



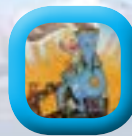
Social life

How you and your firm can get the most out of your social media platforms



Solicitors at war

Remembering the solicitors and apprentices who died in the First World War



Engine room

The Society's new four-year strategy and annual operational plan explained

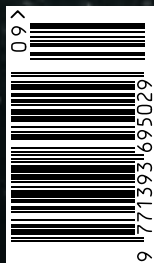
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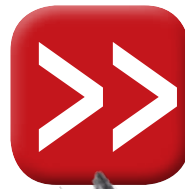
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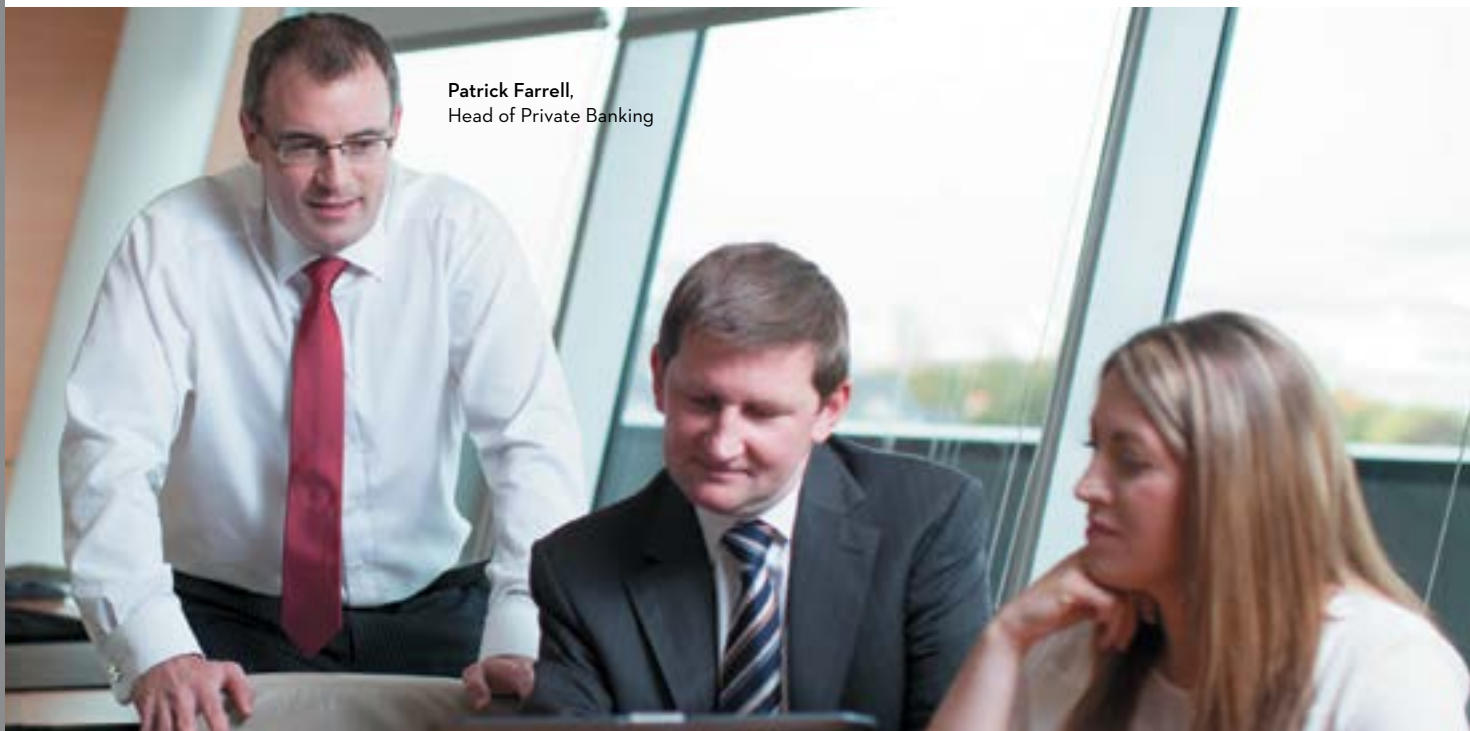
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Patrick Farrell,
Head of Private Banking



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| Cork | The Clarion Hotel | 15th October | 9am – 1pm |
| Limerick | The Savoy Hotel | 16th October | 9am – 1pm |
| Galway | The Courthouse | 16th October | 2pm – 6pm |
| Mayo | The Courthouse | 17th October | 9.30am – 1.30pm |
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law society gazette

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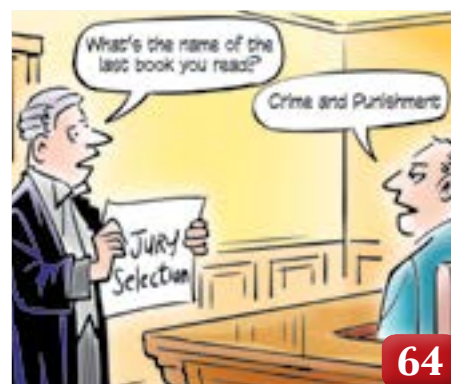
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nationwide

News from around the country



*Kevin O'Higgins
is the Law
Society's senior
vice-president*

MONAGHAN

Monaghan calling

If you can only get to one or two CPD events this year, then Justine Carthy and her colleagues in the Monaghan Solicitors' Bar Association have put together a training package that will go a long way to fulfilling your regulatory requirements, as well as being high-end in terms of content delivery. You can combine interesting lectures with a post-dinner, old-style country and western evening (no CPD points for this one).

The event takes place on 17 October in the Glencarn Hotel, Castleblayney, from 9am to 5.30pm. Seven CPD points will be on offer. The galaxy of speakers include Mark Barr (partner, Arthur Cox) on topical issues for conveyancers, John Murphy (Property Registration Authority) on first registration based on adverse possession, James MacGuill (MacGuill & Company) on the solicitor's role in the garda station, Dorothy Collins BL on the licensing laws, Padraic Courtney (Law Society) on creating trusts in a will, Mark de Blacam SC on recent developments in judicial review, Miriam O'Callaghan on being a broadcaster, Jonathan Kilfeather SC on *Rome II*, and Peter Bland SC on local authority liability.

The cost for the day's CPD event is a mere €70. Dinner and evening entertainment is an additional €40.

GALWAY

A day at the races



Shane Caulfield BL, Adrian Harris, Padhraic Harris, Alan Ledwith BL

Galway solicitors almost had as much fun as the Marx Brothers in *A Day at the Races* at their annual outing to the local racetrack on 28 July 2014. Over 50 members, barristers and judges attended the event. The Galway Solicitors' Bar Association was delighted to welcome Law Society President John Shaw. Yours truly also attended the event, though, unfortunately, I fell far short of the success of the president and our colleague Brian O'Callaghan in assessing the form.

GSBA president James Seymour said: "Hopefully, this annual event will continue to run well – unlike most of the horses I wagered on!"

My thanks to all of our members for the excellent turnout and for their continued support throughout the year."

The autumn CPD calendar is currently being prepared and a minimum of 12 hours' CPD will be held in Galway courthouse during the months of September, October and November, free of charge to all members who have paid the annual €50 subscription fee. More details on www.gsba.ie. Those wishing to join the association should send their subscription to Cairbre O'Domhnaill (treasurer), c/o John C O'Donnell & Son, Atlantic House, 39 Prospect Hill, Galway; DX 4502.

MEATH

La grange



The Meath Solicitors' Bar Association held its AGM at the Newgrange Hotel, Navan, on 28 May. Pictured are Patrick O'Reilly (president), Elaine Byrne (honorary secretary/treasurer), Peter Higgins (vice-president) and Teresa Coyle, Ronan O'Reilly, Stephen Murphy and William O'Reilly (committee members).

DUBLIN

No one expects the Spanish Inquisition

The DSBA annual conference is in Madrid this September. President Keith Walsh has put a huge effort into both delivering on a terrific venue and an excellent CPD offering for the conference, which has been sold out for many months.

The campaign to save many of the suburban courthouses has brought the very best out in both the Law Society and the DSBA. Both have availed of media opportunities to make the case for retention of at least some of the courts earmarked for closure, and indications are that this is gaining some support among business leaders and the public alike.

Now just a personal note: they tell me I have to take leave of absence from this little assignment for a while. I have hugely enjoyed compiling the 'Nationwide' page over the last few years. Call me a newspaper nerd, but I love dipping into local papers whenever I'm out of the city, and I relish the interaction with colleagues throughout the length and breadth of the country. To my many correspondents throughout the years, a big thank you, and I look forward to talking to you all again soon.

gazette app



coming soon

representation

News from the Society's committees and task forces

FAMILY AND CHILD LAW COMMITTEE

Society submission on the *Children and Family Relationships Bill*

Law Society committees have a role in making submissions on legislation, writes *Carol Anne Coolican*. The Family and Child Law Committee has embraced this challenge.

In response to the request for submissions on the establishment of a specific family court system, the committee provided a very extensive submission that was endorsed by Council and forwarded to the Department of Justice earlier this year.

On the publication of the *general scheme* of the *Children and Family Relationships Bill*, the committee – on behalf of the Law Society – compiled a formal submission and was invited to make an oral presentation to the Oireachtas Joint Committee on Justice, Defence and Equality.

Dr Geoffrey Shannon compiled all views expressed by the committee, drafted the submission on our behalf, and made the oral presentation to the joint committee, which I also attended. We expanded on the rationale for the suggested amendments, identified some areas we believed required further scrutiny, and answered some pertinent questions raised by very engaged members of the joint committee. The recently published *report of the joint committee* summarises the submissions and presentations – and many of our recommendations have been included.

The law as it stands does not cater for the increasing number of sole parent or second-relationship families, nor the one-in-six couples who experience fertility problems and who seek to have a family through assisted human reproduction. The bill seeks to address some of the issues that arise – particularly in the areas of parentage, custody/access, guardianship, maintenance, adoption, assisted human reproduction and surrogacy. It also includes provisions on hearing the

views of the child and guardians *ad litem*, particularly relevant in the context of the Children Referendum (a challenge to which is still before the Supreme Court).

The committee's submission welcomes the bill, stating that it "represents the most significant change in family law in a generation and attempts to reflect the social reality of contemporary family life in Ireland", noting that it will bring Ireland in line with many provisions of the *UN Convention on the Rights of the Child*.

The committee recommended:

- Caution in imposing sanctions as a disincentive to commercial surrogacy, suggesting that "care should be taken to avoid harm to the child resulting from penalising the parent",
- The definition of 'surrogacy' should include traditional surrogacy,
- The time of consent by birth mothers in surrogacy requires further consideration to ensure that there is clarity over "who is to make decisions relating to that child pending consent",
- Children born through assisted human reproduction have a right to "information pertaining to their donor",
- "The definition of father precludes ... automatic guardianship" where the parties are in a relationship

but have not married/cohabited,

- Greater consideration of how "children must be afforded a voice, but not necessarily a choice",
- The language of 'guardianship', 'custody' and 'access' should be changed to 'parental responsibility', 'day-to-day care' and 'contact',
- A central register should be created for guardianship declarations, and
- "Extend the power to procure a welfare report to the District Court" and provide funding for same.

All of these recommendations were taken on board by the joint committee report, following on from the consultation process.

We also welcomed the guardianship *ad litem* provisions, which set out the duties and functions of guardians *ad litem*, who must put forward any course of action believed to be in the best interests of the child.

We urged caution in relation to proposals to allow a court to compel parties to attend mediation, as one of the foundational principles of the process is that it is voluntary. We did recommend the attendance at mediation information sessions.

The proposal to amend the *Adoption Act 2010* to put civil



partners living together on the same footing as married couples living together was also welcomed.

We also suggested that the 'best interests' principle be included throughout the bill.

The preparation of the submission comprised detailed analysis of the bill and a full interactive meeting, further consideration, drafting and redrafting. This was a time-consuming, demanding, and challenging exercise. Many thanks are due to the individual members of the Family and Child Law Committee, and particular thanks to Geoffrey Shannon, who pulled it all together and presented it so well to the joint committee. It was a worthwhile venture, particularly as so many of the suggestions were accepted.

See the conclusions of the Joint Committee on Justice, Defence and Equality Report on hearings in relation to the Scheme of the *Children and Family Relationships Bill* at www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/jde-committee/reports/.

EU AND INTERNATIONAL AFFAIRS COMMITTEE

Anti-money-laundering seminar

The EU and International Affairs Committee, in collaboration with the Law Society's Finuas Network, hosted a seminar on anti-money-laundering (AML) on 29 May last. The two main speakers were Cormac Little (partner, William Fry) and Brendan Nagle, senior legal

counsel in the AMLD division of the Central Bank. Over 40 participants attended.

The key theme of Mr Little's presentation was the ever-increasing challenge for law firms in complying with AML rules. After outlining the relevant legislative background,

he highlighted the four key aspects of the relevant legislation, namely: customer due diligence, verification, monitoring, and reporting suspicious transactions. He noted that AML rules apply to solicitors providing certain specific types of advice, such as buying or selling land, other




assets or business entities. Solicitors should identify risk by looking at geographic, client and transaction/service factors. Mr Little also discussed various common types of suspicious transactions, while also touching on the relevant privilege issues. He discussed potential internal compliance structures that law firms, depending on their size, may establish. The presentation talk finished with a brief discussion of some recent Irish

and international cases.

Mr Nagle gave a regulator's perspective on AML compliance issues. He started by mentioning the triple challenge that law firms face, in that they must develop their own compliance arrangements and advise clients on AML issues, while also providing the relevant transaction services. He noted that the focus of EU law is on how the relevant risks are identified, assessed

and understood. Mr Nagle emphasised that safeguarding the Irish financial sector's integrity requires its protection from money-laundering. He also discussed the role of the Paris-based Financial Action Task Force in facilitating the exchange of ideas on how to combat money-laundering, and its role in issuing policy recommendations that often find their way onto the statute books. His Central Bank colleague, Anthony Cahalan,

concluded the event by giving a short presentation on what AML regulation will look like in years to come.

Judging by both the quantity and quality of the questions raised by the audience, this seminar was certainly thought-provoking. Given that law firms must both advise on and comply with the relevant rules, AML update seminars should become a regular fixture in Blackhall Place in the future. 

The future of the sole practitioner – the British experience

I had the recent pleasure of attending the annual conference of the Sole Practitioners Group (SPG) in England and Wales, writes *Kevin O'Higgins*. There are close to 140,000 solicitors in England and Wales, as distinct from the 11,000 practising solicitors here (or 14,000 on our roll). While about 42% of the firms in Ireland are sole practitioners, the percentage in England and Wales is just under 10%.

All by myself

Founded 20 years ago, the aims of the SPG are to represent the interests of their members within the Law Society and to other bodies (such as the Solicitors Regulation Authority) and to ensure that decisions taken do not compromise or adversely affect sole practitioners.

The SPG also responds to consultations issued by the authority and other bodies and, in this way, the expertise and experience of members can help to provide a broader and more informed view.

Another aim is to support members through local groups, training, conferences and communicating through other means. The group has its *Solo* magazine, a website and occasional email contact.

Solicitor sole practitioners became a group within the Law Society of England and Wales in



1993, and its current membership is 4,500. Membership is very diverse, ranging from the sole practitioner working from home or in an office with no staff, to the sole practitioner with more than one office and several assistants. The range of work covers the very specialist niche practice to the more general high-street practice. In addition, this sector of the profession includes members whose main source of income may come from locum work and those who have a very small practice earning less than £15,000 gross fees per year.

The group has a national executive committee comprising representatives from regional areas in England and Wales. However, one of the main aims of the executive is to encourage

the formation of local groups throughout the regions, as this is seen as the best means of providing sole practitioners with mutual support and giving them opportunities to network among local practitioners.

Walk this way

About 140 colleagues turned up for the conference. This was considered to be a satisfactory take-up, and is impressive when you consider the distances some colleagues would have had to travel in order to get there. I learned that the SPG regards the sole practitioner as a manager, a businessman and a practitioner.

However, I also learned that the SPG recognises that sole practitioners are vulnerable simply because they work on

their own, and the group sees one of its most valuable services as providing sole practitioners with pastoral and practice support where possible to ensure that all have someone to turn to in times of need.

The overriding message from the conference was that our sole practitioner colleagues across the water see that sector far from being a dying breed, and may actually be strengthened because of the changing nature of practice. The more generalist high-street practice may diminish, but the point was made that a trend is emerging towards the establishment of the niche specialist practice, and technology is enabling solicitors to be able to practise entirely on their own without the need of even a secretary or other support. This is a welcome trend, but also underlines the need for a group to continue to represent solicitors who practise differently from other sectors of the profession.

I was impressed, too, by their work ethic. While there were social aspects to the conference in the evenings, the business side of things went through the full day on Saturday and Sunday morning, before finishing mid-Sunday afternoon with a conference wrap up and Q&A.

Would that work here? Of course it would! For more information on the SPG, visit their website at www.spg.uk.com.

Diploma Centre Prospectus 2014-2015

The Diploma Centre has included a complimentary copy of this academic year's prospectus for members with this issue of the *Gazette*. If you would like another copy or a PDF version, please email diplomateam@lawsociety.ie.

The prospectus is packed with details of courses and useful information on how to apply for courses, an explanation of webcasting, free diploma student events, a focus on lecturers, and testimonials from students.

All lectures are webcast and available for the duration of the course. This means that if students can't make every lecture in person, they can watch lectures live or in the archive. In addition, a special app allows students to download lectures for viewing at their leisure. For more information, tel: 01 672 4802, email diplomateam@lawsociety.ie, or visit the website www.lawsociety.ie/diplomas.



National Gallery appointment



The *Gazette* congratulates Mary Keane (Law Society deputy director general) who has been appointed to serve on the Board of Governors and Guardians of the National Gallery of Ireland. The appointment was made by the Minister of Arts, Heritage and the Gaeltacht, Jimmy Deenihan.

Winding-up of Blackhall Place Bond Funding Scheme

The Blackhall Place Bond Funding Scheme was set up in 1976 to raise much needed funds for the renovation of what was then the recently purchased Blackhall Place building. The money generously advanced by bond subscribers enabled the Society to complete the renovations of the building by 1978, when it was opened as the Law Society's headquarters. The Society greatly appreciates bondholders' contributions in this regard.

The Finance Committee has resolved to wind up the scheme and is currently endeavouring to contact all bondholders so that their bonds can be redeemed. As most bonds were issued almost 40 years ago, it is proving difficult to ensure that the details for all subscribers are correct. If you have not received any correspondence from the Law Society and are the owner of one or more bonds, please contact Yvonne Burke at 01 672 4901 or email y.burke@lawsociety.ie.

Fees stamped on stickers

The Finance Unit of the Courts Service has asked the *Gazette* to make members of the profession aware of the following notice:

"It has come to the attention of the Courts Service that a number of solicitors are using adhesive labels stamped with the fee stamp to attach to a court document.

"This practice is not in line with the Courts Service policy or the court fees order, which state that the fee

must be stamped on the original court document.

"From 1 September 2014, court offices will not accept any court document with a stamped adhesive label affixed to it.

"If you wish to make an application for a refund on labels already stamped, please forward an application, with all relevant documents, to Finance Unit, 4th Floor, Phoenix House, Smithfield, Dublin 7."

Forget the ice-bucket challenge – dip into law!



The Law Society Diploma Centre recently launched the new Diploma in Law. Pictured at the launch are Freda Grealy (head of Diploma Centre) and Simon Murphy (chairman of the Education Committee). Full details of the course are available at www.lawsociety.ie/diplomalaw. Applications close on Wednesday 12 September 2014.

DSPCA wills plea

The Dublin Society for Prevention of Cruelty to Animals (DSPCA) is offering members of the public the chance to organise their wills 'free of charge', in exchange for a €500 bequest to the organisation upon their death.

The DSPCA has teamed up with solicitor Susan Cosgrove (Cosgrove Gaynard Solicitors, Pearse Street, Dublin 2), who is working pro bono to help run the online drafting service.

The organisation is close to rehousing its 1,000th animal to date in 2014 – an increase of one-fifth on the same period in 2013.

Court closures symbolise damaged justice system

"The closure of court venues is, in many ways, symbolic of the damage that has been done to the fabric of the justice system in the country," the Law Society's director general Ken Murphy told RTE News on 24 July 2014.

He added: "With the proposals to close major court venues in Dublin now underway, we are very concerned that further lasting damage will be incurred."

He was being interviewed following the formal launch of the *Courts Service Annual Report 2013*, at which a copy of the report was presented to Minister for Justice Frances Fitzgerald by Chief Justice Susan Denham.

The director general was echoing remarks made at the



Ken Murphy: 'The closure of court venues is symbolic of the damage done to the fabric of the justice system'

launch by the chief justice, who had said: "The fiscal austerity continued to impact the work of the Courts Service in 2013. Any further or continued subtraction of moneys from the Courts



Chief Justice Susan Denham: Any further cuts in the Courts Service budget will cause 'great and lasting damage to the courts system'

Service budget will cause a great and lasting damage to the courts system."

The chief justice was commenting on the fact that the Courts Service budget had been

cut by 25% over the last five years and that operating costs had reduced by 42%.

As this *Gazette* went to press, the Society was finalising a major submission to the Courts Service, ahead of a 5 September deadline, which (while dealing with each venue separately) argued forcefully that the proposed closures of courthouses in Dun Laoghaire, Tallaght, Swords and Balbriggan should not proceed.

In addition, the Society is arguing that the proposal to transfer all *Road Traffic Act* cases for the city and county of Dublin (which together have a population in excess of one-and-a-quarter million people) to the courthouse in Blanchardstown makes no sense for many reasons (see July issue, p9).

Society welcomes Chinese Legislative Affairs Commission

In preparation for the revision of China's patent law, delegates from the Legislative Affairs Commission of the National People's Congress of the People's Republic of China visited the Law Society on 4 July.

The delegation was led by vice-chairman Mr Lang Sheng and met representatives of the Law Society's Intellectual Property Law Committee in order to learn about patent enforcement in Ireland. The committee welcomed the opportunity to meet the delegation and share its knowledge.

The visit was organised by the Office for Harmonisation in the



The Law Society welcomed delegates from China's Legislative Affairs Commission on 4 July, led by its vice-chairman Mr Lang Sheng

PIC: LENS MEN

Internal Market, which implements the EU-funded action 'Intellectual Property – A Key to Sustainable Competitiveness' (otherwise known as 'IP Key' – see www.ipkey.org). IP Key is Europe's contribution to the new EU/China IP cooperation that is taking place between the European Commission and China.

The visit to the Law Society was part of a packed agenda for the delegation, which included meetings with the Chief Justice Mrs Justice Susan Denham, Mr Justice Peter Kelly, and representatives of the Patents Office.

Department rectifies High Court bail motions fees

The Department of Justice has notified the Law Society of an anomaly in fees payable for High Court bail motions under the Legal Aid Custody Issues Scheme. A recent internal audit highlighted that the fees paid for High Court bail motions were

set at the rate that applied on 1 February 2007. The fee rates were subjected to a number of reductions, with the last being on 1 October 2011, and the reductions had not been made for High Court bail motions.

