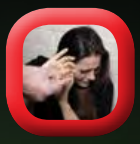


Trespass prohibited
High Court clarifies the nature of trespass-to-person claims in personal injury actions

Hale and hearty
Lady Hale on freedom of religion at the annual Human Rights Conference

Technical ecstasy
Top tech tips from a practitioner's perspective. It's not Tech Trends though!

gazette
LAW SOCIETY

€4.00 **JULY 2014**

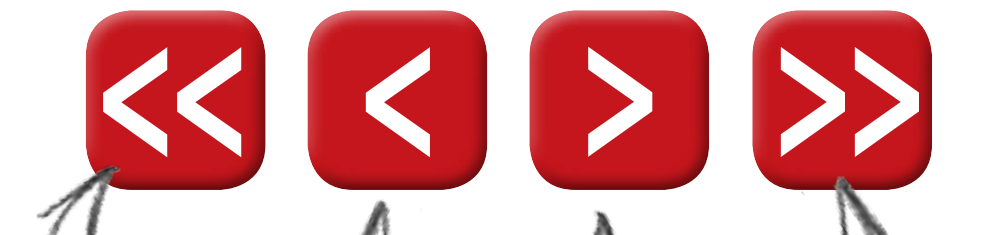
IMA WINNER

FORGET ME NOT

Internet search engines and the right to be forgotten

navigating your interactive gazette

LAW SOCIETY



BACK TO CONTENTS PAGE (once past the contents page)

PREVIOUS PAGE

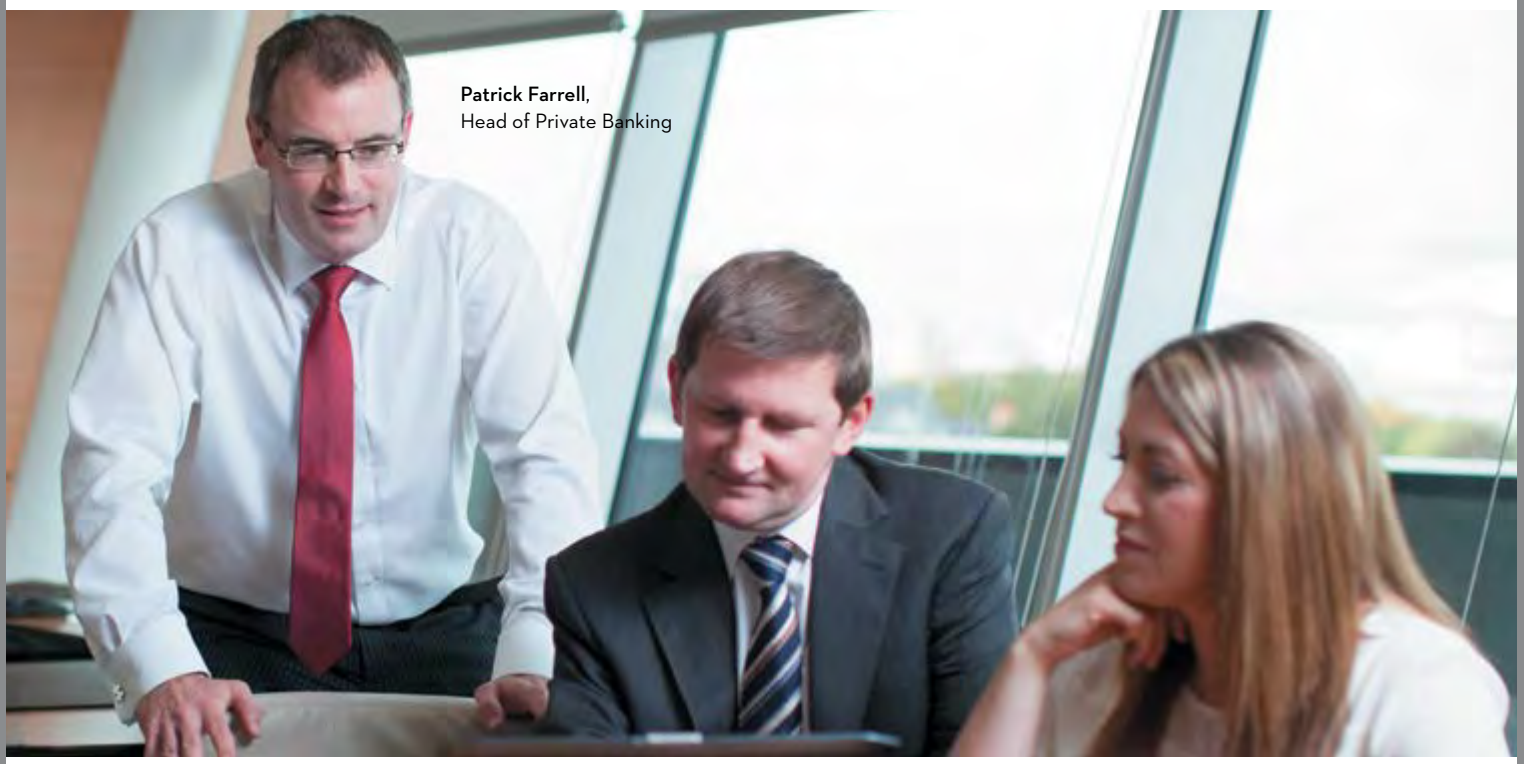
NEXT PAGE

NEXT SECTION/ FEATURE

... enjoy

To enjoy all the features of the interactive version (including bookmarks and contents list), it may be useful to download the *Gazette* to your desktop or mobile device. Depending on your browser, it's possible that viewing the magazine on your browser without saving it first may limit your reading experience.

AIB PRIVATE BANKING



DELIVERING NEW STANDARDS IN BANKING FOR PROFESSIONALS.

You spend each day advising people on their legal matters, but who's looking after your financial affairs and the needs of your family? AIB Private Banking offers a dedicated banking service for legal professionals.

A busy career in law can leave you with little time to look after your own financial affairs. AIB Private Banking is an exceptional new banking experience, offering exclusive, highly-personalised banking to legal professionals and other individuals who require a more proactive, responsive banking relationship from AIB.

At AIB Private Banking, we offer you direct and confidential access to a Relationship Manager. They will help you to efficiently manage your daily banking transactions and best manage your finances to achieve your goals, freeing up your time for your career and your family. Each dedicated Relationship Manager is supported by an expert banking team, to ensure a responsive service where you take priority.

WE MAKE BANKING EASY,
SUPPORTING YOUR BIG DECISIONS,
HELPING YOU TO PLAN FOR THE FUTURE.

SUPERIOR STANDARDS & SERVICE LEVELS

AIB Private Banking is committed to making daily banking easier and more time-efficient for its most highly-valued clients, by introducing new standards and service levels. As an AIB Private Banking client you can contact your Relationship Manager for a prompt response on a range of financial issues, from ordering a new credit card or currency to transferring funds, or more complex financial issues you need information on, such as your mortgage or your pension.

