nor would it be necessary.

However, if such a client (deemed 'existing' on the basis of past provision of legal services or a client who is personally known) should approach the firm for further services within an AML regulated legal service area, AML CDD measures are necessary, including the statutory duty to identify and verify the identity of such clients. This means that:

1) If a client is personally known to the solicitor, AML CDD should nonetheless be applied to the client, including the requirement for identification and so on,
2) If a client is categorised as existing because legal services were previously provided to them at a time before 15 July 2010, and this client later seeks further legal services, AML CDD should be applied, including the requirement of verification of identity. Depending on when legal services were previously provided to the client, identification and verification may be carried out for the first time or previously obtained identification material may have to be updated.

Generally, keeping identification material up to date means that solicitors may have to review it when taking new instructions from a client if there is a gap of over three years between instructions or if the firm receives information of a change in identity details (see paragraphs 3.10 to 3.13 and 5.44 to 5.47 of the Society's guidance notes).

In respect of the verification of identity obligation, the Society's guidance notes offer practical guidance to solicitors at chapters 5 and 6. As stated in the guidance notes at paragraph 6.5, the basic underlying principle is that the solicitor must be satisfied that the client (individual or corporate entity) is who they say they are and, in order for a solicitor to limit any potential exposure s/he may have under the 2010 act, there should be identification evidence on file to support this:

"The general principle is that a solicitor should establish satisfactorily that he is dealing with a real person or organisation (natural, corporate or legal) and obtain identification evidence sufficient to establish that the client is that person or organisation."

Identification is a process by which a solicitor obtains information from the client to establish who the client is. Besides the basic identification documentation such as a passport, other supporting identity information can be accumulated over time (for example, family circumstances, business career, physical appearance, and so on). Verification is the means by which a solicitor establishes that this information is correct based on evidence provided by the client or obtained by the solicitor independently of the client. Chapters 5 and 6 of the Society's guidance notes provide detailed guidance in respect of both aspects of this statutory obligation.

Finally, as a matter of best practice and risk management, the Society is of the view that solicitors ought to identify all clients to whom they wish to provide any legal service. Chapter 6 of the Society's guidance notes provides guidance in this respect.

Ulster Bank's requirement for priority search in commercial mortgage lending

CONVEYANCING COMMITTEE

The Conveyancing Committee has received queries from solicitors on the requirement by Ulster Bank for a priority search to be carried out in commercial mortgage lending cases. The query initially arose before commercial undertakings by borrowers' solicitors to borrowers' banks were prohibited at the end of 2010. The committee had sought confirmation from the bank that the matter would no longer be an issue once the above commercial undertaking would no longer be given but, despite protracted correspondence to the bank, the committee has not received this assurance.

In order to clarify the matter for conveyancing practitioners, the committee's view is that there should not be a bank requirement for a priority search as an automatic requirement in every case and that it is a judgement call for each individual solicitor to make in each case. This position applies whether the solicitor is a panel solicitor acting for the bank or otherwise.

IBRC (in special liquidation): execution of vacates/releases/discharges

CONVEYANCING COMMITTEE

The Conveyancing Committee has received several queries from solicitors about what they should expect IBRC (in special liquidation) to provide in terms of deeds of release/discharge/vacates, including in terms of how those documents should be executed. Following enquires made by the committee with IBRC, the following has been confirmed to the committee.

IBRC has a process in place for dealing with requests for discharges/releases/vacates, and so on, and it also has a process in place for having such documents sealed by the special liquidator:

- If there is a straight discharge of a mortgage/full redemption relating to unregistered title, a solicitor should write in to IBRC in the usual way requesting a vacate.
- If the property concerned has registered title, IBRC will issue an e-discharge in the usual way.
- If what is involved is a partial release, a borrower's solicitor would need to liaise with the relevant business division at IBRC, for example, in a restructuring of borrowings case, and so on, as these matters are dealt with on a case-by-case basis.

The execution block that solicitors should expect to see in the above sealed documents is:

The COMMON SEAL of IRISH BANK RESOLUTION CORPORATION LIMITED (IN SPECIAL LIQUIDATION) was affixed to this DEED and this DEED was DELIVERED
[Kieran Wallace]/or
[Eamon Richardson]
As special liquidator

If practitioners are experiencing any difficulties with obtaining sealed releases, discharges, or vacates, they should advise the committee. G

BRIEFING

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 F Condon, a solicitor practising as McMahon & Tweedy Solicitors, Merchant's House, 27-30 Merchant's Quay, Dublin 8, and in the matter of the *Solicitors Acts 1954-2008* [3127/DT09/10]

Law Society of Ireland (applicant)
John F Condon (respondent solicitor)

On 28 September 2010 and 14 April 2011, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. The tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to respond to repeated letters and calls from two named persons in a timely manner or at all,
b) Failed to take any steps to disabuse said parties of their belief that he was dealing with the matter for them and on their behalf since 19 April 2000,
c) Allowed the complainants' solicitors to think he was proceeding with the stamping of the documentation when he was taking no steps to do so,
d) Failed to reply satisfactorily to the Society's correspondence and, in particular, the Society's letters of 19 February 2009, 4 March 2009, 11 March 2009 and 15 May 2009 in a timely manner or at all,
e) Failed to respond satisfactorily to numerous letters from the complainant.

On 22 January 2013, a separate division of the tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €5,000 to the compensation fund,
c) Pay a sum of €1,000 as restitution to a named party,
d) Pay a contribution of €4,000 towards the whole of the costs of the Society, including witnesses' expenses.

In the matter of Patrick Neligan, solicitor, practising as Patrick Neligan, Solicitors, Main Street, Maynooth, Co Kildare, and in the matter of the *Solicitors Acts 1954-2011* [2705/DT37/12]

Law Society of Ireland (applicant)
Patrick Neligan (respondent solicitor)

On 19 February 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Created a deficit of in or around €108,000 to arise on the client account on or around 30 April 2011, which deficit was due or partly due to the withdrawal of client moneys from one or more client accounts without authority and not for the benefit of clients, in contravention of regulation 7(1) of the *Solicitors' Accounts Regulations 2001 to 2006* (SI 421 of 2001 as amended), and/or
b) Created debit balances on client ledger accounts totalling in or around €7,594.63 on or around 30 April 2011, in contravention of regulation 7(2)(a) of the *Solicitors' Accounts Regulations*, and/or
c) Created a further deficit of €2,069.46 on a named client account, which is unrecorded and not included in the deficit at (a) above, in contravention of regulation 11(3) of the *Solicitors' Accounts Regulations*, and/or
d) Created a further deficit of €2,231.82 on a named client account, which is unrecorded and not included in the deficit at (a) above, in contravention of regulation 11(3) of the *Solicitors' Accounts Regulations*, and/or
e) Withdrew monies from client accounts other than as permitted, in contravention of regulation 8(4) of the *Solicitors' Accounts Regulations*, and/or
f) Failed to maintain, as part of his accounting records, proper books of account that showed the true financial position in relation to the respondent solicitor's transactions with clients moneys and/or with moneys transacted by the respondent solicitor through the client account, in breach of regulation 12 of the *Solicitors' Accounts Regulations*, and/or
g) Failed to prepare balancing statements at the due dates, in contravention of regulation 12(7)(a) of the *Solicitors' Accounts Regulations*, and/or
h) Failed to account for interest to clients on monies held, in contravention of regulation 7(4) of the *Solicitors' Accounts Regulations*, and/or
i) Failed to account for interest to named clients in contravention of regulation 7(4) of the *Solicitors' Accounts Regulations*, and/or
j) Failed to account for interest on a sum of £11,250.00 (€14,285) owing to an untraced beneficiary of an estate, in contravention of regulation 7(4) of the *Solicitors' Accounts Regulations*.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay the sum of €3,000 to the compensation fund,
c) Pay the whole of the costs of the Society, as taxed by a taxing master of the High Court in default of agreement.