The Department of Justice

and Equality intends to rectify this anomaly by amending the rates from 1 September 2014, which is in keeping with the parity arrangement provided for by SI 234 of 1976.

The Department of Justice has advised that the effect will be as

follows:

- Brief fee will be reduced from €221 to €176,
- Consultation fee will be reduced from €110 to €88,
- Fee for attending a place of detention will be reduced from €122 to €97.22.

Judicial conferences 2014 – 2017

Members should note the following in relation to conferences held under the auspices of the Committee for Judicial Studies:

- The 2014 national conference will take place on Friday 21 November 2014. No cases should be listed for any court on Friday 21 November 2014, save on the instruction of the judiciary.
- The 2015 national conference will take place on Friday 20 November 2015. No cases should be listed for any court on Friday 20 November 2015, save on the instruction of the judiciary.
- The 2016 national conference will take place on Friday 18 November 2016. No cases should be listed for any court on Friday 18 November 2016, save on the instruction of the judiciary.
- The 2016 Circuit Court conference will take place on Friday 8 and Saturday 9 May 2015. No cases should be listed for any Circuit Court on Friday 8 May 2015, save on the instruction of the judiciary.
- A bilateral conference with Northern Ireland judges will take place on Friday 28 November 2014. Some judges from the Supreme Court, the Court of Appeal and the High Court will be attending this event.
- A bilateral conference with Northern Ireland judges will take place on Friday 25 November 2016. Some judges from the Supreme Court, the Court of Appeal and the High Court will be attending this event.

The following dates have been booked provisionally:

- Friday 17 July 2015 for the Supreme Court, Court of Appeal and High Court conference,
- Friday 15 July 2016 for the Supreme Court, Court of Appeal and High Court conference,
- Friday 14 July 2017 for the Supreme Court, Court of Appeal and High Court conference.

THERE'S AN APP FOR THAT



iThoughts I thaw a puddy tat!

APP: **iTHOUGHTS** PRICE: €8.99

During the long vacation when we were planning to change the world and clear our desks, I was looking for an iPad app that would help chart my progress and organise my ideas, writes Dorothy Walsh.

I found *iThoughts* (with a little help from a creative friend of mine who uses it all the time).

iThoughts is a paid-for app (€8.99) that, basically, acts as a piece of paper with the usual brainstorming doodles and arrows, and trees with branches of ideas and thought processes. I used it recently for a number of work-related tasks, for example:

- Compiling a chart of precedents that I wanted to add to my precedent bank,
- Organising the office management and staffing structures,
- Planning an examination of a witness in court, and
- Charting out and brainstorming a complicated personal injuries case.

If we look at the personal injuries case as our example, it becomes apparent the uses to which this app can be put. As with any brainstorming exercise, you start with your central topic – in this case an industrial accident. From that springs the usual contemplations, such as issues with liability, Statute of Limitations, number of potential defendants, evidence to be gathered immediately, medical records to be gathered in, authorities from clients, initial investigations, inspection facilities, HAS notification and documentation, data protection request from employer and so on.

Usually, I chart all of this information on a piece of paper and put it on the correspondence pin of the file, setting up individual reminders for each task. With *iThoughts*, I have been able to do all of that on the iPad. I can then export the document to my

case-management system to be saved to the file, export it to a printer and have access, also, to the document wherever I am, once I have the iPad or iPhone with me.

I found this to be another great tool for working on the move. It's a wonderful app for jotting down those brilliant ideas we all have at the strangest times – but keeping those ideas together in a relevant document. I can set alarms and timers on the particular ideas on the mind-map chart in order to remind me to update particular elements of it.

I can even handwrite in doodles or notes within the chart. It has been a more interactive and interesting way to chart my ideas for a particular case.

I also find it really great to chart out an argument and to try to organise my ideas for examining a witness, since the flow allows you to chart out the questions you might ask, depending on some of the answers you might get. It also assists in not letting you forget particular issues, as we all do when we are on our feet.

With regard to the other usual things we look for in an iPad app, it can be fully synced to the iCloud and can, therefore, be available to us on the iPhone should we need it. The chart itself can also be exported to and saved in Dropbox.

It's one of those apps that encourages me to do the brainstorming I always used to do when starting a new case – but in an editable, neater and, essentially, far more legible format than the paper and pen of old.



‘Re-setting’ relationship between the Society and the banks



An unprecedented meeting of the leaders of the Law Society and of the Irish Banking Federation took place on a warm midsummer's evening in Blackhall Place (*seated, from l to r*): Noel Brett (CEO, Irish Banking Federation), Jim Brown, (CEO, Ulster Bank), John P Shaw (president), Richie Boucher (CEO, Bank of Ireland) and Jeremy Masding (CEO, Permanent TSB). David Duffy (CEO, AIB) is missing from the photo but met with the Society subsequently; (*standing, from l to r*): John D Shaw (chair of Undertakings Task Force), Stuart Gilhooly (Coordination Committee member), Michael Quinlan (junior vice-president), Patrick Dorgan (chair of eConveyancing Task Force), Mary Keane (deputy director general), Ken Murphy (director general), James McCourt (immediate past-president), Kevin O'Higgins (senior vice-president) and Suzanne Bainton (chair of Conveyancing Committee)

An initiative has been undertaken at the highest levels between the Law Society and the Irish Banking Federation (IBF). The joint objective is to 're-set' relations and to express a new spirit of cooperation in seeking solutions to longstanding issues.

A memorandum of understanding is currently being put in place between the Society and the IBF that records a desire to maintain a collaborative working relationship on legal and banking matters.

This is in the interest of both solicitors and the IBF – but also the consumer. It provides for a working group structure to be put in place, tasked with resolving all issues or conflicts arising on legal and banking matters.

The initiative follows a meeting that director general Ken Murphy had with the new CEO of the IBF, Noel Brett, earlier this year. Both recognised that there were longstanding unresolved issues, with frustration in relation to these issues being felt on both sides.

Mr Brett mentioned a major change in governance arrangements within the IBF, involving the creation of a new overarching executive committee, comprising the heads of the four biggest lending institutions in the State, together with Brett himself.

Murphy saw this as creating the exciting possibility that, on many issues – thorny conveyancing practice issues, for example – a single approach might ultimately be taken by all

of the lending institutions acting together. This would be instead of each lending institutions taking different approaches on different issues at different times, with an often confused and very unsatisfactory situation resulting for both solicitors and their clients.

High-level meeting

It was agreed that a meeting would take place between the members of the IBF's new executive committee and the Society's Coordination Committee. This meeting took place over dinner on a warm sunny evening on 18 June 2014. It was seen by all as very successful in acquainting both sides with the issues and concerns felt by each.

A fresh and strong commit-

ment to resolving those issues, wherever possible, was given on both sides. AIB chief David Duffy was prevented by an emergency board meeting from attending the meeting; however, he attended a lunch in Blackhall Place shortly afterwards and was equally enthusiastic that the longstanding issues between the IBF and various Law Society committees be reviewed afresh and resolved, if at all possible.

The first meeting of the steering committee established under the new memorandum of understanding is scheduled for September.

For clarity, the memorandum of understanding does not in any way amend or affect the existing agreements between the Society and the lenders under the certificate of title system.

Law Society joined in judicial review of taxing master

On 29 July 2014, the President of the High Court gave permission to the Law Society to be joined as *amicus curiae* in a judicial review of a costs case involving taxing master Rowena Mulcahy.

In the affidavit grounding the Society's application, Law Society President John P Shaw (*right*) said that the taxing master's decision to recuse herself in the cases that are the subject of judicial review was of "great concern to the Society".



He said that the conduct of the taxing master "in recusing herself from adjudicating upon all taxations of cost involving a practising solicitor because of affidavits sworn in legal proceedings and media comments give rise to concerns as to the fair treatment that may be expected by solicitors in taxation of costs adjudications".

He added that it had implications for the entire solicitors' profession, as well as for clients and the general public.

The affidavit also expressed the view that the manner in which the taxing master conducted taxation cases, with several hearings required before adjudication, "is costly and burdensome for solicitors and is disproportionate and unnecessary".

He also expressed the view that this led to cumulative delays, "which I believe is leading to lengthy overall delays in the taxation of costs in the superior courts".

Terms of Garda Station Legal Aid Revised Scheme

The Law Society is developing guidance for members in relation to the Director of Public Prosecutions' direction to the Garda Síochána about the attendance of solicitors during interviews in garda stations.

As a result of that direction, where a request is made by a suspect who is detained in a garda station to have his or her solicitor present during an interview, a solicitor will be allowed to attend. Members should read the *eBulletin* of 20 May 2014.

The terms of the Garda Station Legal Aid Revised Scheme are set out in the *letter of 18 July 2014* to the Law Society from the Department of Justice. You can also download the full details of the *new payment arrangements*.

The Legal Aid Board wrote to the Law Society about the revised scheme on 15 August 2014.

Information from the Legal Aid Board of interest to practitioners can be downloaded from the Legal Aid Board's [website](#).

The Society made representations to the Department of Justice and discussed the fees payable under the scheme with the new minister, subject to the proviso that it is always the minister who makes the final decision on such matters.

The department has now written to say that the fees that it proposes paying are "a very major change from the position [it] initially had". Competition law prohibits the Society making a recommendation concerning the outcome.



Accordingly, the Society is advising members to decide individually and not collectively whether to participate in the provision of services on terms offered.

The Society's Criminal Law Committee has contributed its observations on the proposed Garda Síochána *Code of Practice on Access to a Solicitor by Persons in Garda Custody*. This will be copied by the Law Society to solicitors when it is in its final form.

Members of the Criminal Law Committee are also developing guidance for solicitors when attending garda station interviews. In addition, Law Society Professional Training will deliver nationwide training in the autumn and winter, to be announced soon.

Solicitors urged to cooperate with Fennelly Commission

The Law Society has been keeping in close contact with its members about the controversy surrounding the taping of solicitor/client phone conversations in garda stations. It first sent an *eBulletin* to members on 27 March 2014 about revelations that telephone conversations had been recorded to and from a large number of garda stations over a period of decades.

The Society subsequently wrote to the Taoiseach on 4 April 2014 to request that these revelations

be examined thoroughly within the statutory commission of investigation. It developed a list of 41 issues for inclusion in the commission's terms of reference. The full list is available in the *press release* that was issued by the Society on 4 April.

On 8 April 2014, the Government announced the establishment of a *commission of investigation* to be conducted by Mr Justice Fennelly (the Fennelly Commission). Terms of reference were enacted by way of *statutory instrument*.

The commission would welcome information from any solicitor who:

- Has experience, whether in the form of actual evidence or suspicion, of a telephone conversation between them and a client being recorded,
- Has experience, whether in the form of actual evidence or suspicion, of information known only to the solicitor and client coming into the possession of gardaí following a telephone conversation in a garda station,

- Has experience of making calls to and from garda stations and the procedures that apply,
- Had any awareness or concern that telephone communications within garda stations were not secure, and the reason for such concern.

Contact: Commission of Investigation (Certain Matters Relative to An Garda Síochána and Other Persons), 1st Floor, St Stephen's Green House, Earlsfort Terrace, Dublin 2; tel: 01 662 9151, email: info@fennellycommission.ie.



A conferring of the Diploma in Notarial Law and Practice on notaries public by the Faculty of Notaries Public in Ireland took place at Blackhall Place recently. Among the guests attending were Chief Justice Susan Denham, Jim Sexton (dean of the faculty), E Rory O'Connor (dean emeritus), David Walsh (registrar of the faculty) and Dr Eamonn G Hall (director of education of the faculty)



FIG: PAT MOOR

The Kilkenny Bar Association met at the Ormond Hotel on 25 June 2014, where members met with Law Society President John P Shaw and director general Ken Murphy. Having engaged in some banter about the state of Clare and Kilkenny hurling (which, with the benefit of hindsight, fully vindicated the

position taken by the Kilkenny members!), the meeting got down to the main business of updating members on the *Legal Services Regulation Bill*, delays in taxation of costs, new provisions for solicitors' attendances for garda station interviews, e-conveyancing and appointments to the High and Circuit Courts.

Members raised their own concerns about the issues discussed and retired afterwards for refreshments and further discussion with the president and director general. (*Front, l to r*): Charlene Butler, Mary Molloy (treasurer, Kilkenny Bar Association), John Shaw (president of the Law Society),

Laurence Grace (president of the Kilkenny Bar Association), Ken Murphy (director general) and Maeve Meaney (CPD officer). (*Back, l to r*): Connor Bass, John G Harte, Timothy Kiely, Martin Crotty, Michelle Treacy, Nicholas Harte, Carol Murphy, Seamus Brennan, David Dunne, Thomas Walsh, and John Holland.

Warm welcome for new ministers at annual dinner

The still relatively new Minister for Justice Frances Fitzgerald gave the reply on behalf of the guests at this year's Law Society annual dinner. In a very warm and positive address – one that by coincidence, she was giving on the very day she commenced the report stage of the *Legal Services Regulation Bill* – she thanked the Society for its constructive

engagement, which had led to a great many improvements in the bill.

She was responding to the only other speaker on the night, President of the Law Society John P Shaw. He had listed a number of the Society's concerns on various issues, but he had concentrated on welcoming the Society's 160 or so guests

drawn from Government, the political world generally, the judiciary, the public service, State agencies, other professions and a wide range of other individuals with whom the solicitors' profession has dealings, directly or indirectly, throughout the year.

The evening was enjoyed by all – but perhaps by none

more than the individual whose mention raised the warmest applause of the night. That was the solicitor and TD Charlie Flanagan, who, in the Cabinet reshuffle earlier in the day had been unexpectedly promoted to the portfolio of Minister for Foreign Affairs. He accepted the congratulations of well-wishers all evening long.



ALL PIX: LENS MEN



(From l to r): Senator Paul Coghlan, Jerry Carroll (Director of the Bar Council) and Conan McKenna (assistant secretary general, Department of Justice and Equality)



(From l to r): Alistair Morris (president, Law Society of Scotland), Michael Quinlan (junior vice-president) and Lorna Jack (CEO, Law Society of Scotland)



(From l to r): Michael Quinlan (junior vice-president), Máire Whelan SC (attorney general), John P Shaw (president), Kevin O'Higgins (senior vice-president), Frances Fitzgerald TD (Minister for Justice) and Ken Murphy (director general)



The proud president with his daughter Hannah Shaw (trainee solicitor) and wife Mary Nolan (solicitor)



The British Ambassador to Ireland Dominick Chilcott is welcomed by John P Shaw and Kevin O'Higgins



(From l to r): Law Society Past-President Bruce St John Blake (1976-77) and John P Shaw, his 37th successor



Robin Mandal (president, Royal Institute of Architects of Ireland) and Law Society President John P Shaw



Safe in their hands – chairman of the Bar Council of Ireland David Barniville SC is welcomed by Law Society President John P Shaw



(From l to r): Bruce Beveridge (immediate past-president of the Law Society of Scotland), Chief Justice Susan Denham, and Alistair Morris (president of the Law Society of Scotland)



(From l to r): David Nolan SC (then chairman of the Bar Council), Judge Gerry Griffin (former Law Society president, 2003-04), Laurence K Shields (former Law Society president, 1997-98) and Mary Keane (deputy director general)



(From l to r): Claire Loftus (Director of Public Prosecutions), Brendan Ryan (CEO of the Courts Service) and Seán Aylward (under-treasurer, King's Inns)



(From l to r): Ken Murphy (director general), John P Shaw (president), Michael Quinlan (junior vice-president), Frances Fitzgerald (Minister for Justice) and Charlie Flanagan (Minister for Foreign Affairs)



Attorney General Máire Whelan has a word in the ear of director general Ken Murphy



(From l to r): Judge Rosemary Horgan (president of the District Court) with Judge Patrick Durcan (District Court)

Law Society staff rise to ice-bucket challenge

The Law Society might have a stuffy image – most of it undeserved. One staff member, reacting to the latest ice-bucket challenge craze, decided it was high time to show the fun side and generosity of staff members.

Donna O'Reilly, receptionist in the Education Centre at Blackhall Place, persuaded 19 staff members to get soaked on 25 August to raise money for the Irish Motor Neurone Disease Association (IMNDA). Another ten took on the

icy challenge two days later, including Law Society director general Ken Murphy. Sporting his favourite t-shirt – with the legend 'Trust me, I'm a lawyer' – nobody was taking any chances, with everybody making sure his bucket was well and truly full!

To donate to the Ice Bucket Challenge, text MND to 50300 to donate €2. Alternatively, [donate at www.imnda.ie](http://www.imnda.ie). The IMNDA has committed to spending one-quarter of all funds raised to the MND research programme.



PHOTO: CIAN REDMOND PHOTOGRAPHY



At a recent workshop on 'Ethical Theory and Professionalism', organised by the Diploma Centre, were (l to r): Barry Connolly, Olivia Higgins, Louisa Burke, Catriona O'Brien, Freda Grealy (head of the Diploma Centre), Prof Donald Nicolson (University of Strathclyde Law School), Ciara O Buachalla, Blaitheín Ní Chroinín, Lisa Dowd, Paul Carroll, Fiona Burke, Ruth Callanan, Patrick Cryan, Jennifer Murray, Rosemarie Hayden, Robert Downey, Siobhan Dunne, Bernadette Raleigh

ILHS celebrates silver anniversary at the Áras



President Higgins with members of the council of the Irish Legal History Society at Áras an Uachtaráin, marking the conclusion of its 25th anniversary. (*Front, l to r*): Donnell Deeny, President Michael D Higgins and Robert D Marshall; (*middle, l to r*): Dr Thomas Mohr, Dr Kevin Costello, Hugh Geoghegan, Yvonne Mullen BL, John G Gordon, Felix M Larkin, Daire Hogan and Dr Kenneth Ferguson BL; (*back, l to r*): Prof D Greer QC, Prof Colum Kenny BL, John Martin QC, James McGuire (MRIA), and Dr Patrick Geoghegan

President Michael D Higgins received members of the council of the Irish Legal History Society (ILHS) at Áras an Uachtaráin on 22 May 2014 to mark the conclusion of the society's silver anniversary. The society presented the President with a complete set of the 23 volumes published by the society since its foundation in 1988 for the library he has established at Áras an Uachtaráin.

Welcoming them, the President said he was delighted to meet with those jurists, legal experts and scholars who had come together in a spirit of professional pride to acknowledge and document a shared history and legal culture.

He said that the commitment

of the society to ensuring the publication of documents and learned works on the history of Irish law allowed access to an important part of the narrative of this island. The volumes published by the society were an essential resource for those who wished to engage with the legal history of Ireland – North and South – to understand the complex interplay between the two jurisdictions, and to gain an appreciation of the consequences of considerations, decisions and actions that had occurred in the past for both our present and our future.

The President stated that one of the projects during his term in office was to develop a library at

the Áras that would be a resource for future holders of the office. He saw the 23-volume set as a remarkable collection that would give much pleasure and be a valuable addition to the Áras library.

In reply, Robert D Marshall, solicitor and president of the ILHS, expressed the society's appreciation of President Higgins' generosity in receiving the council. He noted the importance of the Áras for all of the traditions on the island, having been at the centre of formal constitutional and legal events for over 200 years. "The books," he said "are the record of endeavours by scholars interested in Irish legal history to analyse the legal

history of all the traditions on this island." The authors and editors include historians and lawyers in universities, members of the judiciary and practising lawyers from both jurisdictions.

The 2014 AGM of the Irish Legal History Society will be held in the chamber of the former House of Lords, Bank of Ireland, College Green, on 28 November. This will be followed by the Winter Discourse, which will be delivered by Dr Coleman Dennehy on the reconstitution of the judiciary following the restoration of King Charles II. Further particulars of the society, including an application form for membership, can be found at www.ilhs.eu.

MAJOR ENGINE FOR CHANGE

The Society is implementing a four-year strategy statement and an annual operational plan.

Mary Keane explains



Mary Keane is deputy director general and director of policy and public affairs

In his foreword to the Future of the Law Society Task Force [report](#), Law Society President John P Shaw described the development of a strategy statement for the Law Society as “a major engine for change” with the Society’s strategic direction being “guided by the objectives contained in that statement” and “planned and measured annually against those objectives”.

In fulfilment of this commitment, as expressed in recommendations 4 and 5 of the task force report (see panel), the Council approved the Law Society’s Strategy Statement 2014-2018 and its first Annual Operational Plan 2014-2015 at its meeting held on 11 July 2014. A copy of that document is being provided to each member of the Society with this issue of the *Gazette*.

Stronger relationship

A strategy statement is a core element of the process of strategic management within any organisation. It provides a clear focus on priorities and strengthens the organisation’s ability to deliver a cohesive and relevant service. Strategy is concerned with the whole organisation – its goals and objectives,

its long-term themes and direction.

Our strategy statement is a formal expression of the Society’s determination to strengthen the Society’s representative role and establish a stronger relationship between the Society and its members. It follows on the refreshing of the Society’s brand in July 2014 and the

enunciation, for the first time, of the Society’s vision, mission and values as part of its tone-of-voice guidelines (see [news p7](#) and [analysis p22](#), July *Gazette*).

Each page of the strategy statement and operational plan is deliberately laid-out under the heading of the Society’s vision – “The

Each page of the strategy statement and operational plan is deliberately laid-out under the heading of the Society’s vision – “The trusted voice of a respected solicitors’ profession”

trusted voice of a respected solicitors’ profession”.

In preparing the strategy statement for consideration by the Council, the Society’s management team and Coordination Committee considered the feedback from members in the Millward Brown survey and the roadmap



for the Society’s future contained in the *Report of the Future of the Law Society Task Force*.

With the assistance of Red Dog Creative Consultants, the statement was designed to build upon the vision, mission and values, while also reflecting the Society’s new brand identity and tone-of-voice guidelines. Clarity and relevance were key drivers. The graphics in the document illustrate where the statement and the operational plan sit in the overall strategic direction of the Society over a four-year timeframe.

Clarity of purpose

Any modern organisation must be clear about its objectives. Clarity of purpose benefits members, Council, committees, management and staff. Stated objectives ensure that all parties know where the organisation is headed and provide a framework against which agreed activities can be set.

The six high-level strategic objectives that will guide the decisions and activities of the Society for the next four years are as follows:

- We will use our voice, our experience and our relationships

FOCAL POINT

key task force recommendations

RECOMMENDATION 4

The Society should establish a high-level team to review its overall strategic direction, with a view to developing and implementing a new strategy statement for the Society. The process should be facilitated by a skilled external professional, and the new strategy should be approved by the Council prior to its dissemination to the profession.

RECOMMENDATION 5

The Society should develop an annual operational plan that indicates the extent to which its planned annual activities will help achieve its objectives as outlined in the strategy statement. The first annual operational plan should be launched to coincide with the first strategy statement.

President John P Shaw described the development of a strategy statement for the Law Society as “a major engine for change”

to represent the solicitors' profession and to champion its contribution to the Irish economy, the vindication of citizens' rights, and the rule of law,

- We will provide a strong voice in policy debate in order to inform decision making on matters pertaining to the justice system and law reform,
- We will enable our members to achieve their potential as respected and trusted advisors

and successful businesses,

- We will fulfil our statutory regulation functions to ensure fair and effective regulation of solicitors in the interests of the profession and the public,
- We will fulfil our statutory education functions in delivering a premier qualification and high-quality ongoing education and training, and
- We will be a valued resource for our members as a high-performance professional body.