Your Relationship Manager can manage many banking tasks by phone, email or fax ensuring a prompt, efficient service. This greatly reduces the amount of time that you need to give to your banking commitments, giving you the peace of mind that comes with confidential and trusted expertise.

Our team at AIB Private Banking is dedicated to follow-through on all commitments to you, doing the small tasks exceptionally well. You can also benefit from the most advanced digital banking services in Ireland.

A RETURN TO THE TRADITIONAL BANKING MODEL

Patrick Farrell, AIB's new Head of Private Banking, who is responsible for rolling out this new service, is clear in his motivations and aspirations for AIB Private Banking. "What we are aiming for is a return to the up-front values of trust and personal service that were traditional in the banking relationship. Our most highly valued clients are often those who have the least time to look after their financial affairs, such as those working in law, for example.

By delivering the highest level of day-to-day banking and the most advanced digital banking service, we can provide the premier banking experience for our clients. Our goal is to help them to meet their life objectives, giving them the support and advice they need to plan their financial futures. We place the client's long-term interests at the heart of the banking relationship, and are proactive in delivering solutions that will serve their needs and the needs of their family members through all life stages."

We would be delighted to discuss how our new AIB Private Banking services can benefit you. Typically our clients have an annual salary or income which exceeds €250,000. If this applies to you, talk to us about a better banking service which is tailored for you.

To find out more about AIB Private Banking, contact
Patrick Farrell: Telephone 01-6417634 or email patrick.a.farrell@aib.ie

THE CATALYST FOR CHANGE

I've often thought that the cause of the collapse of the 'Celtic Tiger' could be described in one sentence – that we knew the price of everything, but the value of nothing. In trying to resolve our economic problems, we seem to have reached the stage where we know the price of the cuts that are being implemented – but do not appreciate the value of what is, or has been, cut.

Throughout the country over the last number of years, we have seen the closure of smaller District Courts, which have contributed to the destruction of the social infrastructure of small towns and villages throughout Ireland. It was difficult to oppose many of these reductions, as economies of scale held sway.

However, the most recent proposal from the Courts Service proposes the discontinuance of District Courts in areas such as Tallaght, Dun Laoghaire, Balbriggan and Swords.

Tallaght is an area that has 20,000 more people than all of Limerick city. It would be inconceivable that any Courts Service Board would consider leaving Limerick without a District Court. It is proposed that all of these Dublin suburban courts would have their criminal cases heard in the city centre and that all *Road Traffic Act* cases would be moved to Blanchardstown. The difficulties of getting from Tallaght, Dun Laoghaire and Balbriggan to Blanchardstown should not be underestimated.

If this proposal goes ahead, it will not just affect solicitors – it will adversely affect the policing of those areas that are set to lose their District Courts, since the gardaí will be required to travel across the city and remain out of their district for the entire day of a court sitting. This greatly reduces the hours they could have been patrolling the beat.

It will also have a negative impact on business owners who may be called upon to give evidence and have to spend a day in court outside of their local areas. Then there is the effect on the accused, who will have to make their way out to Blanchardstown in order to instruct solicitors and have their defence heard. This is an access-to-justice issue. The citizens of the areas in question are in grave danger of being deprived of their rightful level of access to the District Court.

Solicitors and garda interrogations

The recent decision of the DPP to allow suspects to have a solicitor present during their interrogation at garda stations was made with little or no warning to the Courts Service Board, the Department of Justice or the Law Society. In the case of somebody accused of, say, drug-trafficking, this could mean detention for up to seven days. This would require the presence of a solicitor in the station who is trained and skilled in legal issues that might arise during the course of detention.

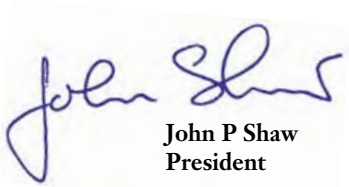
However, no budgetary arrangement was put in place to allow for the costs of the provision of this service by solicitors for this year. This is a fraught issue, given the potential detention times involved and the difficulties this will entail for solicitors who may have to hand over cases to other colleagues, cancel certain appointments, and rearrange hearings at short notice. A solution has not yet been arrived at.

New dawn

Finally, I would draw your attention to the rebranding of the Law Society's image with effect from 4 July. This has been a significant undertaking for all involved, and it shows that the legal profession is fully open to change.

The rebranding of the Society has been carried out following the recommendations of the Future of the Law Society Task Force. Its aim is to promote the profession by strengthening the solicitor 'brand'. In addition, it will be the catalyst for enhancing communications between the Society and its members. Welcome to the future!

> Citizens are in grave danger of being deprived of their rightful level of access to the District Court



John P Shaw
President

gazette
LAW SOCIETY

cover story

features

law society gazette

Blackhall Place, Dublin 7. Tel: 01 672 4828, fax: 01 672 4801, email: gazette@lawsociety.ie

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

COMMERCIAL ADVERTISING: contact Seán Ó hOisín, 10 Arran Road, Dublin 9, tel: 01 837 5018, fax: 884 4626, mobile: 086 811 7116, email: sean@lawsociety.ie. See the *Gazette* rate card online at www.lawsociety.ie/gazette-rates

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

Law Society Gazette
Volume 108, number 6
Subscriptions: €60/€90

Editor: Mark McDermott FIIC
Deputy editor: Dr Garrett O'Boyle
Art director: Nuala Redmond
Editorial secretaries: Catherine Kearney, Valerie Farrell
Printing: Turner's Printing Company Ltd, Longford

32


12

regulars


15

63

Get more at
www.lawsociety.ie

***Gazette* readers can access back issues of the magazine as far back as Jan/Feb 1997, right up to the current issue at www.gazette.ie.**

You can also check out:
- Current news
- Forthcoming events, as well as the **fully interactive version of the *Gazette* and the magazine's indices**.
- Employment opportunities
- The latest CPD courses

... as well as lots of other useful information

nationwide

News from around the country

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

DUBLIN

Dubs debate District Courts threat

PIC: PAUL SHERWOOD

Minister for Justice Frances Fitzgerald attended the DSBA 'Law Book of the Year Awards' on 13 June, held at Bewley's Hotel, Ballsbridge. She is surrounded by the winners and the collaborative partners for the event, including Law Society Skillnet, Byrne Wallace, Peter Fitzpatrick & Co and Lex Consultancy

Colleagues in the suburbs are fuming at the prospect of losing the District Courts of Dun Laoghaire and Tallaght on the southside and Balbriggan and Swords on the northside. The Law Society and DSBA have been working in tandem in denouncing such short-sightedness. The members' dinner was held in mid June in Bewley's Hotel, Ballsbridge, where the DSBA was honoured with the attendance of the new Minister for Justice Frances Fitzgerald, where the feature event was the Law Book Awards.