In the matter of John Feran, solicitor, formerly practising as principal of Feran & Co, Solicitors, Constitution Hill, Drogheda, Co Louth, and in the matter of the *Solicitors Acts 1954-2011* [2677/DT39/12[

Law Society of Ireland (applicant)
John Feran (respondent solicitor)

On 26 February 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Created a deficit of in or around €33,053.40 to arise on the client account on or around 31 December 2010, which deficit was due or partly due to the withdrawal of client moneys from one or more client accounts without authority and not for the benefit of clients, in contravention of regulation 7(1) of the *Solicitors' Accounts Regulations 2001 to 2006* (SI 421 of 2001 as amended), and/or
b) Created debit balances on client ledger accounts, in contravention of regulation 7(2)(a) of the *Solicitors' Accounts Regulations*, and/or
c) Withdrew monies from client accounts other than as permitted, in contravention of regulation 8(4) of the *Solicitors' Accounts Regulations*, and/or
d) Withdrew monies from the client account that were not properly due to the solicitor at the time, in contravention of regulation 11(3) of the *Solicitors' Accounts Regulations*, and/or
e) Transferred monies to and from client ledger accounts to hide debit balances and clear overdrawn fees, in contravention of regulation 9 of the *Solicitors' Accounts Regulations*, and/or
f) Failed to maintain, as part of his accounting records, proper books of account that showed the true financial position in relation to the respondent solicitor's transactions with clients moneys and/or with moneys transacted by the respondent solicitor through the client account, in breach of regulation 12 of the *Solicitors' Accounts Regulations*, and/or
g) Created incorrect balancing statements that did not reflect the true position in respect of client monies, in contravention of regulation 12(7)(a) of the *Solicitors' Accounts Regulations*, and/or
h) Created incorrect entries in the cash book that did not reflect the date upon which client monies were received and lodged, in contravention of regulation 20(1)(a) of the *Solicitors' Accounts Regulations*, and/or
i) Failed to maintain a journal with

BRIEFING

a narrative explaining the transfers between different client ledger accounts, in contravention of regulation 20(1)(d) of the *Solicitors' Accounts Regulations*.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum not exceeding €5,000 as a contribution towards the whole of the costs of the Society.

In the matter of Patrick McCarthy, solicitor, formerly practising as McCarthy & Co, Second Floor, Building 1000, City Gate, Mahon, Cork, and in the matter of the *Solicitors Acts 1954-2011* [7748/DT131/10 and High Court record no 2013/39 SA]
Law Society of Ireland (applicant) Patrick McCarthy (respondent solicitor)
On 27 January 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to comply with his solicitor's undertaking to a lending institution, dated 3 December 2007, up to the date of the swearing of the Society's affidavit,
b) Failed to reply to correspondence from the lending institution,
c) Failed to reply to correspondence from the Society,
d) Failed to attend meetings of the Complaints and Client Relations Committee,
e) Misled the Society in representing to the Society that documents had been sent to the Property Registration Authority when they had not,
f) Failed to discharge the contribution towards the costs of the investigation of the complaint of €550, as directed by the Complaints and Client Relations Committee, up to the date of the swearing of the Society's affidavit.

The tribunal ordered that the matter go forward to the High Court with the recommendation that:
a) The respondent solicitor not be permitted to practise as a sole practitioner or in a partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society,
b) The respondent solicitor pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

The President of the High Court, on 8 April 2013, made the following orders:
a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
b) That the Society do recover the costs of the proceedings before the High Court and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent solicitor, to be taxed in default of agreement.

In the matter of Patrick McCarthy, solicitor, formerly practising as McCarthy & Co, Second Floor, Building 1000, City Gate, Mahon, Cork, and in the matter of the *Solicitors Acts 1954-2011* [7748/DT144/11 and High Court record no 2013/40 SA]
Law Society of Ireland (applicant) Patrick McCarthy (respondent solicitor)
On 5 July 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Breached regulation 12(1) by failing at all times to maintain proper books of account,
b) Breached regulation 12(2)(a) by failing to maintain books of account that showed the true financial position in relation to his transactions with clients' moneys,
c) Breached regulation 7(2)(a) by allowing debit balance to arise on client ledgers in circumstances other than permitted by this subsection,
d) Failed to attend a meeting of the Regulation of Practice Committee on 21 May 2009, despite being required to so attend,
e) Allowed an estimated overall deficit to arise on the client account of €58,771, as of 30 April 2009,
f) Failed to stamp deeds on time, incurring substantial interest and penalties on late stamping of deeds in question,
g) Transferred stamp duty funds to his office account from the client account, ostensibly as fees,
h) Failed to discharge third-party liabilities in two matters, amounting to €32,074,
i) Used €3,090 of the monies for third-party liabilities referred to above to pay legal costs drawers' fees.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 8 April 2013, made the following orders:
a) That the name of the respondent solicitor be struck from the Roll of Solicitors,
b) That the Society do recover the costs of the proceedings before the High Court and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent solicitor, to be taxed in default of agreement.

In the matter of Patrick McCarthy, solicitor, formerly practising as McCarthy & Co, Second Floor, Building 1000, City Gate, Mahon, Cork, and in the matter of the *Solicitors Acts 1954-2011* [7748/DT120/11 and High Court record no 2013/41 SA]
Law Society of Ireland (applicant) Patrick McCarthy (respondent solicitor)
On 5 July 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to stamp and register a deed of conveyance in a timely manner or at all,
b) Severely prejudiced his clients by allowing interest and penalties to accrue in relation to the non-stamping of the deed,
c) Misled his clients,
d) Misled his clients' new solicitor,
e) Failed to reply to correspondence from the Society,
f) Failed to attend a meeting of the Complaints and Client Relations Committee when required to do so.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 8 April 2013, made the following orders:
a) That the name of the respondent solicitor be struck from the Roll of Solicitors,
b) That the Society do recover the costs of the proceedings before the High Court and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent solicitor, to be taxed in default of agreement.

In the matter of Brian Johnston, a solicitor formerly practising as Brian Johnston & Co, Solicitors, 79 Park Street, Dundalk, Co Louth, and in the matter of the *Solicitors Acts 1954-2008* [6927/DT95/11 and High Court record no 2013/60 SA]
Law Society of Ireland (applicant) Brian Johnston (respondent solicitor)
On 11 April 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to comply within a reasonable time or at all with an undertaking given by him dated 31 January 2006, whereby he undertook to procure a deed of partial discharge,
b) Failed to reply adequately or at all to the complainant's correspondence and, in particular, letters dated 18 May 2009, 21 July 2009, 13 August 2009, 14 May 2010 and 1 October 2010.

The tribunal ordered that the matters go forward to the High Court and, on 10 June 2013, Mr Justice O'Neill made the following orders:

a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
b) That the respondent solicitor do pay the Society the costs of the Solicitors Disciplinary Tribunal to include witness expenses, to be taxed in default of agreement,
c) That the respondent solicitor do pay to the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Sean McGlynn, formerly practising as Sean McGlynn & Co, Solicitors, Suite 41, Town Centre, Justice Walsh Road, Letterkenny, Co Donegal, and in the matter of the *Solicitors Acts 1954-2008* [5520/DT35/12]
Law Society of Ireland (applicant)
Sean McGlynn (respondent solicitor)
On 11 June 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to honour an undertaking given to a named financial institution, dated 15 November 2004, on behalf of named clients in respect of a loan advanced to his clients, whereby he undertook to register a mortgage over a property in Letterkenny, Co Donegal, and to furnish title documents and mortgage deed to the financial institution,
b) Failed to honour an undertaking given to the same financial institution, dated 31 May 2005, on behalf of the same clients in respect of a loan advanced to his clients, whereby he undertook to register a mortgage over the same property in Letterkenny, Co Donegal, and to furnish title documents and mortgage deed to the financial institution,
c) Released the balance sale proceeds of the property in Letterkenny, Co Donegal, to his clients in circumstances where he had failed to put in place the financial institution's security over that property in accordance with his undertakings of 15 November 2004 and 31 May 2005 and in circumstances where loans the subject of those undertakings remained outstanding.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €2,000 to the compensation fund,
c) Pay a contribution of €2,000 towards the whole of the costs of the Society, to include witness expenses.