Organisationally, the Society is divided into five departments, each headed by a director. The Annual Operational Plan 2014-2015 identifies the activities that will be undertaken over the next 12 months within each department in order to further the agreed objectives, while also using the Society's resources as effectively as possible.

Each activity within the operational plan is influenced by a key word or phrase in the agreed strategic objectives – ‘represent’,



‘champion’, ‘inform’, ‘enable’, ‘effective’, ‘fair’, ‘strong voice’, ‘valued resource’. In this way, the themes contained in the strategy statement are carried through into agreed measurable actions.

A separate operational plan will be devised each year until the strategy statement is reviewed and refreshed for a further four-year period in 2018.



RAMBLE *on*

PIC: PETER COX

at a glance

- Rights of way do exist, but the network of public rights of way in Ireland is very limited
- The public may claim a right of way over land only if a particular and defined route has been dedicated by specific grant by a land owner and accepted by the public
- Some paths have been procured as access routes by means of negotiations between occupiers and local communities. These paths are not public rights of way, and landowners may decide to stop access

The Old Head of Kinsale: private property versus public access

The recent decision in the *Lissadell* case clarifies the law on public rights of way somewhat, but it also shows how expensive it may be to find out if one exists. **Kevin Hoy** pulls on his walking shoes



Kevin Hoy leads the real estate practice at Mason Hayes & Curran

Incentives for the use of the countryside are important for our rural economy. In Ireland, there is no common law ‘right to roam’ across land. While we may deal with certain landowner concerns, government intervention is required in respect of issues such as trespass and devaluation of property caused by public rights of way.

Rights of way do exist, but the network of public rights of way in Ireland is very limited. The public may claim a right of way over land only if a particular and defined route has been dedicated by specific grant by a landowner and accepted by the public. This type of right of way is created by grant between the landowner and the relevant local authority. Such a public right of way is then the responsibility of the county council to maintain.

The *Planning and Development Act 2000* states that a local authority shall keep a list of public rights of way. The act requires any such public right of way recognised under the act to be registered on the planning authority register of the relevant local authority. It goes on to provide that, if it appears to the local authority that there is a need for a public right of way, then the local authority may make an order, by special resolution, creating such a right of way. So long as a public right of way has been recorded, it will continue regardless of non-use and notwithstanding any action of any landowner through whose land the public right of way passes.

The rover

There are three main walking schemes in Ireland:

- The National Waymarked/Walking Programme, established by the National Waymarked Ways Advisory Committee of the Irish Sports Council (NWWAC),
- The Slí na Sláinte Scheme set up by the Irish Heart Foundation in 1996, and
- Recreational walks through Coillte forests.

In all, 140 walking routes have been established throughout the country, varying in length from 3km to 60km. These routes are marked with a distinctive waymark and are mainly over public roads and public land. Under the NWWAC Scheme, there are currently 31 waymarked ways in existence, which account for 3,431kms, 50% on public roads and 26% through Coillte land. The remaining 24% cross private property, national parks or other public lands. Most of these walking routes are through public lands, and therefore access may be decided by the relevant public authorities.

Other paths have been procured as access routes by means of negotiations between occupiers and local communities. These paths are not public rights of way, and landowners may decide to stop access. The landowner generally enters into an agreement with the NWWAC, which then subsidises 45% of the cost of public liability insurance, with the



Perhaps the New Zealand model is one to use in crafting legislation that balances the concerns of owners and walkers alike

remainder being paid by the local authority. Local management committees administer the route and have responsibility for annual maintenance.

Throughout the country, the public may access national parks and Wildlife Service lands, Coillte lands, and along canals and rivers managed by Waterways Ireland. There are six national parks covering in excess of 56,500 hectares located primarily on the Western seaboard and in Wicklow. Issues of safety or protection of habitats may restrict access.

Trampled underfoot

A private landowner may decide to allow access. Landowners, usually farmers, are worried that if they allow access, then they will experience disruption to their property, livestock and crops. Insurance costs will rise. Lands affected by public rights of way may be worth less than lands that are completely private.

The right of the occupier of the land to exclusive use of it is protected by the tort of trespass, which is the active entering onto

or remaining on another person's land without permission.

The scope of liability of occupiers of land for injury caused to those entering onto land, including trespassers, is governed by the provisions of the *Occupiers' Liability Act 1995*. The act specifies the duties owed by 'occupiers' of land to 'visitors', 'recreational users', and 'trespassers'. The duty of care owed by an occupier to recreational users or trespassers is in addition to the common law duty of care owed in respect of a danger existing on premises, and a duty not to injure the person or damage the property of the person intentionally, and not to act with reckless disregard for the person or the property of the person, which is considered in regard to all the circumstances of the case.

There are also practical problems, such as dogs not being kept under control, vandalism, theft, arson, litter, gates being left open, and the compromising of conservation work. Privacy is also an area that would concern landowners. Would a city dweller welcome

strangers tramping through their garden and peering in their kitchen window?

Hillwalking clubs, recreational walkers, groups, and outdoor

pursuits enthusiasts seek access to traverse lands freely for recreational use. Archaeologists and historians may also require access to monuments and sites on privately owned lands. Each of these parties seek confirmation that they may access land without consequences.

Over the hills and far away

The Scandinavian countries have 'right to roam' provisions in their laws. In Sweden, for example, the public has a right of access that is enshrined in the constitution. Private property is protected from government expropriation except to satisfy urgent public interests. When uses of private property are diminished by government restriction, the landowner is entitled to compensation.

'*Allemansrätten*' is everyone's right or the right of common access. This has evolved

over many years and without any legislation to detail the respective rights and obligations. It is assumed that there is free access across another's land, the right to stay overnight, and the right to pick berries, flowers and mushrooms provided there is no damage done to the owner's property – 'don't disturb, don't destroy' applies. The right of public access does not cover hunting and fishing. One may camp and have a campfire and a dog, provided that the dog is kept on a leash.

In Scotland, the *Land Reform (Scotland) Act 2003* introduced an outdoor access code and new responsibilities for local authorities. Walkers have a statutory right of responsible access to all land (similar to Scandinavia). When the right to roam was introduced in Scotland, landowners were not particularly concerned, as a more open-access tradition was prevalent, particularly in the Highlands.

In England and Wales, the *Countryside and Rights of Way Act 2000* applies, giving the public the right of free access in specified areas of open country mapped areas. There is no general right to roam. Any land that is mountain, moor, heath, down or registered common land may be designated. There is no compensation for any landowner affected, but the act does not mean a landowner would owe any duty of care to any visitor for injury resulting from natural features. Landowners may restrict access for any reason for up to 28 days per year. The act provides for a country code to cover the arrangements for land access and established a national countryside access forum composed of representatives from landowners, local government, and recreational groups to advise.

Misty mountain hop

In 2004, the Minister for the Gaeltacht and Rural Affairs set up *Comhairle na Tuaithe* (the Countryside Council), comprised of representatives from farming organisations, recreational users of the countryside, and State bodies with an interest in the countryside to address the issue of access to the countryside. In recent years, there has been an increase in the number of walking tours in Ireland. People have become more aware of hillwalking. The Atlantic seaboard is an attractive destination for tourists already, and other parts of the country seek to attract more visitors. However, permitted schemes

may be revoked at any time.

In an attempted solution, the *Access to the Countryside Bill* was proposed by Ruairí Quinn in 2007, when Labour was in opposition. The bill proposes the right of access to land that is more than 150m above sea level and any open uncultivated land, including moors, heath and downs. It suggests amendments to the *Occupiers' Liability Act 1995*, where people would enter land entirely at their own risk. The bill met with opposition from farm organisations, which are opposed to proposals that might lead to diminished property rights. Farmers feared increased costs in relation to their farm business, such as higher insurance premiums or threats to crops and livestock.

In Ireland, the ownership of uncultivated land such as mountain, bogland and woodland is fragmented, being owned by many different owners under commonage, each of whom would have to give consent in order for access to be gained across their land. Therefore, statutory intervention is needed if the view is that some form of a right to roam is for the public good. This should be contrasted against the nature of our constitutional

rights to private property in article 40.3 and article 43 of *Bunreacht na hÉireann*.

That's the way

The New Zealand *Walkways Act 1990* may provide a more farmer-friendly template for us. The intent of the legislation is to provide "walking tracks over public and private land so that the people of New Zealand shall have safe unimpeded foot access to the countryside for the benefit of physical recreation as well as for the enjoyment of the outdoor environment and the natural and pastoral and historical cultural qualities of the area they pass through".

Under the act, there is no statutory power to acquire land for a walkway through either negotiation or compulsory purchase. Lands are obtained by way of an easement or a lease funded by the New Zealand parliament. The rights of the property owners are protected under the act. There is a limitation of occupier liability, and there are penalties for transgressions by walkers, including that of trespass-related offences for those who stray from official walkways onto adjoining private land. These offences

include damaging a landowner's property in any way or disturbing or endangering livestock. Interestingly, an owner can request special conditions for the use of his land in question – for example, a walkway can be closed during lambing season or during a period of higher fire risk. The act has now resulted in a network of 125 maintained walkways, totalling about 1,200km in length. Although this figure may appear low, the walkways complement an already significant area of public land (of one-third of New Zealand) that is available for walking and hiking through its national parks.

While there is provision under the *Planning and Development Act 2000* for a right of way, if needed, legal reforms in the area of liability and potentially the commercial reality of a compensation package for farmers should be considered, as well as farmers having special exemptions from the general law on occupiers' liability. In similar circumstances, where a wayleave or right of way is required for overhead power lines that would devalue a farmer's land that would otherwise be used for a commercial purpose – for example, forestry – the ESB compensates the farmer to a significant level of the anticipated income.

The Irish Sports Council's initiative on national walking trails is welcome. It is evident from the opening of the Green Way at the old railway line from Westport to Achill and the incentive under the Wild Atlantic Way that there is a significant demand and interest from both the Irish and tourists alike for access to the countryside. However, the scope of permitted access remains dependant on the goodwill of landowners. Perhaps the New Zealand model is one to use in crafting legislation that balances the concerns of owners and walkers alike. Recreational walking tourism can contribute to the sustainable regeneration and continued protection of the rural communities, to the benefit of all of those who live, work and enjoy the Irish countryside.



The scope of liability of occupiers of land for injury caused to those entering onto land, including trespassers, is governed by the provisions of the Occupiers' Liability Act 1995

look it up

Legislation:

- *Countryside and Rights of Way Act 2000* (England and Wales)
- *Land Reform (Scotland) Act 2003* (Scotland)
- *Occupiers' Liability Act 1995*
- *Planning and Development Act 2000*
- *Walkways Act 1990* (New Zealand)

the DANCE

The lack of robust systems to pursue each and every planning condition adversely affects the human rights of citizens affected by such developments. **Kieran Cummins** assembles a posse



Kieran Cummins is a qualified solicitor and a consultant on planning and environmental matters

The recent controversy over the cancellation of the Garth Brooks concerts on foot of the *Planning Acts* can be viewed as an example of rigorous enforcement of the acts by the planning authorities – in that case, Dublin City Council. While it undoubtedly disappointed and inconvenienced many, politicians were at pains to be seen to say the right thing – that there are planning laws in place and these had to be obeyed. No reasonable person will dispute or take issue with such pious statements, *per se*.

The reality is that the enforcement of the *Planning Acts* insofar as they relate to environmental matters has been abysmal. In the case of large-scale developments such as housing estates and the extractive industry (quarries), it is frequently the case that significant amounts of money – deriving from planning contributions – remain outstanding, and there are examples of several hundreds of thousands of euro outstanding on given developments. These include development levies, road maintenance levies (lump sum and annual), and reinstatement bonds. This is in contrast to the reality of crippling rates levied on the business sector to maintain services and staff in the relevant administrative authorities. This is also at a time when additional stealth taxes, including water rates and property taxes, are being introduced to sustain the public purse.

Likewise, when other breaches of planning conditions occur, it is often the experience that some planning authorities have not introduced modern detection/enforcement methods such as CCTV, insisting instead that one of its officers would need to witness the breach. This makes enforcement of certain conditions impossible. Examples are ‘out-of-hours’ activity, such as truck movements in and out of a quarry site outside of the permitted hours of operation (usually in the very early hours of the morning). Such activity can be extremely disruptive to the local community. Requiring an



at a glance

- The enforcement of the *Planning Acts* insofar as they relate to environmental matters has been abysmal
- When breaches of planning conditions occur, it is often the case that some planning authorities have not introduced modern detection/enforcement methods
- The failure to adequately enforce is manifestly unfair on those businesses that are properly and lawfully operated
- It is arguable that a more hands-on approach by planning authorities is required to adequately protect the rights of citizens



Planning authorities have been generally eager to enforce breaches insofar as small developments are concerned, but experience has shown that there seems to be a lack of resolve to take on larger developments

officer to witness such activity necessitates his/her presence in the early hours of the morning to photograph the truck entering and also to photograph the same truck leaving. This means that its officer would need to be there on the mornings in question, which is impractical. Moreover, it is unlikely that a truck driver would oblige by leaving the facility again under such circumstances. This results in either few or no detections, so that breaches continue.

Wagon wheel

The concept of 'reasonableness' in terms of enforcement must also be considered. It is commonplace for 'reasonableness' to

be interpreted by planning authorities in such a way that it becomes ineffective. Cessation time-frames in enforcement notices are an example, and include circumstances where an enforcement notice issues for 'out- of-hours' truck movements (outside the times permitted in the planning consent). An enforcement notice that gives such a breach two days to be rectified is ridiculous, as it thereby permits the breach to continue for a further two days. Another example might include a situation where a fleet of trucks engage in the unauthorised

removal of topsoil from a disused quarry site (thereby compromising the satisfactory reinstatement of that site). It is frequently the case that, if and when the planning authority eventually issues an enforcement notice, that it provides for the cessation of that activity in two or more days from service of

the notice, thereby permitting that activity to continue for the extended period. Any effective remedy in such situations requires the immediate issue of injunction proceedings with consequent penalties. The interpretation of 'reasonableness' in these

cases severely compromises enforcement and offends against the common good. Perhaps a strengthening of the laws along the lines of strict liability should be considered?

Friends in low places

The planning process frequently employs the concept of 'self-policing'. This puts the onus on the developer to take periodic samples (usually monthly) of dust deposits, water levels, water quality, air-overpressure (in the case of explosives being used to extract rock) and provide these to the relevant planning authorities. As with the financial conditions alluded to above, it is frequently the case that these are seldom adhered to in their entirety, or at all. It is arguable that a more hands-on approach by planning authorities is required to adequately protect the rights of the citizen.

With regard to penalties, it is essential that there be proportionality between fines and offences, if there is to be any meaningful deterrent. For example, the penalty for illegal felling of trees currently stands at €63.49 per tree (£50) (*Forestry Act 1946*). If a person/entity willingly fells a number of trees to free up ground for other purposes, it is but a small penalty to factor into the decision to remove a coppice of trees (if they are detected or prosecuted at all). Furthermore, it is often the case that planning authorities consider that the burden of enforcement outweighs its benefits from their perspective.

Achy breaky heart

Invariably, the pattern of development has been that the planning authority grants planning permission to an operator. This is subsequently exceeded – early detection and enforcement by the planning author-

ity would have prevented this. A retention planning permission is then sought. A further grant then issues and the planning authority attaches yet more conditions justified by statements such as "in the interest of sustainable development" or "in the interest of residential amenities and public health" or "in the interests of orderly development", and such like.

The situation as regards enforcement continues to be someone else's responsibility. In the absence of enforcement, even at this stage, reinstatement is rarely commenced. Subsequently, further extension permissions are sought and granted. Enormous developments frequently come into existence by this process (which would never have been granted planning permission had they been applied for on such a large scale in the first instance). At this stage, the original reinstatement is all but impossible, as the ground on which it was to take place has itself fallen victim to the development. This type of disorderly development is not in the national interest and adversely affects the human rights of citizens living in the vicinity of such developments. Furthermore, fresh applications tend to be assessed in isolation and fail to adequately consider previous non-compliance by the same applicant.

Regarding forward planning strategies, it is undesirable that the State should undertake a series of road-building initiatives while leaving the supply of aggregate to market forces. It is in the national interest that the appropriate

State agencies assess, identify and source supplies of aggregate from sustainable sources. This would protect the State's land resource for arable farming. Furthermore, a system (similar to the tax C2 certificate), whereby suppliers would be obliged to obtain certificates of planning compliance from the relevant planning authority before State agencies could procure product from that supplier, is long overdue. Such a system could also be incorporated into the

licensing of explosive permits by the gardaí.

Finally, the way environmental cases are processed through the courts may be worthy of examination. Currently, environmental cases are included with a multitude of matters, including criminal cases, on District Court lists. A consequence of this is that the criminal

cases tend to attract more attention and obtain priority. Moreover, employment is frequently proffered as a justification to compensate for an adverse environmental effect. The reality is that large tracts of arable land are often removed from production forever, which would have a far greater negative effect on employment in the longer term, not to mention food security, safety of drinking water and loss of amenity.

That don't impress me much

The foregoing issues undermine the integrity of the planning system. Apart from adversely affecting the human rights of citizens, a failure to adequately enforce is manifestly unfair on those businesses that are properly and lawfully operated. Moreover, it has the effect of putting them at a commercial disadvantage and undoubtedly fosters a culture of non-compliance, similar to that of drink-driving decades ago. The problems to which this gives rise include large tracts of un-reinstated quarry lands, which may ultimately become a liability to the State if and when the EU wakes up to the scale of the problem. In addition, duty-of-care issues arise, and there have been numerous drownings in quarry lakes across Ireland and Britain in recent years, which is another consequence of this *laissez faire*

It is commonplace for 'reasonableness' to be interpreted by planning authorities in such a way that it becomes ineffective. Cessation time-frames in enforcement notices are an example

FOCAL POINT

the river

One of the most important and fundamental human rights is the right to a clean, healthy supply of drinking water. This is dependent on a clean, uncontaminated environment and, by extension, uncontaminated groundwater aquifers. It is absolutely essential that a hydrologist be engaged at the planning stage to vet all applications and, subsequently, to police the enforcement of extant grants of planning permission, together with their conditions. While An Bord Pleanála is known to engage such professionals, many planning

authorities do not have access to a hydrologist. This is not without its consequences, as when large bodies of water are created, the expertise to identify, assess and take action is not available. Apart from the significant acreage lost to arable production, these bodies of water potentially act as direct pathways of contamination to the groundwater aquifers. This follows as a result of the removal of the layers of topsoil and subsoil that protect the groundwater aquifers by acting as natural filters.

culture surrounding enforcement of such developments.

While lack of resources may be proffered as a defence to some of the enforcement shortcomings, it is difficult to see how this can be applied in the case of failure to collect financial contributions, to enforce compliance with large-scale developments (residential estates, commercial estates and quarries), or to a failure to introduce modern methods of surveillance to properly enforce planning conditions.


The lack of robust systems to pursue each and every planning condition adversely affects the human rights of the citizens affected by such developments. Opportunities to introduce the changes necessary to improve the functioning of the administrative structures within planning authorities were missed with the BLG (Better Local Government) and benchmarking initiatives of the early 2000s. Planning enforcement is a specialist area that requires both a deep understanding of the law and the real consequences of breaches affecting so many. Sadly, in many instances, this frequently is not the case. It is essential that administrative staff in planning authorities are better equipped in terms of qualifications, together with sufficient legal training.

Planning authorities have been generally eager to enforce breaches insofar as small developments are concerned, but experience has shown that there seems to be a lack of resolve to take on larger developments. Moreover, there also appears to be a difference in enforcement between planning authorities, with some being quite zealous and others being quite the opposite.

“The situation as regards enforcement continues to be someone else’s responsibility. In the absence of enforcement, even at this stage, reinstatement is rarely commenced”



At one end of the spectrum, an individual responsible for a relatively small breach may end up with substantial costs awarded against him/her. This is in contrast to the issues alluded to above, which is manifestly unfair.

Now, as regards Mr Brooks, I wonder whether he realised how unfortunate he was. Would it not be encouraging if all planning enforcement were pursued with the same will and determination? 



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social & PERSONAL

Savvy solicitors are using social media as effective marketing and customer-service tools. But are they aware of the professional requirements and restrictions that attach to the use of such media? **Martin Molony** gets tweeting



Martin Molony is a lecturer in communication, journalism and public relations at Dublin City University

The growth and impact of social media has been as significant in Ireland as anywhere in the world. This is not surprising, given our national propensity for social interaction. Although coined as ‘social’ media, the medium has been adopted within business and professional circles to as great an extent – and often with very rewarding results in terms of service levels, efficiencies and marketing.

As the phenomenon became a mainstream tool within our personal and professional lives, there was a legitimate expectation of its adoption within the legal professional and between legal practitioners and their clients. There is a range of benefits to its use, including the increased sharing of professional experience, opinion and advice. Some social media channels have become the preferred means of direct communication for many – generally for personal use, but also for business and professional purposes.

The adoption of new technologies is to be welcomed, but experience has shown that such adoption is often accompanied by challenges that necessitate some caution in their professional and personal use by the legal profession. Solicitors must also consider the professional requirements and restrictions imposed on them in relation to the use of media and advertising.

Memories of the initial use of fax machines and email remind us of the potential pitfalls without sufficient forethought on how such innovations might change our working practices. Similar forethought must be made about the use of social media. The good news is that the fundamental principles are identical between online communication and communication in a traditional manner.

The biggest shift in social media is the increase in paid-for content and social media advertising. It is important to remember that the advertising code for professional conduct still applies to such advertising

Private and confidential

Privacy and confidentiality form a cornerstone of legal practice. The challenge for solicitors using social media is to understand how such use might undermine their commitment to these principles. A related, but not unimportant, aspect is the perception that a solicitor might be seen to fail to respect privacy or confidentiality through their use of social media.

The use of informal language within social networks can create a false sense of intimacy between the participants, belying the potentially very public nature of such chats. A standard test as to the appropriateness of sharing something on social media is to ask: “How would I feel if

this appeared on the front page of *The Irish Times*?”

While any single piece of information shared on social media may not be a source of concern, two separate pieces of information may result in a breach of privacy. Two individual conversations with different parties in the



best use of key social media

Facebook: an online social platform connecting friends and organisations with others by sharing thoughts, links, images and videos. Best for social interaction, with opportunities for professional contact, and to develop a profile for your organisation.

LinkedIn: a business-oriented platform. Best for business and professional networking and to keep informed about contacts and particular industries or professions. Used extensively for recruitment purposes.

Twitter: a micro-blogging service allowing the exchange of messages up to 140 characters. Best for its immediacy and potential reach. Can be a useful source of gauging and influencing public opinion on an issue or event.

YouTube (also Vimeo): a video-sharing website and the world's second largest search engine. Best for sharing or sourcing video

online, either within YouTube or as part of a website or other social media communication.

WhatsApp (also Viber): a cross-platform messaging service for smartphones and mobile devices that allows unlimited text messaging, including the sending of audio, video and images. Best for inexpensive one-to-one communication across devices and countries.

Instagram: a photo (and video) sharing network that integrates with other social media platforms. Best for sharing or sourcing distinctive images or short videos, or for using such content to develop a profile for your organisation on the site.