CAVAN

Real Madrid

The Cavan Solicitors' Association bi-annual CPD weekend took place in Madrid this year from 9-11 May. Lectures were delivered on aspects of the District Court, civil procedure rules, and the professional duty of care.

Members participated in a walking history tour of Madrid with Stephen Drake-Jones. On Saturday, 25 members took part in a three-hour bicycle tour of the city. On 11 May, members visited the city's many fine museums and parks before heading for home.

The association's officers for 2014 are Michael Ryan (president), Eirinn McKiernan (honorary secretary) and Paul Carolan (treasurer).

Sadly, the association suffered the sad loss of its esteemed and much loved colleague, Niall Dolan (see appreciation on page 51) who died after a long illness, which he bore with considerable bravery and dignity. Many tributes were paid to Niall, and sympathies addressed to his wife Anne (a solicitor with AB O'Reilly Dolan & Co) and to his family on their loss.

WEST CORK

Cork court fight continues

West Cork lawyers are continuing with their fight to keep Skibbereen District Courthouse from closure, with judicial review proceedings before the High Court.

The second West Cork Bar Association conference will take place at the Inchydoney Island Lodge and Spa in September. Says Maria O'Donovan (Wolfe & Co): "We are lucky enough to have secured some excellent speakers, including Ms Justice Mary Laffoy and John Lonergan. All members are eagerly anticipating the event following the enormous success of our inaugural conference in 2012."

Maria says that the West Cork Bar Association is continuing its commitment to provide free or low-cost CPD seminars for members: "Very informative talks were delivered recently by Richard Hammond on practical perspectives on ethics, regulation and complaints, and by Edward Sheehan on auditing standards."

SLIGO

Sligo sets high standards

There was no risk of complaint from the large number of attendees at the Sligo Bar Association CPD event held on 16 May 2014, when Sinead Travers (Law Society) delivered a comprehensive and informative talk on minimising the risks of complaints and dealing with clients. The talk covered the key causes and consequences of complaints made by clients and the importance of maintaining high standards of client care.

KILDARE

Thoroughbred topics

Kildare Bar Association held a very successful half-day CPD course on four topics in Naas recently, followed by an evening barbecue. Of great interest was a talk by Alan Isdell (chartered surveyor) on the issue of how the new building regulations affect houses built by their owners.

The association, through its president Niall Farrell, recently made a presentation to newly appointed Judge Grainne O'Neill (District Court) who worked in Naas for many years and has retained strong connections with Kildare practitioners.

LIMERICK

Shannonside social

St John Dundon says that Limerick Bar Association has plans to hold an annual CPD/social event at the Dunraven Arms Hotel on 31 October. It is hoped that this year's event will follow in the footsteps of last year's outstanding success. Speakers to be advised.

representation

News from the Society's committees and task forces

EU AND INTERNATIONAL AFFAIRS COMMITTEE

Brussels reps roundtable held in Dublin

On 21 March, the EU and International Affairs Committee organised a roundtable with Brussels representatives of other European Bars and law societies, *writes Eva Massa*. The meeting followed on from the 2013 roundtable organised as part of the events marking the Irish presidency of the EU.

The event was attended by representatives of Belgium, France, Germany, Luxembourg, Spain, Poland and Britain. Attendees discussed a wide range of topics, including:

- The register of lawyers engaged in lobbying,
- The changes to national legal-aid systems,
- Online legal services and the rise of electronic legal transactions,
- The regulation of the profession,
- Money laundering,
- Training, and
- Access to the profession and lawyers' fees.

Attending the roundtable event were *(l to r):* Hélène Biais (France), Anne Jonlet (Belgium and Luxembourg), Mary Casey (chair, EU&IA Committee), Eva Massa (secretary, EU&IA Committee), Mary Keane (deputy director general, Law Society), Mickaël Laurans (Britain), Emilie Balbirnie (Britain), Diego Leon (Spain), Maria Slazak (Poland, and vice-president of the CCBE) and Hannah Petersen (Germany)

The Belgian representative, Anne Jonlet, explained how, following on from a case taken by the commission against Belgium for failure to properly implement the consumer protection directives (2005/29/EC and 2011/83/EU), Belgium has introduced a new *Economic Code of Law*, with a specific chapter concerning the liberal professions.

Hélène Biais (France) reported on the introduction by the Paris Bar of a voluntary code in relation to lawyer lobbyists. There was also discussion as to how other jurisdictions dealt with the issue of the lawyer's role as an advisor, as distinct from their potential role as a professional lobbyist. Ms Biais mentioned a recent case against the creators of a website that provided the necessary forms to enable the public to access justice directly, in relation to small claims. Following prosecution for the illegal practice of law, they were found not guilty by the Tribunal Correctionnel de Paris.

The German delegate, Hannah Petersen, explained how, in 2013, limited liability partnerships were introduced in Germany and how there are set fees for lawyers in relation to court work that have recently been increased from their 1994 levels by 12%. The German Bar is now compelled by the introduction of a new law to ensure that all lawyers have a secure electronic mailbox with digital signatures. The law requires this system to be in place by 2016.

Maria Slazak (Poland) reported on new legislation there that is introducing changes to the legal profession, including the merger of the two professions (advocates and legal advisors), the control exercised by the state over exams to access the profession (although the design of legal training remains within the bar), and the fact that the bar retains the disciplinary process against lawyers (with extraordinary control by the Supreme Court). Ms Slazak also reported that legal aid in Poland is extremely poor, and only provided for at court level (not at pre-trial level). The majority of services in this regard are provided *pro bono*.

Diego León (Spain) informed the group that the Spanish Bar and RedAbogacía (its technological infrastructure) are the first organisations to have received certification under the Spanish National Security Framework for its information systems, website and its one-stop access point for online legal aid. This put the ITC services of the Spanish Bar in line with the most advanced e-government and e-justice tools. He also reported on a new bill on legal aid, which was due to be published in April. This raises some controversial issues, mainly (a) it eliminates the territorial link of the lawyer with the provision of legal aid, which denies the applicants this fundamental right, and (b) its links to the *Judicial Fees Law*, introduced in 2013, which has been rejected at different levels by civil society and the judiciary, and currently has five appeals against it on unconstitutionality grounds.

Mickaël Laurans and Emilie Balbirnie (the representatives of the joint offices of England and Wales, Scotland and Northern Ireland) reported that the Law Society of England and Wales is trying to ensure that the new Solicitors Regulation Authority (introduced in 2007) becomes more integrated within the Law Society. There have been significant cuts in legal aid, in particular on the civil-aid side (17% total by the end of 2014), which has had a very negative impact on the profession.