In the matter of Francis McArdle, solicitor, formerly practising as McArdle & Associates, Solicitors, 10 Roden Place, Dundalk, Co Louth, and in the matter of the *Solicitors Acts 1954-2008* [2472/DT12/11]
Law Society of Ireland (applicant)
Francis McArdle (respondent solicitor)
On 13 November 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, up to the date of referral of this matter to the tribunal, he:
a) Failed to comply with his undertaking dated 23 October 1997 to a named bank in a timely manner or at all, and/or
b) Failed to reply to one or more letters from that bank in a timely manner or at all, notwithstanding his undertaking to them.

The tribunal ordered that the matter should go forward to the High Court and, on 24 June 2013, the President of the High Court made the following orders on consent:
a) That the respondent solicitor be restricted from practice as a sole practitioner or in a partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Society (said order to be stayed until such time as the respondent solicitor obtains a new practicing certificate),
b) That the respondent solicitor do pay the Society the costs of the proceedings before the High Court and the costs of the proceedings before the tribunal, to be taxed in default of agreement.

In the matter of Adam A Suzin, a solicitor formerly practising as Adam A Suzin & Co, Solicitors, 6 Keon's Terrace, Longford, Co Longford, and in the matter of the *Solicitors Acts 1954-2008* [10064/DT103/11 and High Court record no 2013/59SA]
Law Society of Ireland (applicant)
Adam A Suzin (respondent solicitor)
On 10 April 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to pay stamp duty to a named firm of solicitors, either at all or in a timely manner, to enable the firm to comply with their undertaking to a named bank,
b) Failed to comply with outstanding matters, either at all or in a timely manner, to enable a named firm of solicitors to comply with their undertaking to a named bank,
c) Permitted and/or had knowledge of the fact that two undertakings came into being in respect of the same property at the same time, without taking any or any sufficient steps to alert the solicitors and/or the financial institutions involved to the situation,
d) Failed to respond to correspondence from the Society, either in a timely manner or at all, and in particular to all or some letters dated 27 April 2010, 29 June 2010, 26 July 2010, 10 August 2010 and 1 September 2010,
e) Failed without reasonable excuse to attend a meeting of the Complaints and Client Relations Committee on 22 September 2010, as required by letter from the Society dated 10 September 2010,
f) Failed without reasonable excuse to attend a meeting of the Complaints and Client Relations Committee on 27 October 2010, as required by order of the High Court dated 18 October 2010,
g) Failed without reasonable excuse to attend a meeting of the Complaints and Client Relations Committee on 14 December 2010 as directed by the committee on 27 October 2010,
h) Failed without reasonable excuse to attend a meeting of the Complaints and Client Relations Committee on 16 February 2011 as directed by the committee on 14 December 2010.

The tribunal referred the matter to the High Court and, on 8 July 2013, Mr Justice O'Neill made the following orders:
a) That the name of the respondent solicitor be struck from the Roll of Solicitors,
b) That the respondent pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal to include witness expenses, to be taxed in default of agreement. G

BRIEFING

Legislation update 11 June – 11 August 2013

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

ACTS PASSED

Central Bank (Supervision and Enforcement) Act 2013
Number: 26/2013
Further provides for the regulation and supervision of financial service providers and financial services; further provides for the enforcement of financial services legislation; provides for the protection of persons reporting breaches; amends and extends the *Central Bank Acts 1942-2010* and certain other acts and statutory instruments, and provides for related matters.
Commencement: 1/8/2013, except for section 72 (per SI 287/2013)

Construction Contracts Act 2013
Number: 34/2013
Regulates payment and certain other matters under construction contracts and provides for related matters.
Commencement: Commencement order(s) required as per s1(2) of the act

Criminal Justice Act 2013
Number: 19/2013
Amends the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* to provide for the cessation of mobile communications services where necessary for the aversion of serious threats, and provides for related matters.
Commencement: Commencement order(s) required for part 2 as per
s1(3) of the act

Criminal Law (Human Trafficking) (Amendment) Act 2013
Number: 24/2013
Extends the scope of exploitative activities criminalised by the *Criminal Law (Human Trafficking) Act 2008* to fully comply with the criminal law provisions of Directive 2011/36/EU, which replaces Council Framework Decision 2002/629/JHA; provides that the commission of a human trafficking offence by a public official shall be treated as an aggravating circumstance for sentencing purposes, as required by the directive; defines the term 'forced labour', as used in the *Criminal Law (Human Trafficking) Act 2008*, and provides for related matters.
Commencement: 9/8/2013 as per s5(2) of the act

Courts and Civil Law (Miscellaneous Provisions) Act 2013
Number: 32/2013
Amends the *Civil Liability and Courts Act 2004* and the *Child Care Act 1991* to alter the *in camera* rule in order to introduce greater transparency in the administration of family and child care law by allowing press access to the courts in family and child care proceedings, subject to certain restrictions and prohibitions, including a strict prohibition on the publication of any material that would lead to the identification of the parties or children involved. Amends various enactments for the purpose of increasing the monetary jurisdiction limits of the Circuit Court and District Court in personal injuries actions and other civil proceedings.
Commencement: 31/7/2013 for part 8 (per SI 286/2013); commencement orders required for other sections

Electoral, Local Government and Planning and Development Act 2013
Number: 27/2013
Gives effect to Council Directive 2013/1/EU of 20/12/2012 on nomination procedures to the European Parliament and for that purpose amends the *European Parliament Act 1997*; amends the *Electoral Act 1992*, the *Referendum Act 1994*, the *Electoral Act 1997*, the *Planning and Development Act 2000* and the *Local Government Act 2001*, and provides for related matters.
Commencement: Commencement orders required for parts 4, 5 and 7 as per s1(7) of the act

European Union (Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013
Number: 21/2013
Provides for the employment in Ireland of nationals of the Republic of Croatia, further to the treaty concerning the accession of the Republic of Croatia to the European Union done at Brussels on 9/12/2011. This treaty was ratified by Ireland on 21/9/2012 and was due to be ratified by all 27 EU member states by the end of June 2013. Therefore, entry into force and accession of Croatia to the EU is due to take place on 1/7/2013.
Commencement: 1/7/2013 for all sections

Further Education and Training Act 2013
Number: 25/2013
Provides for the establishment of a body known as an tSeirbhís Oideachais Leanúnaigh agus Scileanna (SOLAS), under the aegis of the Department of Education and Skills; provides for the dissolution of An Foras Áiseanna Saothair (FÁS) and the transfer of its functions to SOLAS; repeals the *Labour Services Act 1987*; and provides for related matters.
Commencement: Commencement orders required as per s1(2) of the act

Health (Amendment) Act 2013
Number: 31/2013
Amends the *Nursing Home Support Scheme Act 2009* and the *Health Act 1970*. Increases the charges applicable to acute in-patient services in public hospitals and applies charges to all private in-patient services in public hospitals. Provides for related matters.
Commencement: 1/1/2014 for sections 13, 15, 16, 17; commencement orders to be made for other sections, as per s2 of the act

Health Service Executive (Governance) Act 2013
Number: 23/2013
Provides a framework for a new governance structure and associated new administrative structures that are designed to: (i) make the Health Service Executive (HSE) more directly accountable to the Minister for Health, who in turn is accountable to the people through the Oireachtas; (ii) help prepare the service delivery and funding systems for the next phase of the health reform programme; and (iii) facilitate further changes in responsibilities that achieve greater integration and less duplication in relation to national support functions. Amends the *Health Act 2004* to abolish the board and CEO structure of the HSE and to provide for a directorate to be the new governing body for the HSE in place of the board, headed by a director general; provides for further accountability arrangements for the HSE, and provides for related matters.
Commencement: 25/7/2013 for all sections (per SI 275/2013)

Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013
Number: 33/2013
Provides for the exercise by either house or both Houses of the Oireachtas (or by a committee of either house or both houses) of a power to conduct an inquiry into specified matters within existing constitutional parameters; provides for matters relating to compellability, privilege and procedure in the houses (and in committees of either house or both houses); and provides for related matters.