Pinterest: an image-sharing network, allowing users to 'pin' any image from the web to themed boards on their profile. Best for sharing or sourcing visual material related to a specific topic or interest.

at a glance

- Social media benefits for business include sharing professional experience, opinion and advice
- Solicitors should consider the professional requirements and restrictions imposed on them when engaging with media and advertising
- The challenge for solicitors using social media is to understand how its use could undermine their commitment to privacy and confidentiality principles



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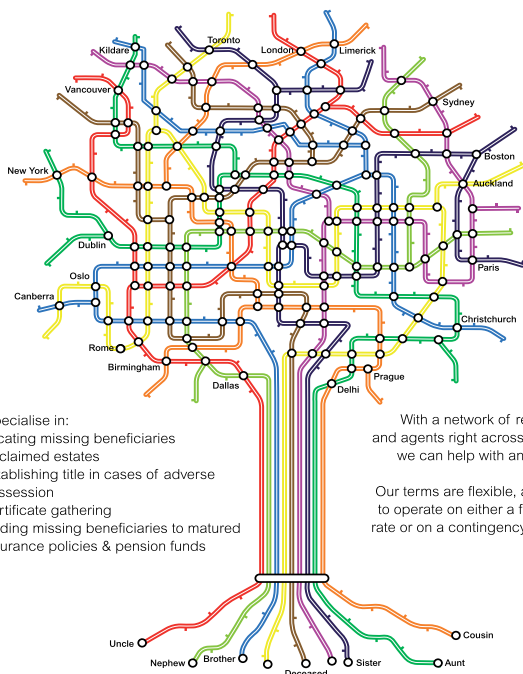
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offline world are unlikely to be heard together – and even more unlikely to be heard together in a public space. However, separate social media interactions are quite likely to appear alongside one another in a search result or within another social media channel.

It is important to remember that social media interactions convey more than the text of the communication. When viewed by others, the author's name, image and basic profile will also be displayed. This may become a problem when extended to sharing the time and location of the originating communication. Could there be a breach of confidentiality if it were publicly known – and recorded – where you were located at a particular time?

We comfortably operate different personae for our personal and professional lives – and with good reason. However, the boundaries between our personal and professional selves can become blurred when we use social media. Care should be taken to identify the purpose to which a particular social media account will be put and to maintain that distinction, both in one's interactions and in the network of contacts associated with that account.

A useful test of the appropriateness of making a comment or sharing information on social media is to ask: 'How would I feel if this appeared on the front page of *The Irish Times*?'

beware the pitfalls

CONFLICTS OF INTEREST

Legal professionals are familiar with identifying and avoiding potential conflicts of interest. However, the use of social media brings new challenges. Establishing particular connections or posting certain information or opinions online may, particularly when combined with other comments, raise questions of impartiality or independence.

CHINESE WALLS

While our personal and professional lives are more easily separated in the real world, our social media presence can be more difficult. Using a single online persona for both professional and personal social media activities is particularly difficult. Even separated, one has to ask whether there are potential professional implications for any personal contacts or activities through social media. Does the very act of connecting with another practitioner or client online cause a professional conflict or the suggestion of such?

DIFFERING CHANNELS

There are now a variety of social media platforms available. Some platforms are for professional use, such as LinkedIn, but others, such as Facebook, may be used for both leisure and professional use. Even within a professional social media network, there may be specific sections that are more appropriate for industry-related matters, while others are best for professional-to-client interactions.

CURRENCY OF CONTENT

Unlike traditional communication, social media is a dynamic medium. Social media content is constantly changing; material is regularly updated and revised; new contributions are published with great frequency. It is important to consider the implications of your content being viewed at a later date: is it clear that this content was written at a given time? Should you remove or amend your content as it becomes outdated or superseded by events?

CIRCLE OF FRIENDS

While some social media channels offer specific connections with identified individuals within your network, one has to assume some level of sharing of content outside your defined network. A typical Facebook user may have 340 friends, but this means any one user has a potential 115,000 'friends of friends', at just one remove. Again, consider how would you feel if this appeared on the front page of *The Irish Times*?

GENIE OUT OF THE BOTTLE

Unlike other forms of communication, social media content cannot be effectively withdrawn from circulation. While the original publication may be removed, copies of your content will inevitably be stored and republished elsewhere.

MEDIA USE

Traditional media outlets now turn to social media as a first port-of-call in many instances. Be prepared to see your social media content published in print or broadcast on radio or television.

SHARED IDENTITIES

While social media was initially used by individuals, clearly identified as such, many organisations develop a social media presence that is maintained and developed by a number of individuals. It is important that clear protocols are established for such situations. Who has authority and access to publish social media content on behalf of the organisation? Is there a clear definition of the style and tone of the organisation's social media 'voice' to be used by those tasked to do so?

ADVERTISING CODE

The biggest shift in social media is the increase in paid-for content and social media advertising. Although taking place within a social environment, it is important to remember that the advertising code for professional conduct still applies to such advertising. At all times, regard must be had to the requirements of the *Solicitors (Advertising) Regulations 2002*, irrespective of the media being used.



On the centenary of the outbreak of WWI, the *Gazette* remembers the solicitors and trainee solicitors who left behind their practices and fledgling careers to join the British Army

to end all WAR S...



Mary Gaynor is the Law Society's head of Library and Information Services



Mark McDermott is editor of the Law Society Gazette

Back in 1914, the Great War was foremost in the mind of Law Society President Henry J Synnott, who made considerable reference to the outbreak of hostilities in his half-yearly general meeting speech (as reported in the *Gazette* in December 1914): "I am afraid our domestic concerns have been almost completely overshadowed by the Great War, which is the first subject referred to in the annual report. The Society has reason to be proud of the attitude of the profession in reference to the war, and of the appreciation shown by its members, in more ways than one, of the gravity of the issues involved for all of us in that great struggle."

The Council decided that year not to hold its customary official dinner, instead sending an 'entertainment' amount of £127.2s (approximately €13,315 in today's terms) to Sir Lambert Ormsby "to assist in the provision of Irish motor ambulances for our wounded soldiers".

At that time, the Law Society listed 884 members out of a total of 1,587 solicitors on the roll. Intriguingly, time spent in service with the naval or military forces was "allowed to be counted as part of the period of service of the apprentice under his indentures of apprenticeship", as long as the service had been approved by the apprentice's master.



at a glance

- Domestic concerns were almost completely overshadowed by the Great War
- A total of 155 Irish solicitors and 83 apprentice solicitors joined the military services during the 1914-18 war
- In 1921, Law Society President Charles G Gamble unveiled a memorial to those killed



“ He was sure they would agree with him that those members of the profession who had joined the army or navy would have a hearty reception on their return ”

A total of 155 Irish solicitors and 83 apprentices joined the armed forces during the war. A roll of honour was published in the *Gazette* during the period of the war – the names below are those listed in the *Gazette*, with supplemental information from the Irish War Memorial

Records 1914-1918, where available.

In 1921, in the Solicitors' Buildings in the Four Courts, Law Society

President Charles G Gamble unveiled a memorial to those killed. Interestingly, one additional name – that of Jason Brett – is

Irish troops moving over the captured German line at Cambrai in France, where they took thousands of prisoners

included in the *Gazette*'s Roll of Honour, but was not included on the war memorial, for reasons unknown.

War is over

At last, during the half-yearly general meeting on 26 November 1918, President William V Seddall could speak in the past

FOCAL POINT

IN MEMORY OF THE IRISH SOLICITORS AND APPRENTICES WHO DIED IN THE GREAT WAR

Ahern, Francis, solicitor, Hilary 1907, Sheahan and Ahern, 14 College Green, Dublin and Balbriggan.

Atkinson, Thomas Joyce, solicitor, Michaelmas 1907; Carleton, Atkinson and Sloan, Portadown; Captain, 9th Batt, Royal Irish Fusiliers, killed in action on 1 July 1916.

Baillie, Hugh Montgomery, apprenticed 7 December 1912 to Sir Alexander McDowell, 51 Royal Avenue, Belfast; Captain, 16th Batt, Royal Irish Rifles, killed in action, 21 March 1918.

Barron, Louis, solicitor, Hilary 1910, practised at 33 Wicklow Street, Dublin; Lieut, 7th Batt, Border Regiment, killed in action in July 1916 at the Somme.

Boal, James S, solicitor, Hilary 1914, practised in Ballymena; 2nd Lieut, Royal Garrison Artillery, died of wounds on 29 January 1917.

Brady, Edward Ellard, solicitor, Hilary 1907, practised at 3 Palace Street, Dublin; Private, Cadet Company, 7th Batt, Leinster Regiment, died on 1 November 1915 at the Connaught Hospital, Aldershot, while his regiment was in training in England.

Brett, Jasper T, apprenticed 1 November 1912 to William J Brett, 13 Bachelor's Walk, Dublin; 2nd Lieut, Royal Dublin Fusiliers, died 4 February 1917.

Bridge, William Purefoy, solicitor, Hilary 1906, practised at 18 St Stephen's Green, Dublin; Private, D Co, 7th Batt, Royal Dublin Fusiliers, died of wounds received in action in the Dardanelles, 10 August 1915.

Byrne, Vincent Connell, apprenticed 11 July 1912 to Mr George J Hoey, 12 Trinity Street, Dublin; 2nd Lieut, Royal Irish Rifles, killed in action 31 July 1917, Ypres.

Callaghan, Arthur Nickson, apprenticed 9 January 1914 to Mr Arthur W Stirling, 52 Dame Street, Dublin; 2nd Lieut, 14th Batt, King's (Liverpool) Regiment, killed in action 30 August 1917.

Crookshank, Arthur Chichester, apprenticed to Mr Hunt W Leech, Coleraine; Sergeant, 7th Batt, Royal Dublin Fusiliers, killed in action, Suvla Bay, Gallipoli, 16 August 1915.

Davidson, James John, apprenticed 27 October 1913 to Hutchinson Davidson, Ballinasloe; Private, D Co, 7th Batt, Royal Dublin, killed in action 16 August 1915, buried at Azmak Cemetery, Suvla, Gallipoli.

Dunn, John Valentine, solicitor, Michaelmas 1913, practised at 60 Middle Abbey Street, Dublin; 2nd Lieut, 7th Batt, Royal Munster Fusiliers, Temporary Captain, killed in action during the Gallipoli landing, 15 August 1915.

Falkiner, Frederick EB, apprenticed 14 July 1913

to Richard B Falkiner, 9 Suffolk Street, Dublin; D Co, 7th Batt, Royal Irish Rifles attached to Royal Flying Corps, killed in action on 21 August 1917, shot down while flying as observer near Ypres, 21 August 1917.

Findlater, Herbert S, solicitor, Michaelmas 1898, practised at 12 Trinity Street, Dublin; Lance-Corporal, D Co, 7th Batt, Royal Dublin Fusiliers, killed in action Gallipoli, 16 August 1915.

Fitzgibbon, Michael J, apprenticed 16 March 1910 to Master Denning of Messrs Hoey and Denning, 12 Trinity Street, Dublin; 2nd Lieut, 7th Batt, Royal Dublin Fusiliers, killed in action, Gallipoli, 15 August 1915.

Fottrell, Brendan Joseph, solicitor, Michaelmas 1908, George D Fottrell and Sons, 46 Fleet Street, Dublin and Kells, Co Meath; Lieut, 3rd Batt, Royal Irish Regiment, killed in action on 15 March 1915 while serving in France.

Furlong, Philip James, apprenticed 18 March 1909 to Thomas J Furlong, 11 Eustace Street, Dublin; 2nd Lieut, 16th Batt, King's (Liverpool Regiment), officially reported killed in action 30 July 1916.

Garvey, Ivan Harold, apprenticed 23 September 1909 to John Garvey, Ballina; 2nd Lieut, Connaught Rangers, died of his wounds on 20 February 1917.

Greer, J Kenneth MacGregor, apprenticed 2 August 1912 to TM Greer, Ballymoney, Co Antrim; Lieut, Nth Irish Guards, died of wounds received in action, 2 October 1916.

Kavanagh, Thomas OJ, apprenticed 15 February 1913 to Mr John G Fottrell, 46 Fleet Street, Dublin; Lieut, Royal Irish Fusiliers, killed in action, 24 August 1918.

Mahaffy, Henry Irwin, apprenticed 26 September 1911 to William Irwin Mahaffy, 22 Calendar Street, Belfast; 13th Batt, Royal Irish Rifles, killed in action, 22 October 1917.

O'Rourke, Daniel, apprenticed to WE O'Rourke, Belfast; 2nd Lieut, Royal Garrison Artillery, killed in action, France, 30 July 1918.

Orr, Robert Clifford, solicitor, Hilary 1903, practised in Belfast and subsequently at Ballymena in partnership with Mr Travers W King; Captain, 3rd Batt, Somersetshire Light Infantry, killed in action in France on 19 December, 1914.

Persse, John Geoffrey, solicitor, Trinity 1909, practised in Galway for two years, and subsequently went to New Zealand; Corporal, 9th Wellington Regiment, New Zealand Expeditionary Force, killed in action, Gallipoli, 8 August 1915.

Pollin, Robert Kelly, apprenticed 14 December 1915 to JM Pollin, Robert Kelly and Son, Belfast; 2nd Lieut, Royal Irish Rifles, killed in action on 31 July 1917, Ypres.

Richards, William Reeves, solicitor, Trinity 1914; 2nd Lieut, 6th Batt, Royal Dublin Fusiliers, killed in action in Gallipoli, 15 August 1915.

Russell, Marcus Ralph, apprenticed to Lewis Goodbody, Tullamore; 2nd Lieutenant, Reserve Regiment of Cavalry, attached 8th Hussars, killed in action 22 March 1918.

Sanderson, W Howard, solicitor, Hilary 1910, practised at 37 St Stephen's Green, Dublin; Lieut, Royal Irish Regiment, 38th Cavalry Clearing Station, died of wounds received in action, 28 September 1918, France.

Scallan, Richard Talbot, solicitor, admitted 22 July 1915; Lieut, Royal Garrison Artillery, killed on active service in Talence, France, 31 May 1918.

Schute, John Hartley, apprenticed 15 February 1912 to Nathaniel Taylor, 23 St Stephen's Green, Dublin; 2nd Lieut, 6th Batt, Royal Irish Fusiliers, killed in action in Gallipoli, 15 August 1915.

Simms, Alfred George F, solicitor, Easter 1912, practised at 7 Suffolk Street, Dublin and Strabane; Lieut, 6th Batt, Connaught Rangers, missing, believed drowned, 30 December 1917.

Smiles, William Alan, solicitor, Hilary 1905, practised in Belfast; Captain, 9th Batt, Royal Irish Rifles, killed in action, 9 July 1916.

Stanton, Robert, solicitor, Michaelmas 1908, Messrs John Stanton and Son, 47 South Mall, Cork; Private, 6th Batt, Royal Irish Fusiliers, killed in action, Gallipoli, 9 August 1915.

Tolerton, Samuel Lee, apprenticed 3 February 1910 to Wm H Geoghegan, 19 Kildare Street, Dublin; Lieut, 6th Batt, Royal Irish Fusiliers, killed in action, Gallipoli, 15 August 1915.

Turnbull, Alexander M, apprenticed to Mr AS Megaw, Belfast; Motor Despatch Rider, Royal Engineers, officially presumed killed in action at Arras, 25 April 1917.

Wallace, Richard Cooke, solicitor, Trinity 1906, practised in Limerick; Private, 2nd Batt, Irish Guards, killed in action, 13 September 1917, West Flanders, Belgium.

Webb, Samuel Cecil, solicitor, Trinity 1908, practised at Kilkenny; 2nd Lieut, 5th Batt, Royal Munster Fusiliers, killed in action 3 October 1916, buried Struma Military Cemetery, Central Macedonia, Greece.

Whaley, William, solicitor; Corporal, Royal Irish Fusiliers, died 5 September 1916, The Somme, France.



PIC: CIAN REDMOND PHOTOGRAPHY

The memorial to the 20 solicitors and 18 apprentices who died in action in the First World War, erected by the Society in July 1921 in the Solicitors' Buildings, Four Courts. It was created by Oliver Sheppard, who sculpted the Cúchullain statue in the GPO

tense of “the shadow of war which hung over the country at the period of the previous meeting of the Society”.

He was sure they would agree with him that “those members of the profession who had joined the army or navy would have a hearty reception on their return, and that the members of the Society would endorse

the action of the Council in giving to those apprentices who had risked their lives every facility to enable them to become honourable and honoured members of the profession.

“Steps should be taken to perpetuate in a suitable manner the memory of those members of their profession and apprentices

who had laid down their lives for their King and country,” he concluded.



A digital archive of the roll of honour, together with a list of solicitors and apprentices who enlisted and military distinctions conferred, is available on the library catalogue in the members' area of the website.

totally TROPICAL taste



Maggie Armstrong
is a journalist based
in Dublin

There is money to be made, on top of a healthy work/life balance, as a lawyer in the Caribbean. **Maggie Armstrong** talks to five Irish solicitors working in the Cayman Islands and the British Virgin Islands

Powdery white sands, beach barbecues, and ‘painkillers’ – a rum-based cocktail – are just some of the draws for young professionals working in the Caribbean. Legal positions are opening up all over the Cayman Islands and the British Virgin Islands (BVI) and, in 2012, Irish firm Dillon Eustace established an office in the Caymans – the first Irish firm to do so.

There is money to be made, on top of a healthy work/life balance, in these tropical financial hubs. According

to recruitment consultant Daniel Halliday, director of **Dunedin Global** (based in Dublin), “salaries in the BVI and Cayman Islands are high, while taxes are low. An Irish third-year, post-qualification lawyer should expect around US\$135,000, plus full relocation costs, plus annual bonuses of up to 30%.”

Corporate and finance work are the backbone of an offshore law firm, with plenty of tax-based trust work and funds management, and appreciable dealings with private clients. But the work is specialised and demanding, with little face-to-face interaction with clients.

Law firms may have very small presences in larger building complexes, meaning smaller teams and less of that morale-boosting elevator chat. A pragmatic approach to getting the job done is needed. And if you’re single, a sporty and sociable disposition comes in handy in these islets, which offer an array of diving, sailing and even GAA.


I’m in heaven

The *Gazette* interviewed five Irish solicitors working in the BVI and the Cayman Islands – three with Maples and Calder, and the others with Appleby and Irish firm Dillon Eustace.

Ruairi Bourke is well aware of the connotations of secrecy and rich lists that go with the term ‘tax haven’. He moved to Road Town on Tortola, the capital of the BVI, in 2012 as an associate with Maples and Calder.

at a glance

- Legal positions are opening up all over the Cayman Islands and the British Virgin Islands; however, jobs are competitive in these financial centres
- There are no taxes on income or capital gains of companies or individuals in either BVI or Cayman
- Most solicitors stay in these locations for five years, on average
- To become an attorney-at-law in the BVI and the Cayman Islands, a solicitor must gain admission to the local Bar. As these are common law jurisdictions, admission as a solicitor in England and Wales is required



"There are many misconceptions about off-shore jurisdictions," he says. "A lot of people think there's something shadowy and mysterious about them. But they play an important role in facilitating legitimate international business and finance." Moreover, they can offer a 'safe haven' to businesses based in countries prone to political instability. Ruairi cites the example of Panama in the 1980s and the migration of many Panamanian companies to the BVI at the time.

There are no taxes on income or capital gains of companies or individuals in either BVI or Cayman, though the BVI levy payroll taxes and social security contributions, depending on the size of the company. The BVI is a major world centre for incorporations, which has its problems.

While the Cayman Islands has been compliant with tax transparency standards set by the OECD, the British Virgin Islands failed to pass these in 2013, along with Luxembourg, Cyprus and the Seychelles.

Ruairi works on corporate transactions involving clients in China, Singapore, Hong Kong, South America, London and New York, among others. "It's a very challenging

role, advising on complex transactions that can often involve companies in half a dozen different jurisdictions, with tight turnaround times."

But it's unusual to get to meet these clients, he adds. "I do miss that. It's always lovely to meet people in person. I have met clients, but because of the physical location, it's rare."

Ruairi says there is a "small but lively ex-pat community" on this 20km strip of land with its population of less than 30,000. But he has explored beyond the comfortable ex-pat ranges. His landlady has introduced him to homemade cooking of plantain and roti – filled flatbread – and has brought him to official functions and the annual Emancipation Festival. (The BVI and the Cayman Islands are both self-governing British territories.)

Ruairi's colleague Jill Shaw, an associate in her 20s, moved to the BVI this summer. She wanted to travel and was keen to work internationally in investment funds and to gain experience in other areas, such as corporate banking. "In Ireland, I worked mainly with

I work in an air-conditioned office – and I worked in an air-conditioned office in Dublin. An air-conditioned office is the same anywhere in the world. But the weekend rolls around. It feels rather like being on holidays every weekend

UCITS funds, which are highly regulated and quite restrictive in terms of what they can invest in, whereas, offshore, there is a greater flexibility in this regard," she says.

Most solicitors stay in these locations for five years, on average. There is a noted trend for saving and moving back home to buy a house. "There always

seem to be people arriving," Jill says of Tortola. She has met people in the ex-pat community and through the Women's Offshore Network, which boosts opportunities for women in the financial services industry to network and share knowledge. But, she says, "I'm missing going out dancing with my friends. I love going to nightclubs, but it's mostly just beach bars here." Nor is there anything like the theatre or concert hall she enjoyed in Dublin, she laments.

Dreadlock holiday

West of neighbouring Puerto Rico, on the other side of the Caribbean next to Jamaica, something akin to an Irish colony is forming in the Cayman Islands. With a population of



Pilates of the Caribbean

nearly 60,000, almost 30,000 of these are expats. Newcomers work across the financial services, with fewer lawyers than accountants.

In the slick financial district on Grand Cayman, you can buy meat from an Irish butcher, while Irish pub Fidel Murphy's provides fish and chips and breakfast rolls for the busy professionals who are dressed down for the perennial high summer.

Cayman is the leading jurisdiction in the world for hedge funds, so many solicitors come here to upskill in that area. According to Paul Kennedy of Appleby, many Irish lawyers got their fund experience in another tax-friendly location – Ireland – working in IFSC investment jobs: “The work they do in

Ireland isn't that different,” he says.

Paul moved his family here when he got a job with Appleby, which was established in Cayman in 1945. “I was doing a lot of investment-fund related litigation and insolvency work in Ireland and knew from that experience how many big hedge-fund cases get decided in the Grand Court of the Cayman Islands. The firm I joined, Appleby, has a specialist funds disputes team, so it was the perfect fit,” he says.

A concern for any lawyer relocating is the worry of losing touch with aspects of the law with which Irish-based solicitors engage regularly – and the fear of running into a career cul-de-sac.

Asked whether he would consider his role varied, Paul says that because the Bar in Cayman isn't split as in Ireland, an attorney does much of the work barristers would do in Ireland. “That is certainly stimulating,” he says.

“The work itself is just as hectic. We have clients from all over the world, so you are often working to multiple time zones. There certainly seem to be more urgent applications, such as Mareva injunctions here, and you are very regularly asked to advise on complex issues of private international law.”