The Law Society of Ireland was represented by deputy director general Mary Keane, as well as the chairperson and members of the EU and International Affairs Committee. The focus was on the progress of the *Legal Services Regulation Bill* and its impact on the profession, the creation of the new Court of Appeal and developments on insolvency.

gazette
LAW SOCIETY

www.gazette.ie

BONUS DIGITAL FEATURES WITH YOUR ONLINE GAZETTE

- Links to judgments, cases and relevant literature
- Links to additional material
- Links to advertisers' websites
- Seamless navigation throughout
- View on your computer, tablet or smartphone

For your best viewing experience, download the *Gazette* to your device

Cox 'women in law' award

Arthur Cox has won the 'Best Firm in Ireland' award for the second consecutive year at the Europe Women in Business Law Awards 2014 in London. The awards, sponsored by Euromoney Legal Media Group, recognise firms for their efforts in ensuring that women advance in the legal profession.

The law firm was also shortlisted in the categories of 'best gender diversity initiative', 'best national firm mentoring programme', 'best national firm for work-life balance', 'best national firm for *pro bono* work' and 'best national firm for women in business in law'.

Out with the old, in with the new!

The Law Society of Ireland introduced its new logo to members and the public at a special launch on 3 July 2014. The logo gives the traditional crest of the Law Society a clean, modern look.

The logo is part of a complete rebranding exercise that has included the development of 'tone of voice' guidelines, which direct all communications by the Law Society to be courteous, respectful, of service, clear and concise.

The rebrand was completed by Irish design agency Red Dog (see page 22 for analysis) and was led by director general Ken Murphy, director of representation and member services Teri Kelly, deputy director general Mary Keane, and managing director of Red Dog Mary Doherty.

LAW SOCIETY OF IRELAND

VERITAS · VINCET

"What struck me is that the old logo of the Law Society didn't adequately represent what this organisation and this profession is all about," said Teri Kelly. "We are forward-looking – not old fashioned. We are inclusive – not exclusive. We are proud of our traditions, but we also embrace change and are prepared for the future. That's what our new logo needed to convey."

The new logo derives from the traditional crest, and has been simplified and refined. The traditional crest of the Law Society, which is registered with the Heraldic Office, will live on, however, in the beautiful stained glass at Blackhall Place and on parchments for newly qualified solicitors.

Judicial conferences

Practitioners should note the following dates for conferences held under the auspices of the Committee for Judicial Studies:

- **The 2014 Supreme and High Court conference has been confirmed for Friday 18 July 2014. No cases should be listed for the Supreme or High Court on this date, save on the instruction of the judiciary.**
- **The 2014 national conference will take place on Friday 21 November 2014. No cases should be listed for any court on this date, 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 this date, 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 this date, save on the instruction of the judiciary.**

Know your social welfare law

Ballymun Community Law Centre will present a course on the social welfare code, delivered by Prof Gerry Whyte of Trinity College Law School.

The course will start on 13 August 2014 and will take place on Wednesdays from 2pm to 4pm, over five weeks, at the Council Chamber, Civic Offices, Main Street, Ballymun, Dublin 9. The course fee is €50 (social welfare recipients free). Topics will include jobseekers' payments, family payments, sickness and disability payments, old-age pensions, means-testing, and social welfare appeals.

To book your place, please contact BCLC at 01 862 5805, email: info@bclc.ie, or visit the website at www.bclc.ie.

Supreme Court nomination

The Government has nominated Mr Justice Peter Charleton for appointment to the Supreme Court by the President. Mr Justice Charleton is a serving judge of the High Court. The vacancy arose with the retirement from the Supreme Court of Mr Justice Nial Fennelly on 3 May 2014.

Born in 1956, Mr Justice Charleton was educated at Trinity College Dublin and the King's Inns. He was called to the Bar in 1979 and to the Inner Bar in 1995. He was appointed to the High Court in 2006.

Specialist support for senior solicitors

A new Support Services initiative called 'Resolve' has been established to provide specialist support to job-seeking senior solicitors.

Solicitors qualified for more than ten years, and who have significant work experience, face a unique set of challenges when job-seeking. The older a person becomes, the more significant these challenges become.

This problem is by no means particular to the legal profession – or to Ireland. Across industry sectors and national boundaries, ageism is well embedded within organisations. The legal profession, however, is traditionally quite positive towards 'grey hair'! It has long been acknowledged that highly experienced solicitors don't need to spend as much time researching as their juniors. And, day to day, they usually require less close supervision and direction.

Notwithstanding these strengths, however, senior solicitors who find themselves out of work increasingly experience a tougher time than their junior counterparts. Too many end up at risk of slipping into long-term unemployment.

PIC: THINKSTOCK

Which is why Resolve was set up. An initial meeting took place in mid-June in order to establish what senior solicitors need in terms of support and assistance. Following that, an initiative plan was developed.

Central to the initiative is a support group that meets every week. These meetings take place at Blackhall Place, but provision has been made for the participation of solicitors who cannot physically attend.

In addition, members of the support group can stay in touch and share information through a private group on LinkedIn that is open solely to senior solicitors.

Resolve will operate in unison with 'Match Up' – another recently established initiative that notifies employers on a regular basis about solicitors who are available for work in their area.

All solicitors qualified over ten years are invited to join Resolve – especially solicitors who are currently out of work or who anticipate that they might be in the near future.

For more information, contact Paul Manley (Support Services) at p.manley@lawsociety.ie or tel: 01 672 4937.

Dip into law

The inaugural Diploma in Law, run by the Law Society's Diploma Centre, will begin on 19 September. Lectures for this intensive one-year course will take place on Wednesday evenings, with an additional block weekend (Friday and Saturday) occurring once a month.

This diploma will be of interest to people looking to expand their legal knowledge, enhance their current role or considering a career in law. Flexible study options are on offer. All lectures are webcast and available onsite, online or as on-demand playback to accommodate distance learning. Participants have the option to take the course over a two-year period.

Consisting of eight key legal modules, the course will be unique in integrating academic theory with the practice of law. Lecturers and tutors will include leading practising solicitors and barristers.

More information is available on www.lawsociety.ie

Law Society offers financial supports for solicitors

The Law Society operates a number of financial supports for solicitors, *writes Sinead Travers*. These include a retirement trust scheme, a group life assurance scheme, a group income protection scheme, and financial advice.

The retirement trust scheme offers a number of retirement options that will allow members to fund the lifestyle they desire when they retire. Members of the scheme can contribute any amount, at any time. As well as being able to make regular or once-off contributions, members can start or stop saving at any time.

Members who are self-employed or in non-pensionable employment and under 75 years of age are eligible to join the scheme. For more information or to join the scheme, contact Brian King of Mercer at tel: 01 411 8273 or email: brian.king@mercer.com.

The Law Society's income protection scheme offers members exclusive and preferential income protection rates and benefits. Joining is open to all members under the age of 60. It is designed to cover many of scheme members' financial commitments in the event of an unforeseen illness, injury or disability preventing them from earning an income. For more information, contact PenPro by emailing msheehan@penpro.ie or tel: 01 200 0100.

PenPro has been selected by the Law Society to provide financial planning advice to members regarding insurance, mortgages, saving plans and general pension advice (not including the Law Society's retirement trust scheme). To find out more, contact Martin Sheehan, PenPro Limited, at the contact details above.