Commencement: Commencement order(s) required as per s1(2) of the act

Housing (Amendment) Act 2013
Number: 22/2013
Amends section 31 of the *Housing (Miscellaneous Provisions) Act 2009* relating to local authority rents so that the enactment can be brought into operation in an effective sequence.
Commencement: 2/7/2013 for all sections

Land and Conveyancing Law Reform Act 2013
Number: 30/2013
Provides that certain statutory provisions apply to mortgages created prior to the commencement of the *Land and Conveyancing Law Reform Act 2009* (1/12/2009), notwithstanding the repeal and amendment of those statutory provisions by the *Land and Conveyancing Law Reform Act 2009*. Also provides for the adjournment of actions for repossession in certain cases relating to the principal private residence of the borrower, where it is considered by the court that the matter could be resolved by recourse to the *Personal Insolvency Act 2012*.
Commencement: 31/7/2013 for sections 2 and 3 (per SI 289/2013)

Ministers and Secretaries (Amendment) Act 2013
Number: 29/2013
Amends the *Ministers and Secretaries (Amendment) Act 2011* to make provision for Government expenditure ceilings and ministerial expenditure ceilings for each of the following three financial years.
Commencement: Commencement order(s) to be made as per s4(2) of the act

Prison Development (Confirmation of Resolutions) Act 2013
Number: 28/2013
Confirms the resolutions of Dáil Éireann and Seanad Éireann under section 26 of the *Prisons Act 2007* approving the development of a new prison in the city of Cork on a site adjacent to the existing prison.
Commencement: 23/7/2013

Protection of Life during Pregnancy Act 2013
Number: 35/2013
An act to protect human life during pregnancy; to make provision for reviews at the instigation of a pregnant woman of certain medical opinions given in respect of pregnancy; to provide for an offence of intentional destruction of unborn human life; to amend the *Health Act 2007*; to repeal sections 58 and 59 of the *Offences Against the Person Act 1861*; and to provide for matters connected therewith.
Commencement: Commencement order(s) required as per s1(2) of the act

Social Welfare and Pensions (Miscellaneous Provisions) Act 2013
Number: 20/2013
Amends and extends the *Social Welfare Acts*, *the Civil Registration Act 2004*, the *Pensions Act 1990*, and provides for related matters.
Commencement: Commencement order(s) required for ss3, 8, 15, 22(b), 26-29 and 34, as per s1(5) of the act G

Prepared by the Law Society Library

BRIEFING

Eurlegal

Edited by TP Kennedy, Director of Education

Going Dutch: breweries fined in cartel beer case

Late last year, the Court of Justice of the European Union (CJEU) upheld decisions of the General Court largely affirming a 2007 European Commission decision fining the brewers Heineken NV and Bavaria NV for their involvement in a cartel in the Dutch beer sector (judgments of 19 December 2012 in Case C-445/11P, *Bavaria NV v Commission* and Case C-452/11P, *Heineken Nederland BV and Others v Commission*). These decisions mark the end of a long road.

Article 101 of the *Treaty on the Functioning of the European Union* (TFEU), formerly article 81 of the *EC Treaty*, prohibits agreements between undertakings, decisions by associations of undertakings, and concerted practices that have the object or effect of restricting competition in the EU. Price-fixing, market-sharing and other forms of cartels between competitors are seen as the most serious infringements of competition law.

Dawn raids

In 1999, following a dawn raid on the Belgian-based headquarters of AB InBev (at the time known as Interbrew) focusing on a possible abuse of a dominant position, the commission opened an investigation regarding cartel activity on the Belgian beer market. On foot of this, AB InBev came forward and provided information under the commission's leniency programme regarding alleged anti-competitive practices in France, Luxembourg, Italy and the Netherlands. This leniency programme encourages participants to provide the commission with 'inside information' on cartels and grants the applicant immunity from or significant reductions in fines, provided it cooperates fully with the investigation.

Further to AB InBev's leniency application, the commission undertook dawn raids in the Netherlands in March 2000. Over four years later, the commission opened formal legal proceedings and issued a statement of objections (SO) to AB InBev, Heineken, Grolsch and Bavaria for their alleged involvement in a cartel. Each brewer (with the obvious exception of AB InBev) objected to the commission's preliminary findings. The SO is a formal step in commission investigations into suspected violations of EU competition rules. In the SO, the commission informs the parties concerned in writing of the objections raised against them. The parties can then examine the documents in the commission's investigation file, reply in writing, and request an oral hearing to present their comments on the case before representatives of the commission and national competition authorities.

Operation of the cartel

Evidence uncovered during the commission's investigations revealed that the four beer companies had held numerous multilateral and bilateral meetings involving the highest levels of management, including board members, managing directors and national sales managers. According to the commission, meetings were conducted secretly under the guise of codenames such as 'working group on agenda' and 'Catherijne consultation'. The commission found that, at these meetings, the brewers involved allocated customers and coordinated prices/price increases of beer in the Netherlands in both the on-trade and off-trade channels. In addition, the commission held that the brewers occasionally coordinated other commercial conditions in the on-trade channel, such as loans to retailers. Evidence of handwritten notes taken at unofficial meetings was discovered. According to the commission, these documents provide proof of the dates and places when and where the meetings took place, confirming statements provided by AB InBev under the leniency programme.

Fines imposed

In an April 2007 decision, the commission found that AB InBev, Heineken, Bavaria and Koninklijke Grolsch NV had infringed article 101 TFEU by participating in a cartel on the market for beer in the Netherlands from early 1996 to late 1999. On the basis of the commission's leniency programme, AB InBev was granted total immunity from fines, as it had informed the DG Competition of the existence of the cartel, provided crucial doc-

umentation, and cooperated fully with the investigation.

Due to the strong position of the brewers on the Dutch beer market, the nature of the article 101 infringement, and the fact that the cartel affected the entire territory of the Netherlands, the commission categorised the infringement committed by the brewers as 'very serious', noting that it had the object of, among other things, fixing prices, thereby restricting competition and affecting trade between EU member states.

In calculating the fines, the commission took into account the extent of the markets for beer, the size of the companies involved, and the duration the cartels operated. The commission applied differential treatment to the brewers involved in order to take account of their effective economic capacity and thus the impact of their anti-competitive conduct. In calculating the starting amount, the commission considered sales figure from 1998, the last full calendar year of the infringement. To ensure a sufficient deterrent effect, an additional 2.5 multiplier was applied to Heineken's starting amount, in view of its financial strength. Fines are generally increased by 10% for each year of the infringement and by 5% for each six-month period or period of less than a year. As the cartel continued for three years and eight months, the starting amount for each brewer was thus increased by 35%.

As it had been over seven years since the initial dawn raids, the commission accepted that the process had been unduly long and, accordingly, reduced the fine imposed on each of the brewers by €100,000. The commission ultimately fined Heineken €219.2 million, Bavaria €22.8 million and Grolsch €31.6 million, a total of €273 million. Each company appealed the commission's decision to the General Court, formerly the Court of First Instance.