Shane Geraghty is a senior associate with Dillon Eustace's Cayman practice, working in the area of alternative funds. “It has enhanced how I think about things,” he says. “Cayman Islands funds can potentially be impacted by laws and regulations in other jurisdictions. This can mean significant interaction with legal counsel in other jurisdictions where the proposed fund is to be sold to investors.” This area, he adds, is “very niche”.

Another Irish lawyer based in Cayman is Maples and Calder's associate Caroline Moran, who has been here since 2008 working in insolvency. The work is “extremely varied,” she says. “You do almost all of your own advocacy in court.”

Caroline says the international aspect of her work requires her to deal with lawyers

qualifying for the caribbean

To become an attorney-at-law in the BVI and the Cayman Islands, a solicitor must gain admission to the local Bar. As these are common law jurisdictions, admission as a solicitor in England and Wales is required. A two-year work visa is issued, and paperwork includes swearing on oath in an open court.

A law firm is expected to organise the first month's accommodation, car rental and shipping.

Within a month, a solicitor could be living in an apartment or pricier beach condo – anything between US\$1,000-\$3,000.

Imports on goods are a form of indirect taxation on these islands, so the cost of living is high, particularly for food. Solicitors noted the cost of US\$5 for a red pepper (Grand Cayman) and US\$10 for a box of Special K (Road Town).

in many jurisdictions on any given case. "The majority of companies incorporated here have their employees and operations outside of the Cayman Islands. Holding companies will be in Cayman, with subsidiaries all over the world. As a result, we will often be coordinating restructuring and insolvency proceedings between a number of jurisdictions, for example the US, China and Europe, and need to become familiar with the insolvency processes in those countries," she says. For meetings, she packs her bags every six weeks or so and flies to New York or Miami.

"It feels like home. There's a sense of community," she says. "It's a very easy place to live, with a big focus on sports and outdoor activities." She never thought she would play for a GAA club before moving to the Cayman Islands, and laughs: "It's either get involved or stay home on your own."

Rainy days and Mondays

Though solicitors describe Cayman as an inclusive place to live, they say it's more suited to young families than to single people. Paul Kennedy (Appleby) moved to live in a beach condo with his wife and child (a second baby was born in Cayman): "I had had enough of rainy Saturdays in Dublin and trying to keep a two-year-old entertained. Now, my daughter swims at the pool or the beach every day and sees turtles and iguanas in the wild," he says.

"You have to understand exactly what you're getting into and why you're coming here. It's 7,000 kilometres away; it takes 20 hours to get home," says Shane Geraghty in the Dillon Eustace office.

All the solicitors are in agreement that, although working hours are just as long as in any law firm, the quality of life is better. There is no commute and the beach is on the doorstep.

Jill Shaw (Maple and Calder) says she has become more of a morning person since she arrived in mountainous Tortola. "I'm on a hill overlooking the sea. I hop out of bed in the morning and sit out on the balcony with my iPad having breakfast, looking at RTE news and the BBC before I head into the office."

Ruairi says, with a dose of realism, "I work in an air-conditioned office – and I worked in an air-conditioned office in Dublin. An air-conditioned office is the same anywhere in the world. But the weekend rolls around. It feels rather like being on holidays every weekend."

the headhunter



Daniel Halliday, director of Dunedin Global

Most solicitors are used to receiving emails from international recruiters. If not, you might wish to bring your digital profile up to speed, since a headhunter's or recruiter's first port of call is LinkedIn.

"People learn of you by word-of-mouth, social media like LinkedIn, or from a project you've completed. Consistently delivering a high standard of service to clients draws attention," says Daniel Halliday of Dunedin Global, a Dublin-based international recruitment consultancy that focuses on legal professionals. (Daniel placed two of the people interviewed for this article in the Caribbean.)

"The offshore markets were very resilient during the global recession. They continually had work coming in," he says. "As the islands don't have a large population, their local supply of staff is limited." People born in the regions are preferentially treated, according to strict employment laws.

However, jobs are competitive in these financial centres. "Law firms in the BVI and Cayman are highly selective due to the low number of positions and high demand from

Irish- and British-qualified lawyers. It's like trying to secure a position in a silver circle or magic circle London firm, and the process can take anywhere from six months to a year," Daniel says.

Recruitment happens in a cycle. The firm advertises a job and the recruiter identifies the person. Recruiters will interview the candidate by phone and look out for gaps or grey areas in their CV. Once sure that there are 'no skeletons in the closet', the recruiter refers the candidate to the company, putting in some Svengali-style coaching in the interview process.

Candidates are sought from newly qualified to partner level. A solicitor wishing to work abroad should have at least three years' experience. It isn't all focused on high-level qualifications: "I make sure every candidate I represent is a top-quality person," says Daniel. An ability to hold a good conversation in the opening phone call is the first sign.

Daniel originally became a recruiter when he went for an interview to become a business consultant. They looked at his experience in business and sales, warmed to him, and asked if they could train him up as a recruiter.

If you're interested in a career abroad, email Dunedin Global Recruitment at enquiries@dunedinglobal.com or visit www.dunedinglobal.com.



It's a very challenging role, advising in transactions where there are half a dozen lawyers in different jurisdictions, with tight turnaround times

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Landlord and Tenant Law – The Commercial Sector

Mema Byrne. Round Hall (2013), www.roundhall.ie.

ISBN: 978-0-4140-314-87. Price: €295 (hardback, incl VAT).

In her foreword to Mema Byrne's new book on landlord and tenant law, Justice Elizabeth Dunne recommends reading the author's treatment of upwards-only rent review clauses in chapter 21. There, the author outlines all of the issues and the recent case law. This thorny issue continues to impede economic recovery in Ireland, and I welcome this comprehensive review.

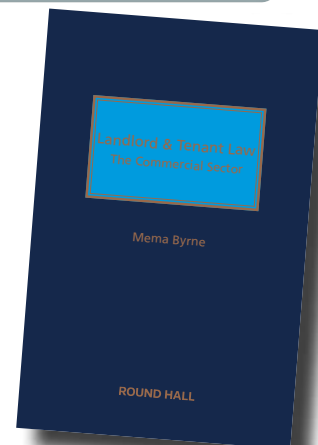
After reading chapter 21, I proceeded to consider the other chapters. Over the past few weeks, I found myself reaching for it regularly for guidance and information. The book concerns the commercial sector only and does not deal with residential tenancies. It is divided into six parts. Part 1 concerns entering into a lease. It covers the nature of the landlord and tenant relationship, categories of tenancies, licences, contract for leases and formalities of a lease, together with a chapter on charges, VAT stamping and registration. Parts 2 and 3 consider common clauses and common covenants in leases. Part 4 goes on to consider the statutory rights we are all familiar with. Part 5 deals with rent and assignment, to include the consideration of rent review in chapter 21. The final part deals with the determination of the landlord and tenant

relationship. It covers expiry, notice and break clauses; surrender, merger, disclaimer and enlargement; and forfeiture and ejectments.

Each chapter gives an introduction, followed by a comprehensive review of the law and a section outlining proposed changes to the law that generally considers the draft *Landlord and Tenant Reform Bill 2011* and Law Reform Commission recommendations. In particular, the author provides step-by-step procedures for practitioners that will be extremely useful. She considers that she is "standing on the shoulders of giants" in writing this book, referring to Deale's *The Law of Landlord and Tenant in the Republic of Ireland* and Wylie's *Landlord and Tenant Law*.

This is a complete review of landlord and tenant law for the commercial sector, written in a simple readable style. I would recommend it to anyone who practises in this area.

Yvonne Kelly is senior executive solicitor at Dublin City Council.



A Short Guide to Divorce Law in Ireland: A Survival Handbook for the Family

Helen M Collins. Atrium Press (2014), www.corkuniversitypress.com. ISBN: 978-1-9090-059-38. Price: €14.95 (paperback, incl VAT; e-book version available).



Solicitors who practice in family law need a whole different tool kit to those specialising in commercial or property law. In family law, it is as important to know the person as it is to know the law. We struggle with

broken dreams, tarnished hopes, economic woes and people going in opposite directions. All of this necessitates a different way of looking at problem solving and outcomes that suits the client and his/her circumstances.

A Short Guide to Divorce Law in Ireland is a tool that could prove very useful in assisting parties involved in break-up/divorce/separation to realise the intricacies of both the legal process and the many layers of emotions involved.

This book is not, and does not claim to be, an exhaustive legal tome on divorce. It is a guide to those entering the legal process or any alternative dispute resolution process – a map for both the psychological and legal signposts along the road to a new and, hopefully, better place for clients and their families.

My one reservation is that, by the time our clients get to us, they may not be in a space to acknowledge and understand the advice given or, indeed, to implement some of the excellent life skills recommended in this book. As many clients attend for a first appointment to obtain information about the different avenues

available to them, this book will be extremely useful as a reference for them and, hopefully, will be read by them before positions get entrenched on either side.

The title is also a little off-putting for the chosen readership as it may, notwithstanding the survival plan subtitle, appear to be too technical. However, this is a small point, as the book will, I expect, be recommended by solicitors who will point out the benefits to

their clients of being well-informed.

The glossary and the support organisations listed at the back I find particularly helpful and would, without hesitation, recommend the book to all family lawyers anxious to understand the dynamics of family break-up so as to better advise and support their clients.

Joan O'Mahony is principal of O'Mahony's, Solicitors, Deansgrange, Co Dublin.

Make Your Claim: A Consumer's Guide to the Injuries Board

John McCarthy. Practice Success (2014), <http://mccarthy.ie/make-your-claim-book>. ISBN: 978-0-9927-982-08. Price: €14.97 (incl VAT and shipping).

It's exactly ten years since the roof fell in on the cocoon in which personal injury lawyers resided for decades beforehand. The introduction of PIAB certainly raised from slumber those of us who wished to avoid the debris raining down around us – and made us fight for our clients and our businesses.

For those of us who believed that what PIAB (or the Injuries Board as they are now known) was setting out to achieve – a lawyer-free zone – was fundamentally wrong, the fruits of the battle and the ultimate success have tasted sweet. Yes, PIAB is here to stay, but over 90% of claimants are represented by solicitors and, in general, we have all learned to cohabit in reasonable harmony.

There are still, though, a large number of flaws in the process, and any number of reasons why a claimant shouldn't apply without the advice of a solicitor. This book, by young Cork solicitor John McCarthy, succinctly picks out these pitfalls and, in the unlikely event that the average punter gets to the end of this relatively short manual, he will almost certainly be on the phone to his solicitor.

I say this not because it is a boring or unreadable book. The opposite is the case, in fact, and as do-it-yourself-type manuals go, it follows the basic 'miniskirt' criteria – short enough to get your attention but long enough to cover the essentials.

The reality is that it is not really a Ronseal book, though it claims 'on the tin' to be a consumer's guide to the Injuries Board. While this is technically true, by the time you are halfway through it, it will be perfectly apparent to any half-intelligent consumer that the

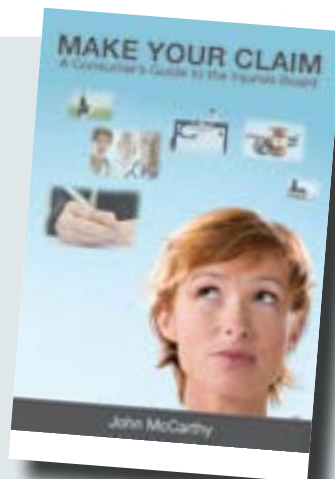
disadvantages of self-application far outweigh the advantages.

Points such as the dangers of the *Statute of Limitations* (which is explained, but not in terms that any non-lawyer could understand as, for instance, no examples are given), the importance of advice in order to value your injury, the value of preservation of evidence, and the refusal to pay for engineers' reports, are just a sample of the issues correctly identified as being dynamite for any uninformed applicant.

It is hard to know who will buy this book. It is not aimed at lawyers, so presumably people who have just had an accident are its target. Certainly, if the number of reviews at the start of the book are anything to go by, there is no one left in Cork who hasn't got a free copy, and most of John's friends and clients are now well up on the importance of section 12 of the 2003 act.

This is probably not going to top the best-seller charts, but that was hardly its intention. It's a very good, accurate, and helpful guide to the process, which also serves as a handy critique of the PIAB's shortcomings ten years on. And, most importantly for McCarthy & Co's litigation department, it points consumers in the right direction.

Stuart Gilhooly is a partner at HJ Ward & Co, specialising in litigation and personal injuries.



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BRIAN McDERMOTT

1961 – 2014

The very sudden and untimely death has occurred of Brian McDermott on 22 July 2014 at the age of 52. Brian was well known around the country as a dynamic, larger-than-life character with an unparalleled zest for life.

He was born in Castlemore, Ballaghaderreen, Co Roscommon, and was very proud to have attended Saint Nathy's College there. After completing a BA degree in UCG in 1983, he did his H Dip. Soon thereafter, he followed this up with a business degree in Dublin.

His teaching career began at St Gerard's, Bray, Co Wicklow, where he taught for one year. This was followed by a year's teaching at Clongowes Wood College, Clane, Co Kildare, after which he moved to Coláiste Mhuire Convent of Mercy, Ballymote, Co Sligo for two years. He finally settled at St Mary's, Nenagh, Co Tipperary in 1991.

He later undertook legal training at UCG, obtaining his LLB in 1998. He commenced his professional studies at Blackhall Place in 2002 and was apprenticed to CE Callan and Co, Solicitors, Boyle, Co Roscommon, before qualifying as a solicitor in 2005. He later qualified in England and Wales. Following qualification, Brian worked with CP Crowley Solicitors in Galway.

He resumed his teaching career in 2007 and returned to St Mary's, where he was teaching up to the time of his death.

Unusually, he taught four subjects: honours English, geography, business and economics, the latter of which he was particularly passionate about, and he prided himself in securing notable people such as Bobby



Kerr and Brendan MacDonagh to speak at St Mary's. He had Fr Peter McVerry lined up for the autumn of 2014.

Brian had a great appreciation for poetry and literature and was a member of the Dromineer Literary Festival. He was also a fluent Irish speaker and, while working as a solicitor in Galway, proudly attended the court sessions on Inis Mór, where he conducted cases in the first language.

Socially, few if anyone could match Brian's extraordinary personality. He was an escort to the Perth Rose in the 1991 Rose of Tralee. He had such a vibrant personality, it was irrelevant what language one spoke. Whether working, social or personal, his ability to communicate transcended

all barriers – language, age, education, and so on. He engaged and delighted all who were fortunate enough to meet him. He loved to frequent the champagne tent at the Galway races, where he hosted many friends, and at Moran's of the Weir.

Brian loved travelling and had a host of friends across the globe, from Europe to Australia and the USA. He had recently returned from the USA and was looking forward to a holiday in Spain, where he loved to walk Romano Beach in Alcocebre (near Valencia). He was also a keen follower of all types of sport.

Being the son of a farmer, he loved to get back to his native Castlemore, where he delighted in minding the farm during his

holidays. He loved to discuss farming and was particularly interested in pedigree breeds, with a love of Charolais, Limousin and Angus cattle. As a geography teacher, he had a keen interest in environmental law and was to have proofread the feature article on that subject (also in this *Gazette*), but sadly that was not to be.

Brian always acted as an advocate for the underprivileged and had an unequalled level of loyalty and devotion to his friends and family. He was always concerned for the welfare of the people he met and, using his vast array of contacts, would personally arrange a meeting with the appropriate solicitor, doctor or whoever. His contacts permeated many sectors of society, well beyond the legal and teaching professions. He had a particular love for his late mother who predeceased him four years ago.

While many are struggling to cope with the enormity of his untimely loss, no words can adequately describe the heartbreak felt by family members and his many close friends. Notwithstanding the immense grief we now feel, it was a privileged to have studied with, worked with, taught with, travelled with and otherwise known Brian McDermott throughout his relatively short life. Brian had a very strong faith and was unapologetic about his fervent religious beliefs. Let's all hope we will one day meet again. Brian is survived by his brothers Michael and Martin, sister-in-law Áine, nephews Árainn and Rossa, extended family and friends.

Ar dheis Dé go raibh a anam dílis.

KC

WILLIAM CLAFFEY

1985 – 2013

With great sadness we mark the passing of our colleague, William Claffey. Will passed away suddenly on 21 September 2013 from sudden adult death syndrome while participating in the Dublin Half Marathon in the Phoenix Park.

Will was an exceptional talent with great promise, who lit up the lives of those around him. From Ballinamuddagh, Moate, Co Westmeath, Will showed signs of his academic and sporting talent from an early age. He excelled in Moate Community School. Achieving 580 Leaving Cert points, Will finished top of his year in school and decided to pursue a career in law.

His work ethic was matched by a great enthusiasm for sport. He made a tireless contribution to Moate's 'All Whites' GAA team and coached junior basketball teams in his school.

In UCD, he studied law (with French law), achieving a first-class honours degree and finishing second in his class in final year.

Will had a love of travel and exploring foreign cultures. He spent the third year of his degree studying in Paris, making trips to Amsterdam, Toulouse and Rome. After university, he voyaged further afield to both Australia and Cuba.

A particular attribute was Will's inquisitiveness and keen thirst for knowledge – he was a limitless font of general knowledge. An avid quiz fan from a young age, he represented his county on a



quiz team in the Community Games and went on to win the UCD inter-faculty table quiz.

Will's career was always headed in the direction of tax law. During his degree, he spent summers working with a local accountancy practice and the Revenue Commissioners before starting a promising career with Matheson as a summer intern.

After graduating, he secured a solicitor training contract with Matheson and progressed to the Law Society, where he continued to excel. Will was chosen to

represent the Society in the national competition of the Philip C Jessup International Law Moot Court Competition. Along with his teammates, he fought off stiff competition from King's Inns to progress to the international competition in Washington DC, where he represented Ireland in the world's largest moot court competition, with participants from over 80 countries.

Never happy to rest on his laurels, he sought a further professional qualification with the Irish Tax Institute, which meant

simultaneously studying for both tax and Law Society exams. Before long, Will had qualified both as a solicitor and a chartered tax advisor. He joined Matheson's tax team upon qualification.

He quickly formed great friendships in Matheson. He was universally regarded as a really great person – both personally and professionally. He was an extremely hard worker and was dedicated to his job. He was very well liked by colleagues and clients. This was clear from the many colleagues and clients who attended his wake and funeral, and from the kind words clients have shared with Will's colleagues in the days and weeks following his untimely death.

Although busy with work, Will always found time for sport. He loved running and had completed a number of 5k and 10k runs leading up to the Dublin Half Marathon, where he was hoping to improve on his 2012 time of 95 minutes. He competed in many of these races to raise funds for charities, including the Emer Casey Foundation.

Will was always calm and good-natured, no matter the circumstance. Quite simply, he was a wonderful colleague and friend who had a very promising future. We miss him. Our thoughts and prayers remain with his father Willie, brother James, girlfriend Emer and their extended families.

Ar dbeis Dé go raibh a anam dílis.

PT



DIPLOMA CENTRE



Continuing professional education for the way
you learn – *onsite, online or on the move...*

| AUTUMN 2014 | DATE | FEE |
|--|------------------------|--------|
| Diploma in Law (new) | Friday 19 September | €4,400 |
| Diploma in Arbitration Law (new) | Saturday 4 October | €3,200 |
| Diploma in Corporate Law & Governance | Tuesday 7 October | €2,200 |
| Diploma in Insolvency & Corporate Restructuring (iPad) | Tuesday 7 October | €2,490 |
| Diploma in Mediation | Thursday 9 October | €2,650 |
| Diploma in Finance Law | Tuesday 14 October | €2,200 |
| Diploma in Investment Funds & Compliance (new) | Wednesday 15 October | €2,200 |
| Diploma in Family Law | Thursday 16 October | €2,200 |
| Diploma in Commercial Litigation (iPad) | Tuesday 21 October | €2,490 |
| Diploma in Taxation for Legal Professionals (new) | Saturday 8 November | €2,200 |
| Certificate in Legal French | Wednesday 24 September | €990 |
| Certificate in Commercial Contracts (iPad) | Wednesday 1 October | €1,490 |
| Certificate in Conveyancing & Property Law | Thursday 2 October | €1,200 |
| Certificate in Aviation Leasing & Finance (new) | Thursday 2 October | €1,200 |
| Certificate in Advanced Negotiation | Friday 3 October | €1,650 |
| Certificate in Trade Mark Law (iPad) | Wednesday 8 October | €1,490 |
| Certificate in Human Rights Law | Wednesday 5 November | €1,200 |
| Personal Insolvency Practitioner Certificate | Friday 21 November | €1,200 |

CONTACT DETAILS

E: diplomateam@lawsociety.ie T: 01 672 4802 W: www.lawsociety.ie/diplomas

Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.

Council meeting – 11 July 2014

council report

Motion: online quotations for legal services

"That this Council approves the Guidance and Ethics Committee's project to publish online questionnaires and supporting material that will facilitate solicitors' firms who wish to use this material to give quotations for legal services. The project is supported by the National Consumer Agency."

Proposed: Brendan Twomey

Seconded: Michele O'Boyle

Brendan Twomey noted that, at the request of the Government, the National Consumer Agency had asked that the Law Society encourage solicitors to make it easier for clients to secure quotations for legal services. The Guidance and Ethics Committee had worked with the National Consumer Agency in developing suitable material to enable solicitors to provide an online facility in relation to four distinct practice areas: (a) purchase of a residential property, (b) sale of a residential property, (c) the drafting of a will, and (d) probate/administration.

The committee was of the view that the project would help the public to understand how legal costs were calculated and to understand the work that solicitors did to earn the fees they charged. In order that the public would not see price as the only criterion for the selection of a solicitor's firm, the committee had prepared an outline of the solicitor's work in a straightforward transaction in each area. This would help clients to understand how much work was involved. The accompanying questionnaires demonstrated that, while one case or transaction might be quite straightforward, another similar case or transac-

tion could be very complex. A complex case would inevitably involve more work and would attract higher costs. The questionnaires would assist the solicitor to elicit whether the transaction was likely to be a straightforward transaction and would operate as useful risk-assessment tools.

The introductory section of the material provided solicitors with the opportunity to give a description of their own firm and was designed to facilitate individuals who wished to obtain quotations from several firms. It would be made available to the profession on the basis of an opt-in system for firms. Firms would make their own decision as to whether the use of online quotations would be a good business choice for them.

The Council approved the motion and the accompanying material, and it was agreed that the project would be formally launched in autumn.

Report on meeting with minister

The president and director general briefed the Council on a meeting with the new Minister for Justice on 16 June 2014, as well as the parchment ceremony and dinner with the minister on 26 June 2014. On both occasions, the minister had been cordial and positive. The Society had raised a number of issues, including the *Legal Services Regulation Bill*, delays in the taxation of costs, the need for the appointment of a third taxing master, the proposed scheme for the attendance of solicitors during garda station interviews with clients, the low number of solicitors being appointed as judges of the High Court and

Supreme Court, the Society's eConveyancing project, the proposed closure of courthouses in Dublin, and cutbacks in the justice system generally.

Legal Services Regulation Bill 2011

The Council noted that, while report stage of the bill was being commenced that morning in the Dáil, all of the substantive issues had been postponed to the next stage in the Seanad.