The Law Society's group life assurance scheme is placed with Generali PanEurope and provides cover for €58,000. The scheme covers practising certificate holders, with the annual premium of €50 included in the practising certificate fee. Solicitors who are in the full-time service of the State, judges, and county registrars may also apply to join the scheme.

The Law Society also provides a range of financial support for solicitors' practices. Full details are available in the *Support Services Directory 2014* and on the website at www.lawsociety.ie/Solicitors/Representation/Member-Benefits.

To discuss the range of benefits offered by the Law Society to members, contact Sinead Travers (support services executive) at tel: 01 881 5772 (direct dial) or email: s.travers@lawsociety.ie.

Rationalisation of court venues has 'gone beyond the rational'

The systematic closure of court venues all over the country has gone beyond what is rational and justified, and is damaging to the very fabric of the justice system, the Law Society has warned.

Speaking at the annual Justice Media Awards on 12 June, President John P Shaw said that the Law Society had serious concerns about the impact of cuts in the justice system that had resulted in the closure of dozens of courts across the country.

The Courts Service is now proposing to close the District Courts in Dún Laoghaire, Tallaght, Swords and Balbriggan – in effect, all but one of the suburban court-sitting venues in Dublin.

"While the cutbacks in State funding of the health system have been the subject of enormous media analysis and public debate," Mr Shaw added, "there has been very little debate about the cutbacks in State funding to the justice system – whether in relation to cuts in criminal legal aid or in the funding of the Courts Service. This has had consequent knock-on effects on access to justice for the citizens of Ireland."

Cathal MacCoille: 'The Courts Service says this is about saving money and delivering efficiencies'

Ken Murphy: 'It is a matter for central government. There's been no debate about the cutbacks in the justice system'

Almost 80 courts closed

Asked to comment on the matter on RTÉ's *Morning Ireland* on 23 June, director general Ken Murphy said that, since 2008, a total of 77 local courts had been closed down – a rate of over 12 per year – and still more courts were facing closure in the near future.

"The rationalisation of the Courts Service has gone beyond what is sensible and justified and poses a threat to the very fabric of our justice system," the director general commented.

Asked by interviewer Cathal MacCoille why the idea of closing the courts was "short-sighted and flawed", Murphy replied: "We think the rationalisation has gone beyond the rational. For example, there were 14 court venues in Co Mayo – there are now four."

Murphy questioned how much money was actually being saved by closing courthouses. "In Cork, the West Cork Bar Association has been fighting in relation to Skibbereen Courthouse, following the closure of seven court venues there."

The association has brought judicial review proceedings against the Courts Service to prevent the closure of Skibbereen Courthouse. The cost of keeping the court open is estimated at €8,000 annually.

"If this court is closed, what additional costs will the State incur when a member of An Garda Síochána or the HSE has to travel a considerable distance and spend an entire day away from their regular duties?" Murphy asked.

Capital punishment

Addressing the issue of the proposed Dublin closures, the director general pointed out that the capital had already suffered closures. "The courts in Dundrum, Rathfarnham and Kilmainham have all closed. Now, it's being proposed to close Swords and Balbriggan courthouses – the two fastest-growing population areas in the country – as well as Tallaght, which has a population in excess of the population of the city of Limerick, and Dun Laoghaire. The effect is that there would be no court venue between Bray and the north bank of the Liffey.

"In addition, it is proposed that all of the *Road Traffic Act* cases for the whole of Dublin – the greater metropolitan area with a population of well over a million people – will all take place in Blanchardstown, with all of the parking and other issues that that will give rise to. We think this is being driven solely by economics. We have sympathy with the Courts Service, of course. They are doing the best they can."

Queried by MacCoille as to the Courts Service's rationale behind the closures, which it had stated were about saving money and delivering efficiencies while not unduly impacting on access to justice, the director general replied: "This is driven by a massive cut in the Courts Service's budget. We say it is certainly not about improving the service to the public, which is what they should be about. It is about saving money. The president of the Law Society and I met with Minister Frances Fitzgerald this day last week. We raised this issue with her, among others. And it was pointed out to her by her officials, of course, that this isn't a matter for you, minister, this is a matter for the Courts Service. The Courts Service Board will decide it. But I took them up on that and said, 'Minister, it is a matter for you. It is a matter for central government. There's been no debate, no debate at all, about the cutbacks in the justice system.'

"This is going to have all sorts of impacts, not least on the million or so people in the greater Dublin area who, instead of courts of local and limited jurisdiction, are now getting more and more remote courts. And yes, this has happened all over the country, but it has happened in much smaller population areas. This is now happening in the greatest concentration of population in the country."

With a 'c', not a 'q'

The Law Society is holding a reunion barbecue on Friday 5 September 2014 for all solicitors who have qualified within the past five years. It will take place on the grounds of the Society, and the event will move indoors if the weather proves unkind. This is an excellent opportunity to revisit your memories of Blackhall Place, while relaxing and catching-up with colleagues. Booking is essential.

For further information, including time and price, contact Sinead Travers (Law Society) at 01 881 5772 or email: s.travers@lawsociety.ie.

Irish lawyers working tirelessly for human rights in Malawi

In May, the Law Society's deputy director general Mary Keane and the charity coordinator of Irish Rule of Law International, Emma Dwyer, travelled to Malawi to visit a small team of Irish lawyers who are implementing IRLI's Access to Justice project.

Since its establishment in 2011, eight volunteer lawyers have worked on the project. Jane O'Connell, Morgan Crowe and Sarah Houlihan currently comprise the Malawi team.

The project grew out of the personal experience of solicitor Paula Jennings who witnessed, first-hand, the severe overcrowding in the prisons of the capital city, Lilongwe, in 2010. A 2011 study reported that Maula adult prison was at 200% capacity, while Kachere juvenile detention centre was at 296%. Today, if you visit Kachere, there is hardly enough space in the small prison courtyard for all the inmates to sit down.

The project aims to improve access to justice for unrepresented vulnerable people in the criminal justice system in targeted areas of the central region of Malawi, including Lilongwe. This is achieved through education programmes, targeted training on restorative justice and human rights, legal assistance to people in pre-trial detention, facilitation of prison 'camp courts', and legal literacy programmes for detainees and the wider community. The project has also developed a diversion aftercare programme for young offenders.

Emma Dwyer (IRLI coordinator) and Mary Keane with police officers Chao and Fanny

IRLI's volunteer lawyers work in Malawi for a period of six to 12 months in partnership with key justice bodies, including the Ministry of Justice, Director of Public Prosecutions, Legal Aid Department and Malawi Police Services, among others. Importantly, the lawyers work next to Malawian colleagues, experiencing first-hand the challenges that people face in trying to get access to justice because of capacity constraints, low morale and limited recourses. The Legal Aid Department in Lilongwe currently has just three legal aid advocates who cater to a population of about 6 million people.