Appeal to the General Court

Koninklijke Grolsch NV, the addressee of the commission's decision for the Grolsch group, appealed the commission's decision on the grounds that it had not directly participated in the alleged infringement. It argued that it was employees of its wholly owned subsidiary, Grolsch Beirbrouweriji Nederland BV, who attended most of the meetings at issue. After a review of documentation of the meetings available to the commission, the court concluded that there was insufficient evidence to establish the direct liability of Koninklijke Grolsch NV.

The court then dealt with the issue of parental liability for actions of subsidiaries. CJEU jurisprudence states that, where a parent company holds 100% of the issued share capital of a subsidiary that has committed an infringement of EU competition rules, there is a rebuttable presumption that the parent company exercises influence over the conduct of its subsidiaries and is therefore jointly and severally liable. However, the court found that the commission had made no reference to any link between the two companies, thus denying Koninklijke Grolsch NV any opportunity to rebut this presumption. The court further found that the commission had failed to set out the reasons for attributing the conduct of its subsidiary to Koninklijke Grolsch NV and in fact had not referred to the name of the subsidiary in the SO. For this reason, the General Court declared the decision of the commission void insofar as it concerned Koninklijke Grolsch NV's participation in the cartel and annulled the €31.6 million fine.

Heineken and Bavaria appealed to the General Court on several grounds, including violation of the principles of good administration and due process, lack of evidence, and the length of the procedure. The General Court refused to annul the decision, but reduced the fines imposed on Heineken and Bavaria for two reasons.

Firstly, it found that the commission had not provided sufficient evidence with respect to the occasional coordination of commercial conditions relating to the loans to retailers. In doing so, the court stated that the commission must produce corroborating evidence where the accuracy of a leniency applicant's statements is being challenged. The commission had sought to rely on various handwritten notes uncovered during the dawn raids. However, the court found that this evidence was capable of being interpreted differently.

Secondly, it held that the administrative procedure was unreasonably long and that the fixed reduction of €100,000 per brewer, as granted by the commission, was not sufficient. However, the court did not go so far as to annul the fine, given that, notwithstanding the long delay, the rights of the defence were not adversely affected. Consequently, the General Court held that the reduction should be increased to 5% of the fine. As a result, the court lowered the fines imposed on Heineken and Bavaria to €198 million and €20.71 million respectively.

Appeal to the CJEU

Despite the reduction in fines, both Heineken and Bavaria appealed the decision of the General Court to the CJEU. The brewers had argued that they were treated unfairly in comparison to the companies fined for their participation in a Belgian beer cartel uncovered prior to AB InBev's leniency application regarding the Dutch cartel. The CJEU determined that the circumstances that were the subject of the commission's decision in respect of the Dutch beer cartel could not be compared to those of the Belgian beer cartel and, as such, the principle of equal treatment had not been infringed. The court found that every cartel is different and thus the relevant fines should reflect the specific and singular characteristics of the relevant cartel. Heineken and Bavaria also claimed that their respective right of defence had been breached by the commission's refusal to give access to the information referenced in the SO provided by another party to the proceedings. The CJEU rejected this argument and held that the rights of defence of both brewers had not been infringed, as Heineken and Bavaria had not proven that such access would have assisted their respective defence. All other pleas were also dismissed.

Lessons learned

The commission decision, allied to the judgments of the General Court and the CJEU, send a clear message to organisations that cartels will not be tolerated in the European Union. The decisions of the General Court provide guidance on the circumstances under which a commission decision may be partially annulled. Where the administrative process or investigation is deemed to have been unreasonably long, fines must be reduced accordingly. The court's views should thus encourage the commission to conduct its investigations in a more expeditious manner.

The General Court followed previous jurisprudence on parental liability for competition law infringements. The commission must therefore give detailed reasons for imputing liability on a parent company for the behaviour of its subsidiaries. Where the subsidiary is 100% owned by the parent company, this must be outlined in the SO before any presumption may arise. The commission cannot simply equate one company to the other. Moreover, the General Court, exercising its supervisory role, has again demonstrated its willingness to amend the commission's cartel fines.

Finally, potential fines and – in certain jurisdictions such as Ireland – jail sentences are not the only penalties cartel participants may face. In June 2013, the commission proposed a package of measures aimed at making it easier for cartel victims to seek financial compensation through the courts. G

Cormac Little is a partner and head of the Competition and Regulation Unit in William Fry.

NOTICES

WILLS

Archer, Michael Ernest (deceased), late of 10 The Park, Quin, Ennis, Co Clare, formerly of 45 Latimer Avenue, East Ham, London E6 2LQ, England. Would any person having knowledge of any will made by the above-named deceased, who died on 2 March 2013, please contact John C O'Donnell & Sons, Solicitors, Atlantic House, 39 Prospect Hill, Galway; tel: 091 561 128, fax: 091 561 481, email: info@jcod.ie

Cooney, Annette (née Gleeson) (deceased), late of 30 Townholme Crescent, Hanwell, London W7 2HA and formerly of 120 Lynwood Park, Ballysimon, Limerick who died on 25 June 2012. Would any person having knowledge of any will executed by the above-named deceased, please contact Alex O'Neill, Solicitors, 22 Barrington Street, Limerick, tel: 061 313 844, email: reception@alexoneill.ie

Cox, Nuala (née O'Donnell) (deceased), late of St Brendan's Village, Mulranny, Co Mayo, and formerly of Apartment 5, Parklands, James Street, Westport, Co Mayo. Would any person having any knowledge of the whereabouts of any will made by the above-named deceased, who died on 3 October 2012, please contact James Cahill, Cahill & Cahill, Solicitors, Ellison Street, Castlebar, Co Mayo; DX 33002 Castlebar; tel: 094 902 5500, fax: 094 902 5511, email: solicitor@jamescahill.com

Deegan, Maurice Laurence (deceased), late of 38 O'Carroll Villas, Cuffe Street, Dublin 2. Would any person having knowledge of a will made by the above-named deceased, who died on 3 February 2013, please contact Eamonn Carney of Carney McCarthy, Solicitors, 1 Clonskeagh Square, Dublin 14; tel 01 269 8855, email: deborah@carneymccarthy.ie

Evans, Margaret (deceased), late of 14 Beech Drive, Mullingar, Co Westmeath, and also of Ennis Road, Newmarket-on-Fergus, Co Clare. Would any person having knowledge of a will executed by the above-named deceased, who died on 6 November 2012, please contact Kerin Hickman & O'Donnell, Solicitors, 2 Bindon Street, Ennis, Co Clare; tel: 065 682 8712/682 8466, fax: 065 684 0243, email: info@khod.ie

Folley, Brian (deceased), late of The White Cottage, Gallows Hill, Tallow, Co Waterford, formerly of 20C Hargrave Park, London N19 5JL, who died on 4 July 2013. Any solicitor holding or having knowledge of a will made by the above-named deceased please contact Regina Forrest, solicitor, Messrs Healy, Crowley & Company, Solicitors, West Street, Tallow, Co Wexford; tel: 058 56457, email: info@healycrowleysolrs.com

Griffin, Patrick (deceased), late of 6 Muckross Park, Perrystown, Dublin 12, who died on 5 July 2013. Would any person having knowledge of a will (or documents relating to a will) made by the above-named Patrick Griffin please contact Bernadette Walsh at 086 242 1650 or email: bernadettewalsh7@gmail.com

Noon, Patrick (deceased), late of 46 Whitehall Road West, Crumlin, Dublin 12, who died on 31 May 2013. Would any person having knowledge of a will executed by the above-named deceased please contact AC Forde & Co, Solicitors, 14 Landsdowne Road, Dublin 4; tel: 01 660 8955, fax 01 660 8877, email: info@acforde.com