Application to be joined as amicus curiae

The Council approved a proposal that the Society would seek to become joined as *amicus curiae* in High Court proceedings being brought against one of the taxing masters.

eConveyancing Project

Patrick Dorgan briefed the Council on the Society's appearance before the Oireachtas Committee on Justice during the previous week, at a hearing specifically on the issue of e-conveyancing. Witnesses from the Law Society, the Property Registration Authority, Teranet and the Irish Banking and Payments Federation (IBPF) had all been invited to attend the committee hearing. While they had made a written submission, no representative from the IBPF had made an appearance. The chairman of the Oireachtas committee, David Stanton, had indicated that the committee would revert to the IBPF to identify a suitable date upon which they would be in a position to provide a representative.

The president briefed the Council on a recent meeting and

dinner with the chief executives of the main banks, at which a number of issues had been discussed, including e-conveyancing. All of the chief executives were positively disposed to such a development, and it was hoped to make progress within the coming months. In addition, a memorandum of understanding between the Society and the IBPF was being developed to provide a framework for the relationship between the two organisations so that they could cooperate and communicate in a constructive manner on legal and banking matters.

Garda station interviews

The president reported that it was intended to develop an online system whereby solicitors could place themselves on a list of those interested in participating in a Garda Station Interview Rota Scheme.

The director general noted that a subcommittee of the Criminal Law Committee was working on a protocol as to what solicitors could and could not do while attending such interviews. A separate subcommittee of the Criminal Law Committee was examining the proposed payment levels being suggested by the Department of Justice. The subcommittee was very conscious of the fact that the Society could not negotiate on behalf of solicitors.

Strategy statement and annual operational plan

The Council approved the Strategy Statement 2014-2018 and the Annual Operational Plan 2014-2015, for circulation to the profession with the August/September edition of the *Gazette*.



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practice notes



CONVEYANCING COMMITTEE

Commercial rates – section 32, *Local Government Reform Act 2014*

Section 32 of the *Local Government Reform Act 2014* comes into effect on 1 July 2014 (by virtue of *SI 146/14*). The section applies to all sales/leases closing on or after 1 July 2014, irrespective of the date of the contract.

Section 32 introduces a number of important changes to the manner in which rates liabilities are to be treated, namely:

- It imposes a statutory obligation on a vendor to notify the rating authority that a sale has taken place and to discharge all arrears for which the vendor is liable (that is, six years). Where the rates due by the vendor are not discharged, those unpaid rates will be a charge on the property for a period of 12 years.
- It obliges a landlord to notify

the rating authority that a tenant has transferred its interest (within two weeks of the assignment).

- It provides that a landlord will be liable “for a charge equivalent to no more than two years of the outstanding rates due” by a previous tenant where (a) the rating authority has not been notified by the landlord of an assignment, and (b) the tenant did not discharge the arrears on the assignment.

Any such charge will affect the property for a period of 12 years.

Leaving aside the statutory obligation to notify the rating authority of a sale, in practice, the first point should not have a material impact on day-to-day conveyancing as, generally, it is the case that all arrears of rates

are discharged in conjunction with completion, the only exception to the foregoing being sales by receivers where the current practice until now has been to deal with rates arrears on the basis of the purchaser’s legal liability for same (that is, up to two years’ arrears). This practice will no longer be possible, as any unpaid arrears will be a charge on the property.

The principal change, as a matter of law, is the potential for arrears of rates owed by a tenant to become a charge on the landlord’s interest consequent on an assignment where any rates arrears have not been discharged. Practitioners should advise their landlord clients of the risk of consenting to an assignment unless the tenant provides evidence that all rates have been

paid up to date.

In light of the provision for a charge, consideration may have to be given on the purchase of investment properties to enquiring as to the payment of rates by tenants where there has been an assignment of their lease post 1 July 2014, in order to establish that no charge may have arisen under this section. This will need to be considered further.

NB: While, for ease, this note refers to landlord and tenant situations, these are not terms used in the section, and practitioners should consider the application of the section to other circumstances where the owner is not the rated occupier.

The committee will continue to monitor this act and will issue further guidelines as required.



CONVEYANCING COMMITTEE

Acts on judgment searches

The Conveyancing Committee receives a lot of queries from practitioners as to what is best practice when acts appear on judgment searches on or before the completion of a sale or mortgage of property.

There is a frequently held misconception that a judgment search is a search for what are generally called ‘money judgments’. In fact, correctly speaking, a judgment search is a search on the Register of *Lis Pendens* in the Central Office of the High Court, which is a separate index from the Index of Money Judgments. However, most firms of searchers routinely include acts on both registers when asked to do a judgment search, and this is the recommended practice. The committee advises that solicitors should check with their searchers to establish what their standard practice is, to avoid any misunderstandings.

When acting for a vendor who has judgments registered against him/her and no action has

been taken to convert any such judgments into judgment mortgages, a purchaser’s solicitor is not entitled to require that any such judgments be vacated. If judgments appear on searches, a purchaser’s solicitor is of course on notice of the potential for a judgment mortgage to be registered against the property and accordingly, to avoid unnecessary difficulty, registration of the purchaser’s title should be treated as a matter of priority. Consideration should also be given to lodging a priority search.

When acting for a lender in a commercial transaction and the bank is providing funds to a purchaser to complete, if the searches show judgments against the borrower, then the lender’s solicitor has a duty to inform the relevant lender, prior to closing or releasing the loan cheque, of the existence of any such judgments and let the relevant institution then decide whether it will authorise the release of the cheque.

The same duty of care does not apply within the certificate of title system for residential mortgages, as the purchaser’s/borrower’s solicitor does not act for the lending institution and therefore owes no duty to the lender to inform them if any money judgments appear on searches against the purchaser/borrower. Solicitors should, however, bear in mind that they must register the mortgage as a first charge in order to comply with their undertakings.

Practitioners are reminded that, under section 52 of the *Land and Conveyancing Law Reform Act 2009*, the entire beneficial interest in the property being purchased passes to the purchaser on the making of an enforceable contract for sale. The purchaser is deemed to acquire an interest in the property that will have priority over any judgment mortgage registered against the vendor’s interest in the property after the making of such an enforceable contract.



CONVEYANCING COMMITTEE

Revised precedent section 54 and section 28 declaration

Practitioners should note that the committee has recently revised its precedent section 54 declaration (part of its suite of precedent family law declarations used in con-

veyancing). The new precedent is a composite declaration covering section 54 of the *Family Law Act 1995* and section 28 of the *Civil Partnership and Certain Rights*

and *Obligations of Cohabitants Act 2010*.

The revised version is now available in the members' area of the Law Society's website. It can

be accessed through either the Conveyancing Committee's page (click on 'precedents' when in the committee's home page) or in the [general precedents area](#).



GUIDANCE AND ETHICS COMMITTEE

Ten steps to good risk management

Failure to manage professional negligence claims and risks can have an immediate and lasting detrimental effect on a law firm's finances and continued existence. This includes policy excess payments, claims management costs, time and stress, and greatly increased professional insurance costs.

1) Alert yourself to risks and complaints sooner rather than later:

- Check credit control, not only to get in necessary cash to run your business, but also for the presence of difficulties that may give rise to claims or complaints.
- Establish mandatory reporting of claims and complaints as a core value for all solicitors and staff.
- Make sure each solicitor and member of staff understands what is an incident capable of giving rise to a claim, and that it is an essential part of your insurance policy that these be reported to the insurer as soon as they are discovered.
- Notify the insurer right away about complaints or incidents capable of giving rise to a claim.
- Be aware of when a moan becomes a claim or complaint.

2) Try to avoid troublesome clients who will bring nothing but claims and complaints:

- If the client looks too good to be true, they probably are.
- Go through proper client enquiries, including money-

laundering regulations. It could uncover a warning.

- Do not commit to huge amounts or work or risk on behalf of a client without first getting a feel for the client and analysing the nature of the problem.
 - Don't be afraid to ask previous solicitors to the client or colleagues for review. The reason for change of solicitor may be down to the client and not the previous solicitor.
- 3) Limit and define in writing the scope of the work, retainer and risk that you are prepared to take on for the client and notify the client of it in such a way that it is clear the client agrees. An example would be "we will look after aspects a, b and c of the transaction or litigation, but we note that your accountant Mr X is looking after your tax advice. Our retainer does not include tax advice in relation to this work."
- 4) Risk management is important in relation to a client referred from within the firm, particularly by a different department. When a client is being served in a related transaction or litigation by two different departments in the firm, be aware of potential risk in the other department. Be sure that there is good communication between each department on this risk, particularly regarding new information, developments, or instructions that might have an

impact on the work in the other department and that might create a risk, if not known to that department. Ensure good cross-department email communication and also ensure that there is someone appointed to liaise for that particular client between both departments and to take charge of that risk.

5) Make good old-fashioned attendance notes, record phone messages, and record notes of risk:

- If ambiguity or a difference in recollection arises because an attendance note was not completed, the courts will lean against the professional who ought to have kept the note.
- A typed attendance note of telephone discussions and meetings are best, but they can also be recorded in other efficient manners such as emails, handwritten notes, time recording and so on.
- In particular, a note of all instructions, advices, and notes of risk should be taken down in writing and recorded in a reliable form.
- It is also important to note changes in instructions, changes in costs, or changes in the circumstances of a case.

6) Work with your insurer/broker:

- Report all incidents that are capable of giving rise to a claim, even if there is a nil reserve.
- Report regularly on claims or complaints.
- Show your insurer that you


have a good internal system for resolving incidents capable of giving rise to a claim and complaint.

- Take advice and guidance from your insurer. They are experienced in risk.

7) Establish an internal complaints procedure and review it with your partners on a regular basis, including reviewing current or potential complaints and incidents capable of giving rise to a claim.

8) Peer review two or three files each month, randomly selected. It is a useful, non-contentious and low time-consuming system that helps manage risk.

9) Use an electronic diary and case-management systems to record key dates, such as the *Statute of Limitations*, and advices given as to those dates, are good risk-management strategies.

10) Talk through problems with partners and colleagues. When a problem arises, seek the objective view of partners or colleagues on the issue. The problem file won't sort itself under the desk! 

gazette app



coming soon

legislation update

10 June – 11 August 2014

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. The links to acts below are to the web page for the various stages of the bill; the PDF for the final version of the act appears at the end of the page. Recent statutory instruments are available in PDF at www.attorneygeneral.ie/esi/esi_index.html

ACTS PASSED*Competition and Consumer Protection Act 2014***Number:** 29/2014

Provides for the establishment of the Competition and Consumer Protection Commission and for the dissolution of the Competition Authority and the National Consumer Agency. Amends the law relating to media mergers. Provides for enabling regulations to regulate for certain practices in the grocery goods sector. Amends the *Competition Act 2002*, the *Consumer Protection Act 2007*, the *Criminal Justice Act 2011*, and provides for related matters.

Commencement: Commencement order(s) required as per s1(5) and (6) of the act

*Health (General Practitioner Service) Act 2014***Number:** 28/2014

Amends the *Health Act 1970* (as amended) to provide for a general practitioner medical and surgical service to be made available without fees to all children who have not attained the age of six years and to provide for related matters.

Commencement: Commencement order(s) required as per s9(4) of the act

*State Airports (Shannon Group) Act 2014***Number:** 27/2014

Establishes, under the *Companies Acts*, a commercial State company to be known as Shannon Group plc and transfers from the Minister for Public Expenditure and Reform to this new company the ownership of Shannon Airport Authority and Shannon Free

Airport Development Company (Shannon Development). Amends the *International Interests in Mobile Equipment (Cape Town Convention) Act 2005* to provide, by means of a government order, for the implementation of the insolvency arrangements set out in 'alternative A' of the protocol to the convention in respect of aircraft assets. Makes changes to the statutory provisions governing superannuation schemes in the State airport authorities, including amendments to facilitate changes to the Irish Airlines (General Employees) Superannuation Scheme. Provides for it to be an offence to deliberately or recklessly dazzle or distract a pilot or other relevant personnel by directing a light in their direction. Amends the *Transport (Tour Operators and Travel Agents) Act 1982* and the *Package Holidays and Travel Trade Act 1995*, and provides for related matters.

Commencement: Part 6 other than section 39 comes into operation on the Shannon Commercial Enterprises transfer day; 27/7/2014 for all other sections

*Employment Permits (Amendment) Act 2014***Number:** 26/2014

Amends the *Employment Permits Act 2003* to provide a defence to a foreign national in certain proceedings under that act and to provide for civil proceedings to recompense certain foreign nationals for work done or services rendered in certain circumstances. Amends and extends the *Employment Permits Act 2006*. Makes further provision for the grant

of employment permits. Amends the *Illegal Immigrants (Trafficking) Act 2000*, the *Immigration Act 2004*, and the *Aliens Order 1946*. Amends the *Taxes Consolidation Act 1997* and provides for related matters.

Commencement: Commencement order(s) required as per s1(4) of the act

*Irish Human Rights and Equality Commission Act 2014***Number:** 25/2014

Provides for the establishment of the Irish Human Rights and Equality Commission. Provides for the dissolution of the Human Rights Commission and the Equality Authority and the transfer of their functions to the new commission. Provides for the conferral of other functions on the commission. Amends the *Employment Equality Act 1998*, the *Equal Status Act 2000* and the *European Convention on Human Rights Act 2003*; repeals the *Human Rights Commission Act 2000* and provides for related matters.

Commencement: Commencement order(s) required as per s1(3) of the act

*Electoral (Amendment) (No 2) Act 2014***Number:** 24/2014

Provides in certain circumstances for the clerk-assistant of Dáil Éireann to perform the functions of the clerk of Dáil Éireann and for the clerk-assistant of Seanad Éireann to perform the functions of the clerk of Seanad Éireann, and provides for related matters.

Commencement: 26/7/2014

*National Treasury Management Agency (Amendment) Act 2014***Number:** 23/2014

Reconstitutes the National Treasury Management Agency as a body with a chairperson and other members; confers on that agency new functions relating to State bodies and assets and proposals for investment; transfers to that agency functions of the National Development Finance Agency re-

lating to infrastructure; provides for the delegation to, and conferral on, the National Treasury Management Agency of functions in relation to the management of certain claims for costs of a legal nature against, or in favour of, the State and certain related functions; provides for the Ireland Strategic Investment Fund and the transfer to it of the assets and liabilities of the National Pensions Reserve Fund and provides for its management by the National Treasury Management Agency; provides for the dissolution of the National Pensions Reserve Fund Commission, the National Development Finance Agency and certain committees; for those and other purposes amends the *National Treasury Management Agency Act 1990*, the *National Treasury Management Agency (Amendment) Act 2000* and certain other enactments, and repeals the *National Pensions Reserve Fund Act 2000*, the *National Development Finance Agency Act 2002* and certain other enactments, and provides for related matters.

Commencement: Commencement order(s) required as per s1(3) of the act

*Strategic Treasury Management Agency (Amendment) Act 2014***Number:** 22/2014

Establishes a company called the Strategic Banking Corporation of Ireland, which will lend strategically within the economy and will, in particular, focus on the credit needs of small and medium-sized enterprises. Allows the Minister for Finance to guarantee borrowings of and provide funding to the company; amends s54 of the *Finance Act 1970*, the first schedule to the *National Treasury Management Agency Act 1990*, the *Taxes Consolidation Act 1997*, the *Stamp Duties Consolidation Act 1999* and the *National Pensions Reserve Fund Act 2000*, and provides for related matters.

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

*Housing (Miscellaneous Provisions) Act 2014***Number:** 21/2014

Provides for: the issue of a tenancy warning by a housing authority where there has been a breach of the tenancy agreement for one of its rented dwellings and a review of such a warning; a revised procedure for a housing authority to recover possession of a dwelling where there has been a serious or repeated breach of a condition of the tenancy agreement, where the dwelling has been abandoned by the tenant or where there is no tenancy in the dwelling and the dwelling is occupied by a person who has no lawful authority to reside there; a scheme of tenant purchase of existing local authority houses along the same lines as the incremental purchase schemes for new local authority houses and existing local authority apartments set out in parts 3 and 4 of the *Housing (Miscellaneous Provisions) Act 2009*; a new scheme of housing assistance payments by housing authorities in respect of rent payable by households qualified for social housing support for private rented accommodation sourced by the households concerned; households qualified for social housing support that are long-term recipients of rent supplement from the Department of Social Protection will transfer to the new housing assistance scheme; the mandatory deduction from social welfare payments due to local authority tenants of rents, rent contributions and rent arrears payable to housing authorities. Amends and extends the *Housing Acts 1966-2014* and the *Social Welfare Acts*.

Commencement: Commencement order(s) required as per s2 of the act

*Radiological Protection (Miscellaneous Provisions) Act 2014***Number:** 20/2014

Provides for the dissolution of the Radiological Protection Institute of Ireland and the transfer of all its functions, assets, liabilities and

staff to the Environmental Protection Agency; gives effect to the amendment to the *Convention on the Physical Protection of Nuclear Material* done at Vienna on 8/7/2005; amends the *Radiological Protection Act 1991*, the *Environment Protection Agency Act 1992* and certain other enactments, and provides for related matters.

Commencement: Commencement order(s) required as per s1(3) of the act

*Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014***Number:** 19/2014

Provides for various amendments to two codes of legislation, the *Friendly Societies Acts* and the *Industrial and Provident Societies Acts*. The main amendment in the area of friendly societies provides for the closure of registration of new societies. The amendments in the area of industrial and provident societies are aimed at easing the regulatory burden of cooperative societies and making examiner-ship, currently available only to companies, accessible to cooperative societies.

Commencement: Commencement order(s) to be made as per s1(4) of the act

*Court of Appeal Act 2014***Number:** 18/2014

Puts legislative arrangements in place that are necessary for the establishment of a Court of Appeal at a level between the High Court and the Supreme Court, as agreed by referendum to amend the Constitution on 4/10/2013. Specifies the jurisdiction of that court, provides for the judges and officers of that court and for matters supplementary to that court and, for those purposes, amends the *Courts (Establishment and Constitution) Act 1961*, the *Courts (Supplemental Provisions) Act 1961* and certain other enactments, repeals certain enactments, and provides for related matters.

Commencement: This act, other than sections 5 and 12(a), shall

come into operation on such day or days as the minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or provisions, and for the repeal of different provisions of the enactments effected by section 73

*Health Service Executive (Financial Matters) Act 2014***Number:** 17/2014

Amends the *Health Act 2004* to provide that the Health Service Executive shall cease to have a separate appropriation vote and shall become part of the appropriation vote of the office of the Minister for Health. Makes a consequential amendment to the *Valuation Act 2001*, and provides for related matters.

Commencement: 17/7/2014

*Social Welfare and Pensions Act 2014***Number:** 16/2014

Gives further effect to Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and for these and other purposes amends the *Social Welfare Acts*; amends the *Pensions Act 1990* and provides for related matters.

Commencement: Sections 5, 8 and 9 shall come into operation on such day or days as the Minister for Social Protection may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions

*Health Identifiers Act 2014***Number:** 15/2014

Provides for the assignment of unique health identifiers to individuals in the public and private health service to whom a health service is being, has been, or may be provided, and provides for the assignment of unique identifiers to health services providers. Provides

for the setting up of a national register of individual health identifiers and a national register of health services providers containing the identifiers and other relevant information. Provides that the National Register of Individual Health Identifiers will be accessible only to specified persons and that the National Register of Health Services Provider Identifiers will be publicly accessible. Provides for the delegation by order to the Health Service Executive of certain functions conferred to the Minister for Health; provides for the consequential amendment of other enactments; and provides for related matters.

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

*Protected Disclosures Act 2014***Number:** 14/2014

Makes provision for and in connection with the protection of persons from the taking of action against them in respect of the making of certain disclosures in the public interest and provides for related matters.

Commencement: 15/7/2014 as per SI 327/2014

*Industrial Development (Forfás Dissolution) Act 2014***Number:** 13/2014

Makes provision for the dissolution of Forfás. Transfers certain functions of Forfás to Enterprise Ireland, the IDA, the Health and Safety Authority of Ireland and the Minister for Jobs, Enterprise and Innovation. Provides for the transfer of the Irish National Accreditation Board (currently a division of Forfás) to the Health and Safety Authority. Amends the *Safety, Health and Welfare at Work Act 2005*, the *Industrial Development (Science Foundation Ireland) Act 2003*, the *Industrial Development (Enterprise Ireland) Act 1998*, the *Metrology Act 1996*, the *Industrial Development Act 1995*, the *Industrial Development Act 1993* and certain other acts. Provides for related matters.

legislation update

Commencement: Commencement order(s) to be made as per s1(4) of the act

Public Health (Sunbeds) Act 2014

Number: 12/2014

Regulates the use and supply of sunbeds. Prohibits permitting persons under 18 years of age to use a sunbed on a sunbed premises. Prohibits the sale or hire of sunbeds to persons under 18 years of age, and provides for related matters.

Commencement: 21/7/2014 as per SI 299/2014

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Number: 11/2014

Replaces the existing statutory and common law arrangements governing the taking of samples for forensic testing from suspects for use as evidence in criminal investigations and proceedings with an updated statute-only regime. Repeals the *Criminal Justice (Forensic Evidence) Act 1990*. Provides for the establishment of a DNA database system for use by the Garda Síochána as an intelligence source for criminal investigations and also to assist in finding missing persons and unknown persons. Regulates the taking of samples from volunteers (persons who are neither suspects nor offenders) for the purpose of generating DNA profiles in respect of such persons in connection with the investigation of criminal offences or incidents that may involve the commission of criminal offences. Implements the DNA elements of Council Decision 2008/615/JHA of 23/6/2008 (the *Prüm Council Decision*), Council Decision 2008/616/JHA of 23/6/2008, and the agreement between the European Union and Iceland and Norway applying those instruments 26/11/2009 and 30/11/2009, and makes provision for similar bilateral or multilateral agreements between the State

and other states.

Commencement: Commencement order(s) required (other than for section 157)

Johnstown Castle Agricultural College (Amendment) Act 2014

Number: 10/2014

Amends the *Johnstown Castle Agricultural College (Amendment) Act 1959* and the *Agriculture (Research, Training and Advice) Act 1988* to allow Teagasc develop the castle and gardens for heritage, tourism, amenity or recreational purposes and to provide for the disposal of land for a burial ground.

Commencement: 22/6/2014

SELECTED STATUTORY INSTRUMENTS

European Union (Consumer Information, Cancellation and Other Rights) Regulations 2014

Number: SI 250/2014

Amend regulation 1(2) of the *European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013*, which give effect to Directive 2011/83/EU of the European Parliament and of the Council on consumer rights.

Commencement: 14/6/2014

Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014

Number: SI 259/2014

Prescribe the form to be used by persons where required under part 3 of the *Personal Insolvency Act 2012* to complete a prescribed financial statement when applying for a debt relief notice or otherwise in connection with a debt relief notice process, and the form to be used by persons in all other circumstances where required under part 3 of the act to complete a prescribed financial statement.

Commencement: 13/6/2014

Circuit Court Rules (Registered Post) 2014

Number: SI 276/2014

Amend the *Circuit Court Rules*

by the insertion of a definition of 'registered post' in the interpretation of terms to facilitate the operation of the *Communications Regulation Act 2002* and the *Communications Regulation (Postal Services) Act 2011*.