During the May visit, IRLI's Malawi team of lawyers organised a number of important activities, including:

- A one-day training event for magistrates on jurisdiction and sentencing,
- A prison-camp court, where a magistrate heard bail applications for minor offences,
- A police station cell inspection, and
- A community legal sensitisation workshop.

The range of these activities reaches to all levels of the criminal justice system, from the vulnerable person in jail with no representation, to the community and local traditional leaders, to the magistrates and High Court judges charged with the responsibility of upholding justice in all its forms.

Partner meetings

The IRLI team also had the opportunity to meet with Malawi's Director of Public Prosecutions, Mr Bruno Kalemba, as well as other partners, including Irish Ambassador Liz Higgins. The team also met the local justice representatives with whom the Irish lawyers work closely, including police officers, advocates, paralegals, leaders and youths who are championing change in the Malawian justice system.

Irish Aid has contributed funding to the Malawi project from the outset and has recently committed to an additional three years of support. This, together with charitable donations and fundraising events, is how the Irish lawyers are able to continue with their important work. For additional information about how to support this project, contact Emma Dwyer at edwyer@irishruleoflaw.ie.

IRLI's project in Malawi is an example of the significant role that members of the Irish legal profession can play in international development and the protection of human rights in countries where the voices of many people are never heard. For more information on IRLI's Malawi project, visit http://irishruleoflaw.ie.

Deputy director general Mary Keane and the IRLI team met with Malawi's DPP Bruno Kalemba

Mediation Northside marks its tenth anniversary

(L to r): Rose Wall (director), Tánaiste Eamon Gilmore and Valerie Gaughran (manager)

Mediation Northside celebrated its tenth anniversary on 12 May and the special guest was Tánaiste Eamon Gilmore. The mediation service was established by the Northside Community Law Centre in 2004 to address the need for a free and accessible conflict resolution service in the community that went beyond family law.

Mediation is provided on issues that encompass boundary disputes and antisocial behaviour. It has expanded over the years to include elder mediation, sibling disputes, workplace disputes and grandparent visitations. It accepts referrals from bodies such as the gardaí, the Courts Service and local authorities.

Since 2004, Mediation Northside has handled 1,425 referrals, with 78% of those progressing to mediation. Of that number, approximately 77% result in a successfully mediated agreement.

This free service is provided by a panel of 150 fully trained mediators who have contributed over 7,000 hours of their time since the service began.

Speaking at the celebration, director Rose Wall said: "The mediation service complements the legal service as an alternative dispute resolution process when the latter is not appropriate. This is particularly true of private disputes between family members and neighbours, where it is vital that good relationships are preserved and parties are enabled to take important decisions over matters which affect their lives."

Time to think about PII

The professional indemnity insurance renewal season will soon be upon us again. Firms are advised to now begin the process of getting together the information and documentation that they will need to complete the common proposal form.

The checklist at the start of the current common proposal form is a good starting point, together with a copy of last year's completed form. Please note that firms are not required to provide certificates of good standing with the common proposal form. It is expected that the common proposal form for the 2014/2015 indemnity period will be published later in the year.

The Society's PII helpline (tel: 01 879 8707 or email: piihelpline@lawsociety.ie) is available to provide information and guidance on the form and the PII renewal process. PII resources can be found on the Society's website at www.lawsociety.ie/PII.

THERE'S AN APP FOR THAT

Any time, any place, anywhere

APP: iANNOTATE **PRICE:** €8.99

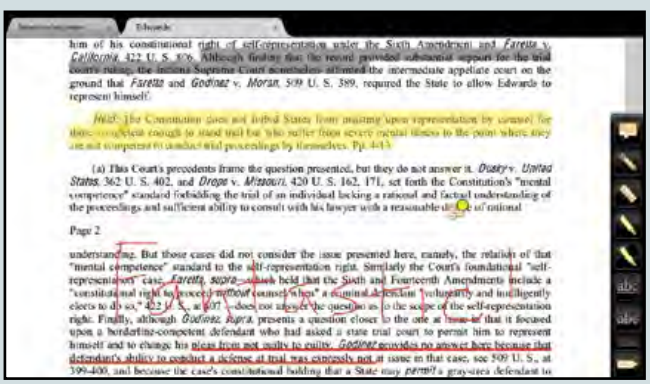
Solicitors work with huge amounts of PDF files, *writes Dorothy Walsh*, and just because a document is saved in an uneditable format does not mean that there isn't an app that allows us to take that PDF document and comment on it and add our two cents' worth.

***iAnnotate* does just that, and it also lets you copy the content of a PDF document in a MS *Word* compatible and editable format. The iPad – being the great little gizmo that it is – already has the built-in ability to view PDF files, and the free Adobe *Reader* app offers even more options, but for professional work with PDF files, it is nice to have a more powerful app.**

***iAnnotate* (€8.99) basically allows you to open one or more PDF documents and work on them almost to the same extent as you would work on a MS *Word* or *Pages* document. If you open a document from Dropbox in *iAnnotate* and make changes to that document, the app will warn you via a little red spinning ball on the screen that you are working on an amended version of the document and when you finish and save the new version, it will save back into Dropbox as the final amended and saved version. This is a really good feature.**

There are loads of handy and useful tools to work with within the app. You can actually highlight text, write notes across the document, search within the document for particular words, add bookmarks, rotate the document, sign the document with the in-built pen, and create a stamp of your signature so it can be applied automatically. It facilitates annotation on *Word* documents too, which is a really useful feature: the app opens the *Word* document as a PDF, and away you go.

This app has been compared with *Goodreader*, but I don't see them as being really comparable in terms of what we as solicitors will get from it. *Goodreader* (as you will remember from the Jan/Feb review) is great for collating, sharing, and cataloguing documents of all kinds and formats, whereas *iAnnotate* is great for opening and working with all kinds of documents in all kinds of formats. I really like it for working with my headed paper on the go, marking up comments on screen, highlighting text on reports, making notes on all manner of documents, editing and saving and sharing my views! It's an app that serves a purpose well and one in which even the functionality described here is just the tip of the iceberg.



Louth and proud at seventy!

Louth solicitors Dermot Lavery and Roger MacGinley celebrated their joint 70th birthdays at the Bellingham Castle Hotel recently. Many friends from the County Louth Solicitors' Bar Association attended, including members of the judiciary, solicitors from across the Border in Newry and Banbridge, colleagues from Drogheda and Monaghan, and the DSBA president Keith Walsh who travelled all the way from the capital. The speakers included Mr Justice Matthew Dearey and Judge Flan Brennan, bar association president Conor MacGuill and Fergus Mullen (MC). Marking their important milestones were *(l to r)*: Dermot and Geraldine Lavery *(left)* with Lucille and Roger MacGinley

Lisa is world champion

Law Society in-house designer Lisa Duffy is the new world champion in the deadlift event at the WDFPA World Single Lifts Championship, held in Dusseldorf, Germany, from 7-8 June.