O'Donnell, John (deceased), late of 6 Greenfield Place, Harolds Cross, Dublin 6W, who died on 27 November 2012. Would any person having knowledge of any will executed by the above-named deceased please contact Business and Commercial Solicitors at 32 Lower Leeson Street, Dublin 2; tel 01 708 8471, email: law@businesslawyers.ie

Flaherty, Mary (deceased), late of Inis Meáin, Árainn, Co na Gaillimhe, who died on 28 October 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Carroll & Company, Solicitors, 19A Merchants Road, Galway; tel: 091 565 516, email: ocarrollsolicitors@eircom.net

O'Halloran, Fr Joseph A (deceased), late of Cregannamore, Oranmore, Co Galway, who died on 30 November 2012. Would any person having knowledge of a will made by the above-named deceased please contact William F Semple & Company, Solicitors, Lough Corrib House, Waterside, Galway; tel: 091 567 373, fax: 091 567374, email: wfsemplesolrs@eircom.net

Ó Liatháin, Claire (deceased), late of 38 Whitethorn Road, Clonskeagh, Dublin 14, who died in May 2013. Would any person having knowledge of a will made by the above-named deceased please contact her daughter Maeve at email: 2013maeve@gmail.com

Reilly, Pascal (deceased), late of Grange, Dunsany, Co Meath. Would any person having knowledge of a will made by the above-named deceased, who died on 3 August 2012, please contact Fabian Cadden & Co, Solicitors, Main Street, Dunshaughlin, Co Meath; DX 80003 Dunshaughlin; tel: 01 825 0299, fax: 01 825 0612, email: info@fabiancadden.ie

Walsh, Anna (deceased), late of 61 Johnstown Grove, Dun Laoghaire, Co Dublin, who died on 7 May 2012. Would any person having knowledge of the whereabouts of any will made by the above-name deceased please contact John Nolan & Co, Solicitors, 11 Parliament Street, Dublin 2; tel: 01 677 0743, fax: 01 679 8420: email: info@jnolanco.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005*; premises: 16 Sandymount Road, Sandymount, Dublin 4; applicant: Louis Preston

Notice to any person holding any legal estate in the above premises: take notice that the above applicant intends to apply to the county registrar in the county of the city of Dublin for acquisition of any such legal estate in the aforesaid premises, and any party asserting that

RATES

Professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €147 (incl VAT at 23%)
- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for October *Gazette*: 18 September 2013. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

NOTICES

they hold a superior interest in the aforesaid premises is called upon to furnish evidence of the title to the below-named within 21 days from the date of this notice. In default of such notice being received, the applicant intends to proceed with the application before the county registrar after the period of 21 days from the date of this notice and will apply to the said county registrar for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest in the premises are unknown or unascertained.

Date: 6 September 2013
Signed: Thomas O'Reilly & Co (solicitors for the applicant), 20 Sandymount Green, Dublin 4

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 Percy Nominees Limited in respect of the property known as number 36 Upper O'Connell Street and 75A, 75B and 75C Parnell Street, Dublin

Take notice that any person having an interest in the freehold interest of the following property: all that and those part of the hereditaments and premises comprised in and demised by indenture of lease dated 11 January 1949 between Richard Burke and Kevin Burke of the one part and Edward Mangan and Michael Mangan of the other part, and therein described as "all that and those the building plots and premises situate in Upper O'Connell Street and Parnell Street in the parish of Saint Thomas and the city of Dublin, whereon the dwelling known as number 36 Upper Sackville Street, demised by the said lease of the 4 August 1898 formerly stood fronting Parnell Street, formerly Great Britain Street, and Upper O'Connell Street, formerly Upper Sackville Street, respectively known as numbers 36 and 36A Upper O'Connell Street and 75A, 75B and 75C Parnell Street and which said premises are now known as number 36 Upper O'Connell Street and 75A, 75B and 75C Parnell Street, for a term of 150 years from 1 February 1938, subject to the yearly rent of £110".

Take notice that Percy Nominees Limited, being the entity now holding the said property, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold simple estate or any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of the title to the aforementioned property to the below-named solicitors 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 person or persons beneficially entitled to all superior interests up to and including the fee simple in the aforesaid property are unknown or unascertained.

Date: 6 September 2013
Signed: McCann FitzGerald (solicitors for the applicant), Riverside One, Sir John Rogerson's Quay, Dublin2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of the dwellinghouse, garden and premises lately occupied by Maurice Galvin, deceased, at Abbey Street, Ballinrobe, Co Mayo: an application by Noel Galvin and Maurice Galvin

Take notice that any person having a superior interest in the following property: the plot of ground together with dwellinghouse standing thereon and garden, lately occupied by Maurice Galvin, deceased, at Abbey Street, Ballinrobe, Co Mayo, being the land demised by a lease dated 11 February 1858 made between Henry Augustus Dillon of the one part and George Francis Roughan of the other part from 1 November 1857 for the term of the natural lives of George Francis Roughan, Teresa Roughan and Catherine Roughan and for the term of 61 years after the death of the longest lived of them, subject to the yearly rent of £3.6s.8d, and the covenants on the part of the lessee to be performed and the conditions therein contained, should give notice of their interest to the undersigned solicitors.

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

In default of any such notice of interest being received, Noel Galvin and Maurice Galvin intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Mayo for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior

NOTICES

interests in the above property are unknown or unascertained.
Date: 6 September 2013
Signed: Martin & Galvin Solicitors (solicitors for the applicants), Teeling Street, Sligo

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 Pangrove Limited
Take notice that any person having any interest in the freehold estate of the following property: numbers 1 and 2 Dartmouth Place, Dublin 2, being part of the property more particularly described in an indenture of lease dated 16 December 1858 made between Henry Read of the one part and John Rooney of the other part for 200 years from 25 March 1858, subject to the yearly rent of £8, and an indenture of lease dated 24 June 1880 made between Teresa Rooney of the one part and Peter Lannery of the other part for 200 years from 25 March 1858, subject to the yearly rent of £4 and to the covenants and conditions therein.

Take notice that Pangrove Limited intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold the superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Pangrove Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.
Date: 6 September 2013
Signed: Reddy Charlton (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and, in particular, the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of an application by OCS Properties Limited, having its registered office at Fitzwilton House, Wilton Place, Dublin 2, relating to the premises known or formerly known as nos 18 and 19 Lower O'Connell Street (including nos 1, 2 and 3 Sackville Place at the immediate rear thereof) and also nos 20, 21 and 22 Lower O'Connell Street (all of which now form part of Clerys Department Store) in the parish of Saint Thomas and city of Dublin
Any person having any interest in the fee simple estate or any intermediate interest or interests in all and singular the hereditaments and premises known or formerly known as nos 18 and 19 Lower O'Connell Street (including nos 1, 2 and 3 Sackville Place at the immediate rear thereof) and also nos 20, 21 and 22 Lower O'Connell Street (all of which now form part of Clerys Department Store) in the parish of Saint Thomas and city of Dublin, held under a lease dated 18 August 1919 made between (1) Kate Price, (2) Mary Catherine Evans and (3) Clery & Company Limited for a term of 700 years from 1 May 1919, subject to the yearly rent of £324 (€411.40).