Commencement: 10/6/2014

Rules of the Superior Courts (Service or Delivery by Post) 2014

Number: SI 277/2014

Amend order 125 of the *Rules of the Superior Courts* by the insertion of a definition of 'registered post' to facilitate the operation of the *Communications Regulation Act 2002* and the *Communications Regulation (Postal Services) Act 2011*.

Commencement: 10/6/2014

Rules of the Superior Courts (Provision of Transcripts of Sentencing Hearings) 2014

Number: 278/2014

Amend the *Rules of the Superior Courts*, order 85, rule 13, and order 86, rule 14(5) to provide for the release of transcripts of sentencing hearings in criminal proceedings for the Parole Board and to the parole authorities of a foreign administration receiving a sentenced person under the *Transfer of Sentenced Persons Acts 1995 and 1997*, and those of a designated country in which the convicted person is serving a sentence or remainder of a sentence in accordance with the *Transfer of Execution of Sentences Act 2005*.

Commencement: 10/6/2014

Circuit Court Rules (Examinership) 2014

Number: 284/2014

Amend the *Circuit Court Rules* to regulate the procedure in respect of examinership proceedings brought in the Circuit Court by virtue of section 2 of the *Companies (Amendment) Act 1990* as amended by the *Companies (Miscellaneous Provisions) Act 2013*.

Commencement: 16/6/2014

Local Property Tax (Local Adjustment Factor)

Regulations 2014

Number: 296/2014

Set out the requirements for local authorities who may wish to vary their local property tax basic rates in accordance with section 20 of the *Finance (Local Property Tax) Act 2012*.

Commencement: 1/7/2014

Solicitors Acts 1954 to 2011 (Apprenticeship and Education) (Amendment) Regulations 2014

Number: 328/2014

Provide for the agreement of trainee solicitors to abide by such a code of practice as may be designated, to reduce the minimum number of examinations to be taken in each sitting of the FE1s and to provide for training in ethical matters and related amendments.

Commencement: 1/1/2015

Solicitors (Continuing Professional Development) (Amendment) Regulations 2014

Number: 329/2014

Introduce a levy for failure to comply with the Law Society's CPD audit.


Commencement: 1/1/2015

European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2014

Number: 336/2014

Give further effect to Directive 93/13/EEC on unfair terms in consumer contracts; make the Commission for Communications Regulation an 'authorised body' for the purposes of the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*.

Commencement: 17/7/2014

A list of all recent acts and statutory instruments is published in the free electronic newsletter *LawWatch*. Members and trainees who wish to subscribe, please contact Mary Gaynor at m.gaynor@lawsociety.ie 

Prepared by the
Law Society Library

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 James V Dockry, a solicitor practising as Dockry Solicitors at Olympia House, 62 Dame Street, Dublin 2, and in the matter of the *Solicitors Acts 1954-2011* [6513/DT75/13]

***Law Society of Ireland (applicant)*
*James Dockry (respondent solicitor)***

On 28 January 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 29 February 2012 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001).

The tribunal ordered that the respondent solicitor do stand admonished.

In the matter of Paul B Lambert, a solicitor practising as Merrion Legal at Suite 12, Butler's Court, 77 Sir John Rogerson's Quay, Dublin 2, and in the matter of the *Solicitors Acts 1954-2011* [8776/DT174/12]
***Law Society of Ireland (applicant)*
*Paul Lambert (respondent solicitor)***

On 28 January 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2011 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001),
- b) Through his conduct, showed disregard for his statutory obligation to comply with the

Solicitors' Accounts Regulations and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor do stand admonished and advised.

In the matter of Deirdre M Fahy, a solicitor previously practising as D Fahy & Associates, Solicitors, at 69 Main Street, Blackrock, Co Dublin, and in the matter of the *Solicitors Acts 1954-2011* [5471/DT54/13]
***Law Society of Ireland (applicant)*
*Deirdre M Fahy (respondent solicitor)***

On 13 February 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2011 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001),
- b) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

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

NOTICE: THE HIGH COURT

In the matter of Angela Farrell, a solicitor formerly practising as Farrell Solicitors, 28 North Great Georges Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2011* [2014 no 57SA]

Take notice that, by order of the High Court made on Tuesday 24 June 2014, it was ordered that

the name of Angela Farrell, of Farrell Solicitors, 28 North Great Georges Street, Dublin 1, be struck off the Roll of Solicitors.

*John Elliot,
Registrar of Solicitors,
Law Society of Ireland,
17 July 2014*

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

In the matter of Gregory F O'Neill, solicitor, formerly practising as Greg O'Neill Solicitors, Suite 109, The Capel Building, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [3365/DT176/10 and High Court record 2014 no 7SA]
***Law Society of Ireland (applicant)*
*Greg O'Neill (respondent solicitor)***

On 19 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

- a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001),
- b) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the matter go forward to the President of the High Court and, on 3 March 2014, the President of the High Court ordered that the solicitor's name be struck from the Roll of Solicitors and that the respondent

solicitor pay the costs of the Society's proceedings before the disciplinary tribunal and the cost of the High Court proceedings, to be taxed in default of agreement.

In the matter of Gregory F O'Neill, solicitor, formerly practising as Greg O'Neill Solicitors, Suite 109, The Capel Building, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [3365/DT34/12 and High Court record 2014 no 7SA]
***Law Society of Ireland (applicant)*
*Greg O'Neill (respondent solicitor)***

On 19 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2010 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001).

The tribunal ordered that the matter go forward to the President of the High Court and, on 3 March 2014, the President of the High Court ordered that the solicitor's name be struck from the Roll of Solicitors and that the respondent solicitor pay the costs of the Society's proceedings before the disciplinary tribunal and the cost of the High Court proceedings, to be taxed in default of agreement.

In the matter of William Colin Martin, a solicitor previously practising as Colin Martin &

regulation

Company, Solicitors, 14 South Bank, Crosses Green, Cork, and in the matter of the *Solicitors Acts 1954-2002* [4043/DT57/10 and High Court record 2010 no 102SA]

Law Society of Ireland (applicant)
William Colin Martin
(respondent solicitor)

On 19 October 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Allowed a deficit on his client account of €38,505 as of 30 June 2008,
- b) Transferred funds of €20,000 from the client account to pay nursing home fees for a family member and wrongly posted this payment to the client ledger card of another client,
- c) Allowed a debit balance of €18,505 on the client account, in breach of regulation 7(2) of the *Solicitors' Accounts Regulations 2001*,
- d) Failed to pay stamp duty totalling €399,707 in respect of a number of conveyances to the Revenue Commissioners in a timely manner, as set out in paragraph 2.4 and appendix 3 of the investigation report of 24 September 2008.

The Solicitors Disciplinary Tribunal recommended that the solicitor was not a fit person to be a member of the solicitors' profession and that his name be struck off the Roll of Solicitors.

On 10 March 2014, the President of the High Court made an order in the following terms:

- a) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership and should 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 Law Society.
- b) The respondent solicitor pay to the Society the costs of the pro-

ceedings before the disciplinary tribunal and the costs of the proceedings before the High Court, to be taxed in default of agreement.

In the matter of William Colin Martin, a solicitor previously practising as Colin Martin & Company, Solicitors, 14 South Bank, Crosses Green, Cork, and in the matter of the *Solicitors Acts 1954-2008*

Law Society of Ireland (applicant)
William Colin Martin (respondent solicitor)

On 29 January 2013 and 18 July 2013, the Solicitors Disciplinary Tribunal sat to hear ten complaints against the above solicitor

4043/DT23/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking furnished to the complainants, dated 19 October 2000, in respect of a mortgage by the solicitor and his wife in respect of property in Cork in a timely manner or at all,
- b) Failed to comply with an undertaking dated 22 October 2003 in respect of a mortgage by the solicitor and his wife and a property in Cork in a timely manner or at all,
- c) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,
- d) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society,
- e) Failed to attend the meeting of the Complaints and Client Relations Committee of 14 December 2010, despite being required to attend.

4043/DT25/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 24 February 2006 in respect of his named clients and borrowers and in respect of property at Glandore, Co Cork in a timely manner or at all,
- b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,
- c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society,
- d) Failed to attend the meeting of the Complaints and Client Relations Committee on 14 December 2010, despite being required to attend.

4043/DT26/12

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 three undertakings, all dated 11 January 2006, in respect of his named clients and borrowers and three account borrowings all in respect of a property in Mallow, Co Cork, in a timely manner or at all,
- b) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, to the Society's letters of 15 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,
- c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society,
- d) Failed to attend the meeting of the Complaints and Client Relations Committee meeting of 14

December 2010, despite being required to do so.

4043/DT27/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 1 December 2005 in respect of his named clients and borrowers and a property at Midleton, Co Cork, in a timely manner or at all,
- b) Failed to comply with an undertaking dated 15 September 2008 in respect of the same clients and borrowers and property in Caherdaniel, Co Kerry, in a timely manner or at all,
- c) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 4 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,
- d) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society,
- e) Failed to attend the Complaints and Client Relations Committee meeting of 14 December 2010, despite being required to do so.

4043/DT28/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 20 November 2002 furnished to the complainant bank in respect of his named clients and property at Rochestown, Co Cork, in a timely manner or at all,
- b) Failed to respond to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,
- c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September

2010 to provide an update to the Society within one month of the meeting,

- d) Failed to attend the meeting of the Complaints and Client Relations Committee meeting of 14 December 2010, despite being required to do so.

4043/DT29/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 11 January 2006 in respect of his named clients and borrowers and in respect of property in Blarney, Co Cork, in a timely manner or at all,
b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,
c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society,
d) Failed to attend the meeting of the Complaints and Client Relations Committee on 14 December 2010, despite being required to attend.

4043/DT30/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an under-

taking dated 2 September 2003 and a further undertaking dated 16 November 2005 in respect of named clients and borrowers and in respect of a property at Lower John Street, Cork, furnished to Bank of Ireland Mortgages in a timely manner or at all,

- b) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 15 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,
c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update to the Society within one month of the meeting,
d) Failed to attend the meeting of the Complaints and Client Relations Committee on 14 December 2010, despite being required to attend.

4043/DT31/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 20 July 2005 in respect of his named client and in respect of property at Lavitts Quay, Cork City,
b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,

- c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society,
d) Failed to attend the meeting of the Complaints and Client Relations Committee of 14 December 2010, despite being required to attend.

4043/DT51/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 25 April 2006 in respect of his named client and in respect of property at Carrolls Quay, Cork City, in a timely manner or at all,
b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,
c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society,
d) Failed to attend at the meeting of the Complaints and Client Relations Committee of 14 December 2010, despite being required to do so,
e) Failed to comply with the direction of the Complaints and

Client Relations Committee meeting made at its meeting on 16 February 2011 to provide an update on this matter by 20 April 2011,

- f) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 11 May 2011 to provide an update on this matter prior to the meeting of 6 July 2011.

4043/DT52/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

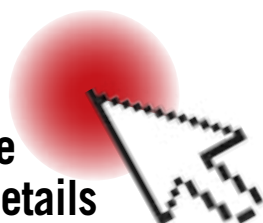
- a) Failed to comply with an undertaking dated 11 May 2006 in respect of his named clients and borrowers and in respect of property at Lavitts Quay, Cork City, in a timely manner or at all,
b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 9 August 2010, 28 September 2010 and 17 November 2010,
c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society,
d) Failed to attend the Complaints and Client Relations Committee meeting of 14 December 2010, despite being required to do so.

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regulation

Having made findings of misconduct in respect of the ten matters, the Solicitors Disciplinary Tribunal referred the matter forward to the President of the High Court and, in record no 2013 no 97SA, the President of the High Court made an order on 10 March 2014 that:

- a) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership and to 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 Law Society,
- b) The respondent solicitor pay to the Society the costs of the proceedings before the Disciplinary Tribunal and the costs of the proceedings before the court, to be taxed in default of agreement.

In the matter of William Colin Martin, a solicitor previously practising as Colin Martin & Company, Solicitors, 14 South Bank, Crosses Green, Cork, and in the matter of the Solicitors Acts 1954-2008

Law Society of Ireland (applicant) William Colin Martin (respondent solicitor)

On 5 March 2013 and 24 September 2013, the Solicitors Disciplinary Tribunal heard seven complaints against the above solicitor.

4043/DT57/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking furnished to the complainants dated 23 October 2008 in respect of his named clients and borrowers and a property in Co Cork in a timely manner or at all,
- b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 5 August 2010,

28 September 2010 and 17 November 2010,

- c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society.

4043/DT58/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 16 February 2008 in respect of his named clients and borrowers and in respect of a property in Co Waterford in a timely manner or at all,
- b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 9 August 2010, 28 September 2010 and 17 November 2010,
- c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society.

4043/DT59/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking to deal with Land Registry queries, dated 23 December 2004, furnished to the complainant in respect of a property in Co Kerry in a timely manner,
- b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 October 2010 and 17 November 2010.

4043/DT60/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to reply to the Society's correspondence in a timely

manner or at all and, in particular, the Society's letters of 4 June 2010, 9 August 2010, 28 September 2010 and 17 November 2010,

- b) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting of 22 September 2010 to provide an update within one month to the Society.

4043/DT61/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking dated 21 September 2007 in respect of his named clients and borrowers and a property in Cork in a timely manner or at all,
- b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 5 August 2010, 28 September 2010 and 17 November 2010,
- c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society.

4043/DT62/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking given to named complainants and dated 2 April 2007 in respect of his named client and borrower and in respect of property in Waterford in a timely manner or at all,
- b) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 15 June 2010, 9 August 2010, 28 September 2010 and 17 November 2010,
- c) Failed to comply with the direction of the Complaints and Client Relations Committee made

at its meeting on 22 September 2010 to provide an update within one month to the Society.

4043/DT63/12

The Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking given to a named bank on 27 May 2003 in respect of his named clients and a property in Cork in a timely manner or at all,
- b) Failed to comply with an undertaking dated 19 December 2006 furnished to a named bank in respect of the same clients and properties in Co Kerry and Co Cork in a timely manner or at all,
- c) Failed to comply with the extension of undertaking dated 20 December 2006 furnished in respect of the same clients and properties in Cork in a timely manner or at all,
- d) Failed to comply with an extension of undertaking furnished on 10 December 2007 to the same bank in respect of the same clients and property in Cork in a timely manner or at all,
- e) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 22 September 2010 to provide an update within one month to the Society,
- f) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, the Society's letters of 17 August 2010, 28 September 2010 and 17 November 2010.

Having heard the seven complaints and made those findings of misconduct, the Solicitors Disciplinary Tribunal referred the matter forward to the President of the High Court and, on 10 March 2014, in proceedings with record number 2013 no 101SA, the President of the High Court made the following orders:

- a) That the respondent solicitor not be permitted to practise as

a sole practitioner or in partnership and should 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, and

- b) That the respondent solicitor do pay to the Society the costs of the proceedings before the disciplinary tribunal and the costs of the proceedings before the High Court, to be taxed in default of agreement.

In the matter of Michael Kieran Griffin, a solicitor of Kilkerrin House, Currabeg, Ovens, Co Cork, and in the matter of the Solicitors Acts 1954-2011 [10174/DT32/13]

Law Society of Ireland (applicant) Michael Kieran Griffin (respondent solicitor)

On 15 April 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he appeared in court on 31 May 2012 and on 5 June 2012 holding himself out as a practising solicitor at a time when he did not hold a practising certificate and had not held one since 2008.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
b) Pay a contribution of €750 towards the whole of the costs of the Law Society of Ireland.

In the matter of Thomas O'Donoghue, a solicitor previously practising as O'Donoghue

& Company, Solicitors, 2 Eigans Lane, Tuam, Co Galway, and in the matter of the Solicitors Acts 1954-2011 [8824/DT80/13]

Law Society of Ireland (applicant) Thomas O'Donoghue (respondent solicitor)


On 7 November 2013, 18 February 2014 and 15 April 2014, the Solicitors Disciplinary Tribunal sat to consider a complaint against the respondent solicitor and found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to ensure there was furnished to the Society an accountant's report for the year ended 30 June 2011 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001),

- b) Failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors' Accounts Regulations*, in a timely manner or at all,

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

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
b) Pay the whole of the costs of the Society, as taxed by a taxing master of the High Court in default of agreement. 

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DATA RETENTION DIRECTIVE DECLARED INVALID BY CJEU

On 8 April 2014, the CJEU handed down a landmark judgment in the field of data protection law: [joined cases C293/12 and C594/12](#), *Digital Rights Ireland and Seitlinger and Others*. By its preliminary ruling, the EU's highest court held that the controversial [Data Retention Directive](#) (2006/24/EC) was invalid and that the effect of the declaration of invalidity would be immediate. In addition, the directive would be deemed invalid as from the date it was adopted. The judgment has an Irish dimension, as it arose from two parallel preliminary references, one of which was from the Irish High Court (the other was from Austria's Constitutional Court).

It is likely that the ruling will have implications for the blanket retention of communications data, the national laws that transposed the now invalidated directive, service providers that incurred costs retaining data under the directive, and court decisions handed down since the directive's adoption in 2006 that were based on evidence in the form of data retained under the directive.

Background to the directive

Following the terrorist attacks in Madrid in 2004 and London in 2005, the EU decided to adopt a data retention directive to harmonise the EU member states' efforts in terms of the investigation and prosecution of serious crime and terrorism.

In short, the directive obliged electronic communications service providers to retain certain data generated or processed by them. The objective was to ensure that the retained data would be available to law enforcement authorities (upon request) for the purposes of the investigation, detection, and prosecution of serious crime and terrorism.

The directive only applied to the metadata (traffic and location data, along with "related data necessary to identify the subscriber or registered user") and did not apply to the actual content of electronic communications, including information consulted using an electronic communications network.

In effect, the adoption of the directive was a recognition by the European Commission that, in the 21st century, there is widespread illicit use of the internet and that a significant proportion of sophisticated crime is now perpetrated through the exploitation of communication technologies. EU law enforcement authorities also acknowledge that retained data continues to grow in importance in terms of its central role as potential evidence in criminal investigations.

The validity of the directive

In essence, the referring courts were asking the CJEU to examine the validity of Directive 2006/24 in the light of articles 7, 8, and 11 of the [Charter of Fundamental Rights of the European Union](#). Article 7 refers to respect for private and family life. Individuals' personal data is protected by article 8. This provision also requires that data only be processed fairly for specified purposes and on a consensual basis. Article 11 enshrines the right to freedom of expression and information.

The CJEU examined the question of whether the interference caused by Directive 2006/24 was limited to what was strictly necessary. The court observed that, by virtue of articles 3 and 5(1), the directive required the retention of all traffic data concerning fixed telephony, mobile telephony, internet access, internet email, and internet telephony. It therefore applied to all means of electronic communication, the use of which is very widespread and of growing impor-

tance. Furthermore, by virtue of article 3, the directive covered all subscribers and registered users. It therefore entailed an interference with the fundamental rights of practically the entire European population.

The court was critical of the directive's overbroad application, which affected persons using electronic communication services, even if there were little prospect of criminal prosecutions occurring. The directive's lack of exceptions also meant that it would apply to persons whose communications were subject to the obligation of professional secrecy.

General absence of limits

In its ruling, the CJEU referred to the 'general absence of limits' in the directive and its failure to lay down any objective criterion by which to determine the limits of access by the competent national authorities to the data and their subsequent use. Article 4 of the directive, which governed the access of national authorities to the data retained, did not expressly provide that that access and the subsequent use of the data in question be strictly restricted to the purpose of preventing and detecting serious offences or of conducting criminal proceedings relating thereto.

Also problematic was the fact that access by the competent national authorities to the data retained was not made dependent on a prior review carried out by a court or by an independent administrative body, whose decision would seek to limit access to the data and their use to what is strictly necessary for the purpose of attaining the objective pursued.

Data retention period

The data retention period contained in article 6 of the directive also came in for criticism. Noting

that the data had to be retained for a period of at least six months, the court thought it unsatisfactory that no distinction was made between the categories of data set out in article 5 of the directive on the basis of their possible usefulness for the purposes of the objective pursued or according to the persons concerned. The CJEU was also critical of the fact that the determination of the period of retention (somewhere between a minimum of six months and a maximum of 24 months) was not based on objective criteria that, if applied, would ensure that the period be limited to what was strictly necessary.

Fundamental rights

In what is probably the most compelling passage of the judgment, the CJEU (at paragraph 65) criticised the directive for not laying down clear and precise rules governing the extent of the interference with the fundamental rights enshrined in articles 7 and 8 of the charter. The court then went on to hold that directive 2006/24 involved a wide-ranging and particularly serious interference with those fundamental rights in the legal order of the EU, without such interference being precisely circumscribed by provisions to ensure that it is actually limited to what is strictly necessary.

Security and protection

The CJEU also condemned the rules in the directive relating to the security and protection of data retained by providers of publicly available electronic communications services. It ruled that directive 2006/24 did not provide for sufficient safeguards, as required by article 8 of the charter, to ensure effective protection of the retained data against the risk of abuse and against any unlawful access and use of that data. Elaborating



on this, the court held that article 7 of Directive 2006/24, the provision governing data protection and data security, did not lay down rules that were specific and adapted to (a) the vast quantity of data whose retention was required by that directive, (b) the sensitive nature of the data, and (c) the risk of unlawful access to that data. Such rules, if implemented, would have served to govern the protection and security of the data in question in a clear and strict manner in order to ensure their full integrity and confidentiality.

Assessing article 7 of Directive 2006/24 in conjunction with article 4(1) of Directive 2002/58 (the *ePrivacy Directive*) and article 17(1) of Directive 95/46 (the fundamental legal instrument at EU level on the processing of personal data), the court stated that, cumulatively, the three provisions did not ensure a “particularly high level of protection and security”. The CJEU was also particularly critical of the fact that Directive 2006/24 did not ensure the irreversible destruction of the data at the end of the data retention period.

Staying with the issue of security and protection of data, the court also observed that the directive did not require the data in question to be retained within the EU. As a consequence, the directive failed to comply with article 8(3) of the

charter, which requires that compliance with the protection of personal data rules be “subject to control by an independent authority”. This reference to an independent authority is to the national data protection authority operating in each of the 28 member states. If the data were retained outside the borders of the EU, then the power, control and influence of the EU data protection authorities would be negligible. As stated previously in case C-614/10, *European Commission v Austria*, such control, carried out on the basis of EU law, is an essential component of the protection of individuals with regard to the processing of personal data.

Having regard to all the foregoing considerations, the CJEU ruled that, by adopting Directive 2006/24, the EU legislature had exceeded the limits imposed by the principle of proportionality in the light of articles 7, 8 and 52 (1) of the charter. As a consequence, the court found Directive 2006/24 to be invalid.

Consequences

Digital Rights Ireland is undoubtedly a landmark ruling. It is only the second time ever that the CJEU has struck down an EU directive, and the ruling comes at an important time when there is an ongoing debate in both the EU and US, sparked by Edward Snowden’s rev-

elations of the spying activities of the US National Security Agency. Tangibly, the ruling will serve to limit blanket government surveillance of communications data, which was permitted under the directive.