Lisa (third from left) matched her personal best of 165 kilos in the deadlift on 8 June to take first place on the podium – thus breaking her own national record, which stands at 162.5 kilos. A relative newcomer to powerlifting, Lisa took up the sport two years ago with the Performance and Fitness Academy in Naas, Co Kildare. She began competing in August 2013.

Attracta O'Regan (head of Law Society Professional Training) delivered a Legal English Systems Negotiations Masterclass to Italian lawyers in Posada, Sicily. The course was delivered under the auspices of the School of Advocates (Scoulo Di Formazione Forense, Nuoro) and the Nuoro Bar Council, in collaboration with Law Society of Ireland. The visit resulted in a mutual CPD reciprocity agreement between the School of Advocates, the Nuoro Bar Council and the Law Society of Ireland. This summer, LSPT will run four legal English courses at Blackhall Place. Email lspt@lawsociety.ie for details

PIC: EIMEAR DUGGAN PHOTOGRAPHY

The first of the so-called 'regional cluster events' took place in Ennis in May. The event was chaired by Law Society President John P Shaw and was presented in collaboration with the Clare Bar Association, Galway Bar Association, Mayo Solicitors' Bar Association, Limerick Solicitors' Bar Association and Law Society Skillnet. Attending were *(from l to r)*: Bill Holohan (Holohan Law), Suzanne Bainton (Liston & Co), Richard Hammond (Hammond Good), Annette O'Connell (Probate Office), St John Dundon (Dundon Callanan), John P Shaw (Law Society president), Katherine Kane (LSPT), Attracta O'Regan (Law Society Skillnet) and Gerry O'Donnell (O'Donnell Waters)

Islamic finance success

PIC: JASON CLARKE PHOTOGRAPHY

Participants in the Diploma in Islamic Finance celebrated at CIMA's HQ in Harcourt Road on 16 May. The diploma was delivered by the Law Society Finuas Network in partnership with the Chartered Institute of Management Accountants (CIMA). *(Front, l to r)*: Jean Scally, David Harrison, Sinead Hart Moran, Kasturi Majumdar, Simon O'Neill and Rana Sayegh; *(back, l to r)*: Abdullah AL Naimi, Neil Ryan (assistant secretary general, Department of Finance), Eoghan Ryan, Gerard Greene, Eamon McDonagh, Dermot Monahan, Mert Demiralp, John Havel, Dave Flynn (Skillnets Ltd) Michelle Nolan (Law Society Professional Training), Irshad Ul Hassan, Denis McCarthy and Denis McCarthy (director, CIMA Ireland)

New partner and associates at Orpen Franks

On the appointment of a new partner and associates at Orpen Franks, managing partner Peter Walsh commented: "We are delighted to continue in the expansion of our practice, having recently appointed Rachael Liston as a partner in our medical and professional negligence department, in addition to Martina Devaney, associate solicitor, who has joined our commercial property department, and Angela Cleary, associate solicitor, who joined our corporate and commercial department."

(From l to r): Rachael Liston (partner), Angela Cleary (associate solicitor), Martina Devaney (associate solicitor) and Peter Walsh (managing partner)

Semi-final finish for Society's Stetson moot team

Irish trainee solicitors Sinéad Martyn, Kieran O'Sullivan and Aoife O'Carroll won through to the semi-finals of the Stetson International Environmental Moot Competition in Gulfport, Florida, last April. The unusual theme of this year's competition was international law relating to the protection of sea turtles

Tip top at Telders!

Award winners Hannah Shaw (Eugene F Collins) and Shane O'Neill (McCann FitzGerald)

A Law Society team took two awards at the international final of the Telders International Law Moot Court competition, held at the Peace Palace in The Hague, *writes Eva Massa (team coach)*. The team, which represented Ireland at the final, was ranked seventh of the 27 teams participating.

Telders is an annual moot court competition on public international law and one of the most prestigious competitions in Europe. Each year, student teams are presented with a case involving a fictitious dispute between two states. This dispute is put before the United Nations' most important legal organ, the International Court of Justice (ICJ).

The competition consists of three stages:

- A written stage where teams conduct extensive research and prepare memorials on behalf of the applicant and respondent,
- A national (oral) round to select the team representing Ireland, and
- An international final (oral) round at the Peace Palace in The Hague.

During the final, team members took the opportunity to network, meeting with academics in international law as well as judges of the ICJ. It was a great opportunity to practise their advocacy skills and gain knowledge and confidence in this area of law.

Congratulations to team members Shane O'Neill (McCann FitzGerald), Hannah Shaw (Eugene F Collins) and Caolán Doyle (Doyle & Co, Solicitors).

The team expresses its gratitude to former trainees who helped with the practice rounds, and to the team's firms for their support.

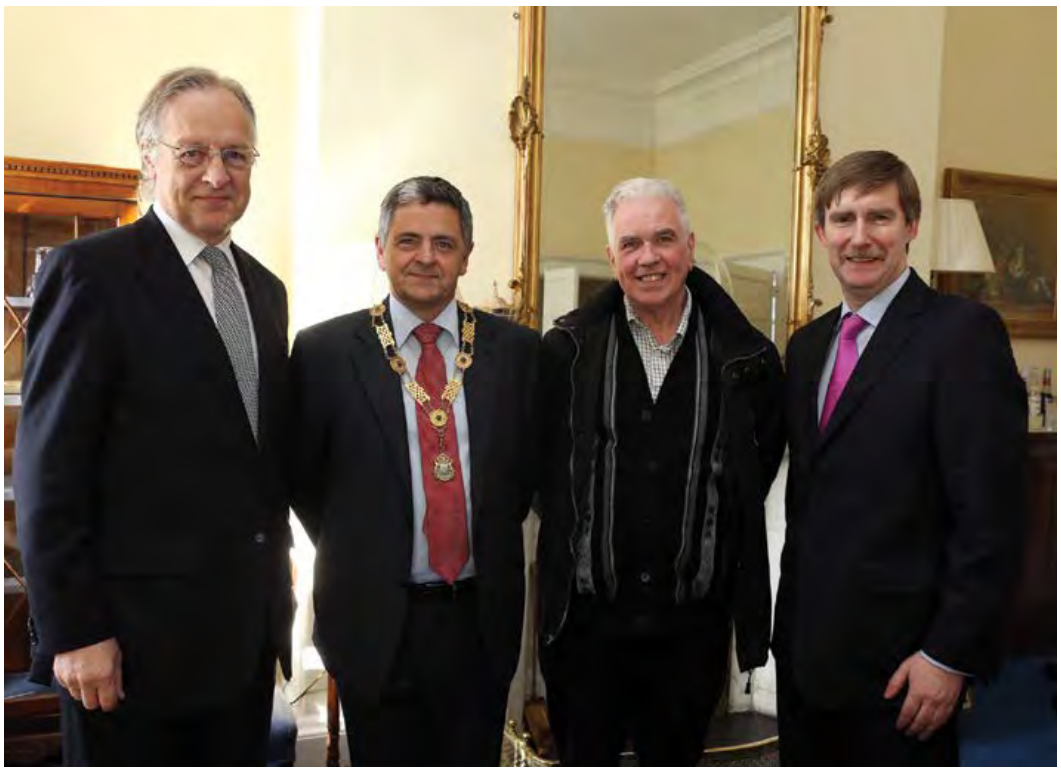
Fr Peter McVerry: 'You can make a difference'

Celebrated social justice campaigner Fr Peter McVerry has told newly qualified solicitors that it is incumbent on them to play their part in the building of a fairer society. "It is a very important role you have in making this society a more just one", he stated.