Take notice that OCS Properties Limited, being the body entitled to the lessee's interest in the said lease, intends to apply to the county registrar for the city of Dublin for the acquisition of the fee simple estate and any intermediate interest or interests in the said property, and any party claiming that they hold the fee simple or any such intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said OCS Properties Limited intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said 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: 6 September 2013
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 particular, the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of an application by OCS Properties Limited, having its registered office at Fitzwilton House, Wilton Place, Dublin 2, relating to the premises known or formerly known as no 25 Lower O'Connell Street (which now forms part of Clerys Department Store) in the parish of Saint Thomas and city of Dublin
Any person having any interest in the fee simple estate or any intermediate interest or interests in all and singular the hereditaments and premises known or formerly known as no 25 Lower O'Connell Street (which now forms part of Clerys Department Store) in the parish of Saint Thomas and city of Dublin, held under a lease dated 18 October 1852 made between (1) Thomas Nowlan and (2) Peter Paul McSwiney and George Delany for a term of 839 years from 29 September 1852, subject to the yearly rent of £80 (now €101.58), subsequently adjusted to £76.9.0 (€97.07).

Take notice that OCS Properties Limited, being the body entitled to the lessee's interest in the said lease, intends to apply to the county registrar for the city of Dublin for the acquisition of the fee simple estate and any intermediate interests or interest in the said property, and any party claiming that they hold the fee simple or any such intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said OCS Properties Limited intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said 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

NOTICES

including the fee simple in the said property are unknown and unascertained.
Date: 6 September 2013
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 particular, the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of an application by OCS Properties Limited, having its registered office at Fitzwilton House, Wilton Place, Dublin 2, relating to the premises known or formerly known as no 26 Lower O'Connell Street (which now forms part of Clerys Department Store) in the parish of Saint Thomas and city of Dublin

Any person having any interest in the fee simple estate or any intermediate interest or interests in all and singular the hereditaments and premises known or formerly known as no 26 Lower O'Connell Street (which now forms part of Clerys Department Store) in the parish of Saint Thomas and city of Dublin, held under a lease dated 16 July 1803 made between (1) Andria Gibbons and (2) Patrick King for a term of 999 years from 29 September 1803, subject to the adjusted yearly rent of £42.15.0 (€54.28).

Take notice that OCS Properties Limited, being the body entitled to the lessee's interest in the said lease dated 14 July 1934, intends to apply to the county registrar for the city of Dublin for the acquisition of the fee simple estate and any intermediate interest or interests in the said property, and any party claiming that they hold the fee simple or any such 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 OCS Properties Limited intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said 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: 6 September 2013
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 particular, the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of an application by OCS Properties Limited, having its registered office at Fitzwilton House, Wilton Place, Dublin 2, relating to premises adjoining 5 Earl Place, being the premises immediately adjoining the south side of the premises known or formerly known as 5 Earl Place, located at the rear of nos 24, 24 and 26 Lower O'Connell Street (all of which now form part of Clerys Department Store) in the parish of Saint Thomas and city of Dublin

Any person having any interest in the fee simple estate or any intermediate interest or interests in all and singular the hereditaments and premises immediately adjoining 5 Earl Place, being the premises immediately adjoining the south side of the premises known or formerly known as 5 Earl Place, located at the rear of nos 24, 24 and 26 Lower O'Connell Street (all of which now form part of Clerys Department Store) in the parish of Saint Thomas and city of Dublin, held under a lease dated 31 January 1811 made between (1) George Duff and (2) Luke Duff for a term of 882 years from 25 March 1811, subject to the adjusted yearly rent of £20.0.6 (€25.43) and also purportedly demised or sub-demised for the residue of the said term at the same adjusted yearly rent as aforesaid by a deed dated 4 December 1830 made between (1) John McDonnell and Eleanor Duff (executors of the said Luke Duff, then deceased) and (2) Nicholas Walsh.

Take notice that OCS Properties Limited, being the body entitled to the lessee's interest or interests in the said term or terms demised or sub-demised as aforesaid intends to apply to the county registrar for the city of Dublin for the acquisition of the fee simple estate and any intermediate interest or interests in the said property, and any party claiming that they hold the fee simple or any such intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said OCS Properties Limited intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said 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: 6 September 2013
Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

In the matter of the *Landlord and Tenants Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of application by Domenico Morelli

Take notice that any person having any interest in the freehold estate of the property known as 92 Terenure Road North, Terenure, Dublin 6W, being the property more particularly described in an indenture of lease dated 24 March 1906 and made between Helena Diana Maud Mary Hilling, Charles Eyre Coote Townsend, Robert Norman Thompson and Robert Massy Dawson Saunders of the one part and Patrick Joseph Barry of the other part for a term of 150 years from 29 September 1905, and subject to a yearly rent IR£45 and to the covenants and conditions therein, and in an indenture of sub-lease dated 1 September 1928 and made between Clare Mary Barry, Raymond Barry, Alexander Barry, Gwendoline Barry, Muriel Barry and Clare Barry of the one part and Annie Mary Bannon of the other part for a term of 99 years from 14 February 1928, and subject to a yearly rent IR£70 and to the covenants and conditions therein.

Take notice that Domenico Morelli intends to submit an application to the county registrar for the county/city of Dublin at Áras Uí Dhálaigh for the acquisition of the freehold interest in aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of the title to the aforementioned property to the below named within 21 days from the date of this notice.

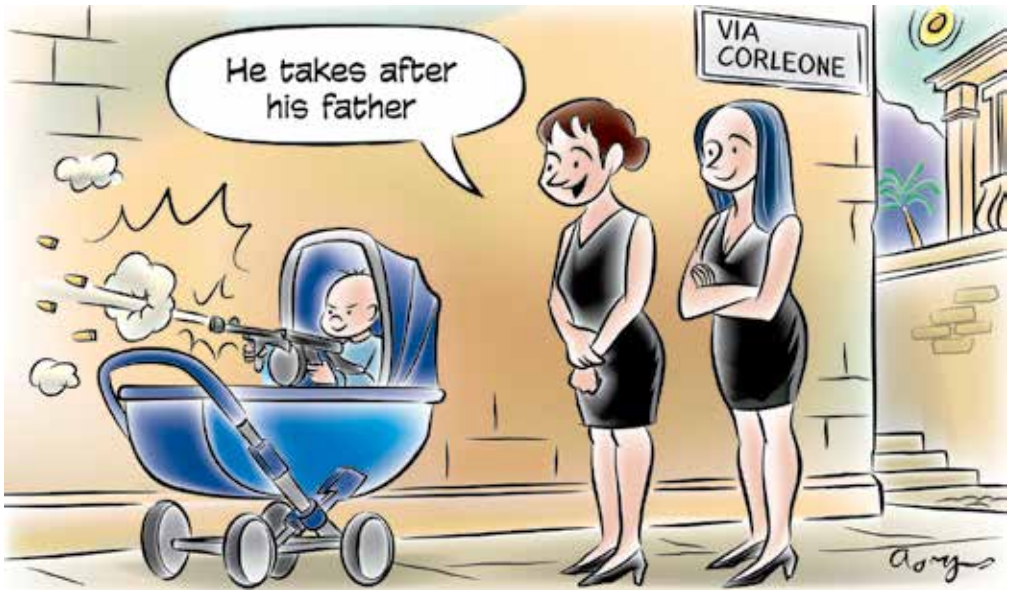
In default of any such notice being received, Domenico Morelli intends to proceed with the application before the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.
Date: 6 September 2013
Signed: Gaffney Halligan & Company, Solicitors (solicitors for the applicant), Artane Roundabout, Malahide Road, Artane, Dublin 5

WILD, WEIRD AND WACKY STORIES FROM LEGAL 'BLAWGS' AND MEDIA AROUND THE WORLD

Translator jailed over exam cheats

A Chinese translator in Birmingham has been jailed for helping 200 learner drivers cheat on theory exams, *the Daily Mirror reports*. Peter Hui was approved by the Driving Standards Agency (DSA) to translate multiple-choice questions in Mandarin for foreign applicants – but he was also providing the answers for a fee. At Birmingham Crown Court, Hui was sentenced to 12 months in prison. Police believe the illegal practice made him up to £100,000.