A period of legal uncertainty is inevitable, particularly as the court held that the declaration of invalidity would take effect from the date on which the directive entered into force. This element of retrospection could seriously affect the outcome of proceedings long since concluded, where the evidence relied on was data retained under the directive. There is also a strong likelihood that national legislation transposing the directive in the various member states will be challenged in domestic courts. In fact, after the CJEU ruling, Digital Rights Ireland returned to the High Court to seek to have part 7 of the *Criminal Justice (Terrorist Offences) Act 2005* struck down. This part of the 2005 act requires telephone communications service providers to retain traffic and location data for a period specified by law in order to prevent, detect, investigate, and prosecute crime and safeguard the security of the State.

Interestingly, Britain responded quickly to the CJEU’s ruling by adopting the *Data Retention and Investigatory Powers Act* on 17 July.

This replaced the *Data Retention (EC Directive) Regulations 2009*, which transposed the directive into British law. The new act met quite a bit of opposition from politicians and campaign groups, who argued that it was fast-tracked through parliament without much scrutiny. The act received royal assent a mere seven days after being published as a bill.

As the directive is entirely invalid, the immediate consequence is that we return to the status quo before the directive’s adoption in 2006. This means that member states have an option, but not an obligation, to retain data pursuant to the *ePrivacy Directive*.

The prospect of the EU legislature adopting a replacement directive in early course is unlikely. However, if there is to be a new directive, it may be included in the main data protection reform package currently being negotiated by the EU institutions.

While there is no obvious silver bullet for this imbroglio, the CJEU ruling may well help to steel the resolve of those in Europe who have been clamouring for a digital bill of rights that would enshrine the right of privacy for digital citizens using the internet.



Mark Hyland is a lecturer at Bangor University Law School, Wales.



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| 30 Sept | ADR Directive: Law Society Professional Training in collaboration with the ECC (European Consumer Centre) and Law Society's EU/ADR Committees | Complimentary | | 3 General (by Group Study) |
| 3 Oct | Practice & Regulation Symposium Conference - Mansion House, Dublin in collaboration with Sole Practitioners' Network, the DSBA and Law Society Skillnet | €85 Hot lunch and networking drinks reception included | | 4 M& PD Skills plus 2 Regulatory Matters (by Group Study) |
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| 21 Nov | CPD Conference for General Practice – Hotel Kilkenny – Kilkenny - In collaboration with Kilkenny Bar Association, Tipperary Solicitors' Bar Association and Waterford Law Society | €85 Hot lunch and networking drinks reception included | | 5 General plus 1 Regulatory Matters (by Group Study) (6 total) |
| 28 Nov | Annual Family and Child Law Conference – in collaboration with the Family Law Committee | €180/€225 Hot Buffet Lunch included | | 4.5 General (by Group Study) |

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WILLS

Bradley, Lena (deceased), late of Woodlands, Moynalty, Kells, Co Meath. Would any person having knowledge of any will made by the above-named deceased, who died on 2 February 2014, please contact Nathaniel Lacy & Partners, Solicitors, Kenlis Place, Kells, Co Meath; tel: 046 928 0718, 046 924 1312, email: law@nlacy.ie

Byrne, Eileen 'Helen' (deceased), late of Ballyroe, Blackwater, Enniscorthy, Co Wexford, who died on 8 February 2013. Would any person having knowledge of any will executed by the above-named deceased please contact Frizelle O'Leary & Co, Solicitors, Slaney Place, Enniscorthy, Co Wexford; tel 053 923 3547, email: postmaster@folco.ie

Carmichael, Kevin (deceased), late of 14 Thomas Hand Street, Co Dublin, who died on 29 March 2014. Would any person having knowledge of the last will made by the above-named deceased or its whereabouts please contact Direct Law Solicitors, 84 Strand Street, Skerries, Co Dublin; tel: 01 849 4226, email: sdowling@directlaw.ie

Crowley, Gregory (otherwise Denis), (deceased), late of Flat 3b, Duhallow House, Bishopstown, Cork, and formerly of Myrtlehill, Ballygarvan, Co Cork, and formerly of Hillcrest, Knockbrown, Bandon, Co Cork. Would any person having any knowledge of a will made by the above-named deceased, who died on 19 March 2014, please contact Mary Dorgan,

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No recruitment advertisements will be published that include references to years of post-qualification experience (PQE). The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

Solicitors, 96 South Mall Cork; tel: 021 427 6556, fax: 021 427 5408, email: marydorgan@securemail.ie

Delaney, John (deceased), late of Clonard Hill, Mountrath, Co Laois, who died on 26 May 2014. Would any person having any knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Poe Kiely Hogan Lanigan, Solicitors, 21 Patrick Street, Kilkenny; tel: 056 772 1063, fax: 056 776 5231, email: jhickey@pkhl.ie

Duffy, Kieran (deceased), late of 52 Clareview Park, Ballybane, Galway, who died on 9 June 2014. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact G Jones & Company, Solicitors, Carrickmacross, Co Monaghan; tel 042 966 1822, fax: 042 966 1464, email: clynch@gjones.ie

Dunne, Alan (deceased), late of 79 Park Avenue, Castleknock, Dublin 15, and late of Cape Town, South Africa, who died on 2 February 2013. Would any person having knowledge of the last will made by the above-named deceased or its whereabouts please contact MacGuill and Company,

Solicitors, 34 Charles Street West, Dublin 7; tel: 01 878 7022, email: koleary@macguill.ie

Evans, Eileen (deceased), late of 56 Maddens Buildings, Blackpool, Cork, who died on 11 August 2014. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Mr Jonathan Lynam of Finghin O'Driscoll & Co, Solicitors, 11 Pembroke Street, Cork; tel: 021 420 4122, email: info@fodsolicitors.ie

Fallon, Kathleen (deceased), late of 7 Donnycarney Road, Donnycarney, Dublin 9, who died on 27 June 2014. Would any person having knowledge of any will of above-named deceased please contact Byrne Carolan Cunningham, Solicitors, 39/41 Mardyke Street, Athlone, Co Westmeath; DX 12011; tel: 090 647 8433, fax: 090 647 8455, email: info@bccsolicitors.ie

Flood, Margaret (deceased), late of Cormackstown, Maynooth, Co Kildare, who died on 19 November 2013. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Michael Ward & Co, Solicitors, Edenderry, Co Offaly; tel: 046 973 1323, fax: 046 973

1564, email: info@michaelwardsolitors.ie

Flynn, Elizabeth (orse Betty) (deceased), late of 18 Sheelin Road, Caherdavin, Limerick, and Abbeyfeale, Co Limerick, who died on 30 November 2013. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Woulfe Murphy, Solicitors, The Square, Abbeyfeale, Coy Limerick; tel: 068 31106, fax: 068 31394, email: orla@woulfemurphy.com

Fogarty, Patrick (deceased), late of 558 Howth Road, Raheny, Dublin 5, who died on 26 April 2014. Would any person having knowledge of a will made by the above-named deceased or its whereabouts please contact Hamilton Turner Solicitors, 66 Dame Street, Dublin 2; tel: 01 671 0555, email: law@hamiltonturner.com

Hillard, Annie (orse Hilliard) (deceased), late of Beabus, Adare, Co Limerick, who died on 10 November 2013. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Woulfe Murphy Solicitors, The Square, Abbeyfeale, Co Limerick; tel: 068 31106, fax: 068 31394, email: orla@woulfemurphy.com

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Hillard, Bridget (mother of said Annie Hillard) (deceased), who died on 26 October 1965, late of Beabus, Ardare, Co Limerick. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Woulfe Murphy Solicitors, The Square, Abbeyfeale, Co Limerick; tel: 068 31106, fax: 068 31394, email: orla@woulfemurphy.com

Hourigan, Cornelius (deceased), late of Little Buds Farm, Dysart, Mullingar, Co Westmeath, who died on 16 May 2014. Would any person having knowledge of the last will made by the above-named deceased or its whereabouts please contact Carroll Kelly & O'Connor, Solicitors, 107 Clonskeagh Road, Dublin 6; DX 28; tel: 01 260 4880, email: carrkell@indigo.ie

Howard, Audrey Lucinda (deceased), late of 68 Brighton Square, Rathgar, Dublin 6. Would any person having knowledge of any will made by the above-named deceased, who died on 18 July 2014, please contact Cullen & O'Beirne Solicitors, Suite 338B,

The Capel Building, Mary's Abbey, Dublin 7; tel: 01 888 0855, email: info@cullenobeirne.ie

Kelleher, Cornelius (Connie) (deceased), (ex Garda Síochána), late of Dungarvan Co Waterford and late of Mount Cross, Clondrohid, Macroom, Co Cork, who died on 28 May 2014. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact James Lucey & Sons, Solicitors, Kanturk, Co Cork; tel: 029 50026, fax: 029 50738, email: dan@lucelyaw.ie

McDermott, Brian (deceased), late of Annaghbeg, Dromineer, Nenagh, Co Tipperary, and also late of Castlemore, Ballaghaderreen, Co Roscommon. Would any person having knowledge of any will made by the above-named deceased, who died on 22 July 2014, please contact Greg Nolan, solicitor, 5 Sherwood Avenue, Taylor's Hill, Galway; tel: 091 582 942, email: greg@gns.ie

McGing, Paddy (deceased), late of 619 South Circular Road, Dublin. Would any person having

knowledge of any will made by the above-named deceased, who died on 24 March 2014, please contact Liam J Sheridan & Co, Solicitors, Unit 9, The D-Mek Centre, Teeling Street, Ballina, Co Mayo; tel: 096 77410, email: ljsheridan@eircom.net

Meehan, John (deceased), late of Botuney (otherwise known as Botunagh), Curry, Co Sligo, and formerly of Culfadda, Ballymote, Co Sligo. Would any person having knowledge of a will executed by the above-named deceased, who died on 26 April 2014, please contact William G Henry & Co, Solicitors, Emmett Street, Ballymote, Co Sligo; tel: 071 918 9962, fax: 071 918 9970

Mullen, Philomena, 'Phyllis' (deceased), late of 'Sunnyslope', Carley's Bridge, Enniscorthy, Co Wexford, who died on 15 November 2010. Would any person having knowledge of any will executed by the above-named deceased please contact Frizelle O'Leary & Co, Solicitors, Slaney Place, Enniscorthy, Co Wexford; tel: 053 923 3547, email: postmaster@folco.ie

Ryan, (Mahoney), John Joseph (deceased), late of Carnahalla, Doon, Co Limerick/Carnahalla, Cappawhite, Co Tipperary, who died on 5 July 2013. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Beatrice Dolan of Vincent McCormack & Co, Solicitors, 11 St Michael Street, Tipperary Town; tel: 062 52899, fax: 062 52944, email: tippelgal@eircom.net

Watts, Patricia (deceased), late of 2 Beechside Grove, Riverchapel, Gorey, Co Wexford. Would any person having any knowledge of a will made by the above-named deceased please contact Louis Watts; tel: 087 631 5933, email: louis8watts@hotmail.com

MISCELLANEOUS**High Court: 2014 no 357 COS**

In the matter of Imperius Asset Management Limited and in the matter of the Companies Acts 1963-2013 and in the matter of sections 72, 73 and 74 thereof

Notice is given that a petition was, on 28 July 2014, presented to the High Court by the company whose registered office is at 37 Main

Street, Ongar Village, Dublin 15, seeking court approval for a proposed reduction in the share capital of Imperius Asset Management Limited.

The petition is directed to be heard on 20 October 2014. Any creditor or contributory of the company who wishes to support or oppose the making of an order on the petition may appear at the time of hearing by himself or his counsel for that purpose, and a copy of the petition will be furnished to any creditor or contributory of the said company who requires it by the undersigned.

Note: Any person who intends to appear at the hearing of the petition must serve on, or send by post to, the petitioner or his solicitor, notice in writing of his intention to do so. The notice must state the name and address of the person or if a firm the name and address of the firm and must be signed by the person or firm, or his or their solicitor (if any) and must be served or, if posted, must be sent by post in sufficient time to reach the above-named solicitor or the petitioner not later than 5 o'clock in the afternoon of 17 October 2014.

Smyth Solicitors, Alexandra House, Ballsbridge Park, Ballsbridge, Dublin 4

TITLE DEEDS

Would any person having knowledge of the whereabouts of the title deeds of 5 Beech Row, Clondalkin, Dublin 22, in the ownership of James Cahill since 4 September 1968, please contact Oliver Burke, Solicitors, Clondalkin, Dublin 22

Anyone knowing the whereabouts or holding title documents on behalf of the late Ms Rose Barrett (deceased), late of Main Street, Ballisodare, Co Sligo, with respect to property at Main Street, Ballisodare, Co Sligo, please contact O'Connell and Clarke, Solicitors, Suite 142, The Capel Building, Mary's Abbey, Capel Street, Dublin 7, tel: 01 872 2246, email: lucy@oconnellclarke.ie

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 Derek Tynan

Any person having a freehold estate or any intermediate interest in all that and those no 10 Marino Mart, Fairview, Dublin, being the premises the subject of an indenture of sub-lease of 14 October 1926 between JF Keating & Sons Limited of the one part and Morris Tomkin and Sander Tomkin of the other part (the said sub-lease having been carved out of a superior indenture of head-lease dated 9 April 1926 between the Lord Mayor, Aldermen and Burgesses of Dublin of the one part and JF Keating & Sons Limited of the other part) and therein described as "all that and those that part of the lands of Marino being the plot of ground no 9 with the shop and buildings thereon part of the estate of the Corporation of Dublin".

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

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

Date: 5 September 2014

Signed: Murray Flynn Maguire (solicitors for the applicant), 12-16 Fairview Strand, Dublin 3

In the matter of the Landlord and Tenant (Ground Rents) Act 1967 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978

In the matter of the lands, dwellinghouse and premises commonly known as 52 Upper Dorset Street in the parish of St George and county of the city of Dublin, and in the matter of an intended application by Claude Fettes, Annette Cooper and Marc Godart, all care of Donal O'Kelly & Co, Solicitors, 1 Grand Canal Wharf, South Dock Road, Dublin 4, being the persons entitled to the beneficial interest in the said lands, dwellinghouse and premises.

Take notice that any person having an interest in the fee simple estate or any intermediate interest or interest in all and singular the hereditaments and premises known as 52 Upper Dorset Street, Dublin 1, more particularly described as all that and those the hereditaments and premises demised by an indenture of lease dated 5 August 1807 and made between John Claudius Beresford and the Reverend Charles Cobb Beresford of the one part, and Edward Kavanagh and William Kavanagh of the other part, and therein described as all that and those that piece or plot of ground situate, lying and being on the east side of Dorset Street in the county of Dublin, containing in front to the said street 20 feet and the like number of feet in the rear, and in depth on the north side 80 feet, and on the south side the like number of 80 feet, bounded on the west by Dorset Street aforesaid, on the east by a lane, on the north by ground in the possession of the said Edward Kavanagh and William Kavanagh, and on the south by a holding in the possession of Mistress Morgan, together with a new brick dwellinghouse erected thereon by the said Edward Kavanagh and William Kavanagh, as the same is now particularly described and delineated on a map or terchart thereof hereunto annexed be the said admeasurements more

or less together with all and singular the rights, members and appurtenances thereunto belonging or in anywise appertaining, which said premises are now known as 52 Upper Dorset Street in the parish of St George, in the county of the city of Dublin, more particularly delineated on the map attached to a deed of assignment dated 29 October 2013, Bank of Scotland plc of the first part, Michael McAteer and Patrick Dillon of the second part, and Claude Fettes, Annette Cooper and Marc Godart of the third part.

The said premises were previously held under a lease dated 1 August 1807 and made between John Claudius Beresford and the Reverend Charles Cobb Beresford of the one part, and Edward Kavanagh and William Kavanagh of the other part, held for a term of 999 years from 1 August 1807, subject to the yearly rent of £20 reserved by the lease.

Take notice that we, Claude Fettes, Annette Cooper and Marc Godart, being the parties now holding the said property under the terms of the previously recited assignment, intend to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and any intermediate interest or interests in the said property, and any party claiming that they hold the fee simple freehold 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 Claude Fettes, Annette Cooper and Marc Godart intend 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

professional notices

unknown and unascertained.

Date: 5 September 2014

Signed: Donal O'Kelly & Co (solicitors for the applicants), 1 Grand Canal Wharf, South Dock Road, Dublin 4

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by AIB Banks plc, AIB Bank, Terenure, Dublin 6

Take notice that any person having an interest in the freehold estate or any intermediate interests of the property known as AIB Bank Terenure, 12 Rathfarnham Road, Dublin 6, held under an indenture of lease made 4 December 1962 (thereafter 'the lease') between the Terenure Laundry Company Limited of the one part and the Royal Bank of Ireland Limited of the other part. The term of the lease is for 900 years from 4 December 1962 and is subject to a yearly rent of £1 if demanded, and subject to the covenants and conditions therein contained; the lessee paid a fine of £5,000 for the grant of the lease.

Take notice that AIB Banks plc intends to submit an application to the county registrar for the county of the city of Dublin sitting at the Four Courts, Inns Quay, Dublin 7, for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and that any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, AIB Banks plc intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate that the person or persons beneficially entitled to the intermediate interests, including the fee simple, in the aforesaid property are un-

known or unascertained.

Date: 5 September 2014

Signed: Messrs Gleeson McGrath Baldwin (solicitors for the applicant), 29 Anglesea Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the premises 'Cruachan', Clonskeagh Road, Dublin 14 – applicant: Eileen O'Higgins

Take notice that any person having an interest in the freehold estate or any other estate of the following property: all that the piece or plot of ground being part of the lands of Roebuck, Clonskeagh, in the parish of Taney, barony of Rathdown, and county of Dublin, being the property more particularly described in a lease dated 25 July 1930 between James F Cherry of the one part and Mary Casey of the other part.

Take notice that the applicant, Eileen O'Higgins, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said applicant intends to proceed with the application before the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the above premises are unknown or unascertained.

Date: 5 September 2014

Signed: O'Shea Barry Solicitors (solicitors for the applicant), 5 Fitzwilliam Place, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the mat-

ter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the property known as 13 Main Street, Portlaoise, Co Laois: an application by Joan Hennessy

Take notice that any person having an interest in the freehold estate or any superior interest in the following property: all that and those the premises known as no 13 Lower Main Street in the town of Portlaoise, parish of Borris, barony of Maryborough East and county of Laois, and as more particularly described in an indenture of lease dated 16 March 1967 and made between Enda Phelan of the one part and Enda Boylan of the second part for the term of 99 years from 1 July 1966, subject to a yearly rent of £50. Take notice that Joan Hennessy, being the person currently entitled to the lessee's interest in the premises, intends to apply to the county registrar for the county of Laois for the acqui-

sition of the freehold interest and all intermediate interests in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, Joan Hennessy intends to proceed with this 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 Laois for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforementioned premises are unknown or unascertained.

Date: 5 September 2014

Signed: Cosgrave Solicitors (solicitors for the applicant), Market House, 15 Market Square, Navan, Co Meath



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m.seabrook@lawsociety.ie



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Twelve angry men – or not, as the case may be

There's an art to jury selection. According to the chief executive of the trial consulting company DecisionQuest, Philip Anthony, the goal is to ask questions that elicit enough information without tipping off opposing counsel, *The New York Times* reports.

The *Times* includes an

[interactive juror questionnaire](#) for a hypothetical case involving a woman suing her investment adviser for mismanaging her money.

One question was whether the potential juror does crossword puzzles or other games that require full concentration. A 'no' answer apparently means the potential

juror is more likely to side with the plaintiff's emotional theme of victimhood rather than looking at the legal and financial details. The *Gazette* tried it out – the editor was refused on the basis that he would most likely side with the plaintiff; the deputy editor was refused for the opposite reason. Would lying assist in getting picked?

Juries? Oh, tell

And on the subject of juries, here are some actual questions put to potential jurors in real US cases.

In the federal corruption trial of a state senator in Brooklyn, potential jurors were asked whether they had ever worked as janitors, business owners, or at hospitals; whether they worked in a job where they had an expense account; and whether they were the person who managed the money at home.

In the trial of five associates of Ponzi schemer Bernard Madoff, potential jurors were asked about their parents' jobs, whether they had lost money in the stock market since the economic downturn, whether they owned e-readers, and whether they played the lottery.

And in the trial of alleged mobster Whitey Bulger, potential jurors were asked whether marijuana should be legalised and the name of the last book they had read.

We're not in Kansas anymore

The smiling group of lawyers in the plush office of the English firm looks legit on its website. The pictures are of real lawyers – but they practise in Kansas, not in the 'Dovernor Chambers' law firm that purports to operate in England.

The firm is fake – its website contains photos lifted from other law firms' websites to create a convincing online presence to scam would-be clients, *The Mirror* reports.

Such schemes are increasingly common. The Solicitors Regulation Authority says it is identifying new fake law firms on an almost daily basis. Some scammers reportedly steal law firms' entire web pages, then change the contact information to redirect traffic elsewhere.

So concerned is the authority that it has issued a warning:

"The SRA does not authorise or regulate a firm called Dovernor Chambers. Therefore, any business or transactions through Dovernor Chambers using the website [dovernorchambers.com](#) [as well as listed 'phone and fax numbers and email addresses] are not undertaken by a solicitor's practice authorised or regulated by the SRA."

It warns that the wording on the website appears to have been cloned from the websites of genuine law firms without their knowledge or consent.

The SRA recommends that genuine legal practitioners and members of the public conduct their own due diligence "by checking the authenticity of the correspondence by contacting the law firm directly by reliable and established means".





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Conveyancing – Assistant to Senior Associate – PP0314

This award-winning business law firm is seeking to recruit both junior and senior solicitors to join their highly regarded Real Estate Team. You will be a qualified solicitor with experience in the following areas: Investigating title and due diligence; Receiver sales; and Landlord and tenant matters.

Construction – Assistant to Associate – PP0134

A leading Irish law firm is searching for strong Construction lawyers. You will be dealing with contract drafting and advisory matters as well as litigation and all forms of alternative dispute resolution.

Energy & Renewables – Associate – J00486

This is an excellent opportunity to join a highly respected legal practice whose client base includes banks, commercial lenders and government agencies. The department advises on the full range of energy transactions and the successful candidate will be dealing with significant project and debt finance related matters.

Investment Funds – Assistant to Associate – J00478

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Knowledge Management Lawyer (Corporate/Commercial Contracts) – Associate – J00367

Our client is seeking a qualified lawyer to join its Knowledge Team supporting the Corporate Department and assisting with other knowledge projects. Reporting directly to the Director of Knowledge, you will be a qualified solicitor or barrister with experience in a top firm. Excellent academics with strong communication skills are essential.

Litigation – Contentious IT/IP – Assistant to Associate – J00472

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Regulatory/Compliance – Assistant to Associate – J00505

This rapidly developing practice requires an ambitious assistant solicitor to join the regulatory and compliance team. The role will involve but is not limited to: Advising clients on practical implications of new regulatory developments; consumer based financing; sanctions regimes; and insurance regulation.

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A Top 5 Dublin law firm is looking to recruit a Senior Tax Assistant with solid general tax experience to slot into a fast growing partner led team. You will advise Irish and European clients on structuring transactions, such as complex cross-border acquisitions, real-estate investment, private equity public offerings of debt and equity securities and joint ventures. The tax group also advises on executive compensation and share incentive schemes, VAT and international tax planning.

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