DSA officials became suspicious when the number of prospective drivers choosing to be represented by the 55-year-old interpreter increased rapidly. An investigation revealed that Hui aided more than 200 candidates to pass by agreeing a cheat code, which involved him saying "Shi", the Mandarin for "Yes", before reading out the answer he believed was correct.



Mafia kids made offer they can't refuse

A judge in southern Italy is pioneering a programme to help children of mafia bosses to escape a life of crime – by taking them away from their parents at the first sign of trouble, *reports the BBC.*

"We needed to find a way to break this cycle that transmits negative cultural values from father to son," says Roberto di Bella, president of the juvenile court in Reggio Calabria, southern Italy.

In recent years, Judge Di Bella's court has been dealing with the sons of mafiosi who he had sentenced as juveniles back in the 1990s. Last year, he decided to try to tackle the problem.

"This always starts with a court case," says Di Bella. "When these children are accused of bullying, of vandalising cars or police cars, and families do nothing, then we intervene.

"Our objective is to show these young men a different world from the one they grew up in," he says. "If you are a boy whose father, uncle or grandfather is a mafioso, then there's no-one who can set rules – and we provide them with a context."

The hope is that when these youngsters go back home permanently, at the age of 18, they will chose not to follow in their fathers' footsteps.

Flash-for-cash crash backlash

Motorists are being warned of a car insurance scam where criminals flash their lights to let other drivers out of a junction, then crash into them deliberately, *the BBC reports*.

It's a new take on 'crash-for-cash' incidents, where criminals slam on the brakes so that the victim is forced to rear-end them. But 'flash-for-cash' is more cunning, because it often comes down to the innocent driver's word against the criminal's that they flashed their lights to let them out.

Each 'accident' can net the gangs tens of thousands of pounds in a variety of ways. Firstly, they put in false personal injury claims for whiplash, sometimes including claims for people who were not even in the car. Added to that, they might charge the insurance company for loss of earnings, then they put in fake bills for vehicle storage, recovery, repairs, and replacement car hire.

Detective Inspector Dave Hindmarsh says it's a growing problem. "Financially, it costs insurers £392 million a year – that impacts on motorists, as it's an extra £50 to £100 on every person's premium."

Death-ray terror plot foiled by G-men

Two men have been charged in a court in Albany, New York, in a bizarre plan to use a home-made death ray to target "enemies of Israel" with lethal x-ray radiation, *reports CNN.*

Glendon Scott Crawford (49) and Eric Feight (54) were arrested after an undercover operation by the Albany FBI Joint Terrorism Task Force. They were charged with conspiracy to provide material support to terrorists.

The suspects intended to use the device to harm and kill enemies of Israel, a Department of Justice news release said. If convicted, each faces up to 15 years in prison, a $250,000 fine and five years of supervised release.

The device created by the defendants was deemed inoperable and not a threat to the general public.

WORTH YOUR WEIGHT

HRM Recruit's Legal Selection Team brings superb practice and in-house opportunities to outstanding legal talent in Ireland and overseas.

BANKING (3 Years Relevant Experience) In-House | Ref JS01
Within this major financial institution you will advise lending teams and assist with a variety of legal project work. These roles will require a significant degree of legal input in a range of areas including: transactions, restructuring of loans, enforcement options, lease reviews and management of litigation. Suited to professionals who wish to develop their expertise in a fast paced, rewarding environment. Applicants must be professionally qualified lawyers. Expertise in banking law is preferred but property/conveyancing experience is also relevant.

FUNDS (4 Years Relevant Experience) Top Tier Firm | Ref BD01
In a highly competitive market, this industry leading team continues to dominate the Irish funds landscape attracting and retaining both the best clients and the best talent in Dublin. Consistently ranked as the number one adviser to the asset management industry in Ireland, the team advises major institutional clients across the spectrum of UCITs and alternative products. The firm's transparent management structures and bonus system along with its unique partnership track programme are all reasons why this firm have attracted solicitors from every other top 5 firm in the last twelve months.

LITIGATION (6 Years Relevant Experience) Top Tier Firm | Ref BD02
This litigation department allows you the option of either remaining a generalist, or if you prefer will support you in focusing in a specialist area of litigation; a rare choice in the top tier. In joining this team, you will deal with cutting edge Commercial Court litigation, ADR & Mediation, advising a blue-chip client base on some of the most high profile, public interest litigation matters in Ireland. Solicitors in the team are supported in developing their client facing and marketing skills and if you feel you are ready to run a negotiation or meeting alone, the partners will be keen to encourage you.

BANKING (4 Years Relevant Experience) Top Tier Firm | Ref BD03
Tier one in every head of banking law; in joining this team you will act for both borrowers and lenders across a broad range of domestic and international corporate banking matters. If you wish to develop an expertise in one of the firm's niche practice areas such as aviation finance, structured finance or debt capital markets, the partners will fully support you. The firm, which enjoys a commanding position at the upper end of the top tier, acts both as lead counsel on the major domestic transactions and Ireland counsel on global deals.

PROPERTY/BANKING In-House | Ref JS02
In joining this corporate entity you will advise on all aspects of loan portfolios including: new facilities and associated security, enforcement options, planning and implementation, material transactions and issues post enforcement, and advice on corporate and personal insolvency. The opportunities afford successful candidates insightful industry exposure to these portfolios. Expertise in commercial banking/property and restructuring is required, a proven track record providing legal advice on significant transactions with 3 years relevant experience.

CORPORATE (5 Years Relevant Experience) Top Tier Firm | Ref BD04
Dominating the deals by both value and volume this corporate department, at the upper end of the top tier, deals with a wide range of work including M&A, high profile FDI into Ireland, takeovers, privatisations, JVs, corporate reorganisations in addition to advising on ongoing corporate, company law and governance issues for multinationals in Dublin. Typically solicitors in the team deal with a combination of transactional work in addition to ongoing advisory work for clients of the firm. Progressive, collegiate, down to earth and high achieving are the hallmarks of this group.

IP & IT (7 Years Relevant Experience) Top Tier Firm | Ref BD05
Across all areas of IP and IT, this firm not only leads in the independent rankings for Ireland but has also maintained its lead over the competition for international work and clients in a legal services market which has seen considerable change in recent years. The firm's client list is an enviable who's who of the global technology, pharma, IT and web-based household brand name corporations. The team, which has recorded significant year on year revenue growth over the last five years, provides a full service advisory and contentious offering to its clients across the IP/IT bandwidth.

INSOLVENCY (2 Years Relevant Experience) Top Tier Firm | Ref BD06
In joining what is widely regarded as the top insolvency group in Dublin you will advise a corporate client base which includes insolvency practitioners, creditors, bondholders, directors & shareholders on both contentious and non contentious corporate recovery & insolvency matters. The team's deal sheet includes every major administration and liquidation which has taken place in Ireland in recent years. Admired in Dublin not only for the depth of its technical expertise, the team is also highly regarded for its pragmatic, calm and solution oriented approach.

For a confidential discussion on any of these opportunities, or other non-advertised positions please contact:

Bryan Durkan
Principal Consultant Legal Selection
t: +353 1 632 1852
e: bryan.durkan@hrmrecruit.com

James Steele
Legal Selection Consultant
t: +353 1 632 1881
e: james.steele@hrmrecruit.com

www.hrmrecruit.com

HRM RECRUIT

Fostering successful partnerships www.benasso.com

Recognising talent's one thing...
finding a truly successful fit is another

Benson & Associates have an unparalleled network of quality clients, over a decade of experience and above all, trusted instincts to find that perfect partnership.

For the latest opportunities, please visit our website: www.benasso.com or contact Michael Benson BCL Solicitor in strict confidence at Benson & Associates, Legal Recruitment Specialists, Suite 113, The Capel Building, St Mary's Abbey, Dublin 7, tel: +353 1 670 3997

Benson & Associates
Legal Recruitment Specialists