Speaking at the Law Society's parchment ceremony on 8 May, he pleaded with the newest batch of solicitors to use their privileged position to build a fairer society. "The greatest happiness in life," he said, "was in giving to others. It is the taking up of the cause of those who are poor and marginalised that will give you the most pleasure.

"If we don't do this, we are setting down a road to a more marginalised society – and those who are marginalised will express that in criminality and antisocial behaviour.

"Please give your support to the many people that need you. You can make a difference," he concluded.



PIC: JASON CLARKE PHOTOGRAPHY

At the parchment ceremony on 8 May 2014 were *(l to r)*: Mr Justice Michael Peart, Law Society President John P Shaw, Fr Peter McVerry SJ and director general Ken Murphy

on the move

James O'Rourke has joined Leman Solicitors as a senior associate on the corporate and commercial team from a leading multinational pharmaceutical company

Sharon Pennick has joined the Leman Solicitors commercial property team as a solicitor. She specialises in land development

Síobhra Rush joins the employment team in Leman Solicitors from one of Dublin's top-five firms. Síobhra has over 12 years' experience

Ronan McGoldrick has been appointed partner in the litigation department of Leman Solicitors. Ronan is a financial services dispute specialist

Mason Hayes & Curran has appointed Nina Gaston as partner to its insurance team. Nina specialises in professional indemnity defence litigation

DAC Beachcroft has appointed partner Gary Rice to its global group. Gary is experienced in public, regulatory and commercial law

LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for
Professional Education and Training

Irish Institute of Training & Development (IITD) Award Winners 2011, 2012 & 2013 Awarded for excellence in training and development

LAW SOCIETY OF IRELAND

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

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
24 Sept	STEP Annual Conference (Probate Practice Update) in collaboration with Law Society Professional Training	€180	€225	3.5 General (by Group Study)
25 Sept	Annual Employment Law Update in collaboration with the Employment Law Committee	€180	€225	3.5 General (by Group Study)
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	CPD Conference – Mansion House Dublin – in collaboration with the Sole Practitioners Network and Law Society Skillnet	€85 Hot lunch and networking drinks reception included		6 M & PD (by Group Study)
8 Oct	Annual Litigation Conference - in collaboration with the Litigation Committee	€180	€225	3.5 General (by Group Study)
11 Oct	Human Rights Committee – Annual Conference	Complimentary		3.5 General (by Group Study)
16 Oct	Annual Property Law Conference – in collaboration with the Conveyancing Committee	€180	€225	3.5 General (by Group Study)
7 Nov	Annual In-house and Public Sector Conference: Law Society Professional Training in collaboration with the In-house and Public Sector Committee	€180	€225	1 Regulatory plus 1 M & PD Skills plus 1.5 General (by Group Study) (3.5 total)
14 Nov	CPD Update Conference 2014, Clarion Hotel – Cork – In collaboration with Southern Law Society and West Cork Bar Association	€85 Hot lunch and networking drinks reception included		6 (by Group Study)
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 & Child Law Committee	€180/€225 Hot Buffet Lunch included		4.5 General (by Group Study)

COMING THIS AUTUMN – COURSE IN CONSTRUCTION ADJUDICATION – REGISTER YOUR INTEREST BY CONTACTING LSPT@LAWSOCIETY.IE

ONLINE COURSES: To register for any of our online programmes OR for further information email: Lspt@Lawsociety.ie

Online	How to use an iPad for business and lifestyle	€136	Approx. 5 hours Management & Professional Development Skills (by eLearning)
Online	How to use a Samsung for business and lifestyle	€136	Approx. 5 hours M & PD Skills (by eLearning)
Online	Twitter for Lawyers: The "How to" Guide	€55	Approx. 5 hours M & PD Skills (by eLearning)
Online	The LinkedIn Lawyer: The "How to" Guide	€55	Approx. 5 hours M & PD Skills (by eLearning)
Online	Facebook for Lawyers: The "How to" Guide	€55	Approx. 5 hours M & PD Skills (by eLearning)
Online	How to create an eNewsletter	€90	Approx. 5 Hours M & PD Skills (by eLearning)
Online	New Terms of Business - Contract Precedent	€45	Approx. One Hour Regulatory Matters (by eLearning)
Online	Responding to a Regulatory Investigation & Data Protection – the current regulatory position	€45	Approx. One Hour Regulatory Matters (by eLearning)
Online	Touch Typing	€80	Approx. 5 Hours M & PD Skills (by eLearning)
Online	Microsoft Courses – Word - all Levels, PowerPoint – all levels, Excel	From €40	Approx. 5 Hours M & PD Skills (by eLearning)

For full details on all of these events visit webpage www.lawsociety.ie/Lspt or contact a member of the Law Society Professional Training team on:
P: 01 881 5727 E: Lspt@lawsociety.ie F: 01 672 4890

**Applicable to Law Society Skillnet members. Please note FIVE hours on-line learning is the maximum that can be claimed in the 2014 CPD Cycle*

letters

Those pesky non-conveyancing matters once again!

From: Seán Ó Riain, Achadh an tSeagail, Achadh an Iúir, Contae an Chábháin

So, now that water charges are now upon us, can I, as a legal executive (or 'law clerk', as I used to be called) of 35 years' experience, request the Law Society Conveyancing Committee not to get the profession further embroiled in non-conveyancing matters by directing practitioners that the matter of water charges are not deemed to be a part of conveyancing transactions and that the profession will have no role in dealing with same?

Already conveyancers are called upon to deal with a ridiculously increasing number of non-title matters, such as TV aerials, cable and satellite TV, consent to transfer of phone lines, ISDN lines, MMDF, broadband, rubbish collection, alarm codes, alarm company accounts, anti-money-laundering regulations (okay, that one's probably necessary!) and BER, in addition to new title matters such as HHC, LPT, NPPR, service charges, *MUD Act*, wastewater treatment plant registrations, e-stamping, PPS number problems – on top of VAT, municipal rates, and double-checking architects/engineers' qualifications and certifications in relation to building control and planning permissions.

As water charges are simply a utility that will not be a charge on property, can we please not get involved in extra work for less fees and let the parties themselves, or the estate agents, deal with electricity, phone lines, TV connections, rubbish collection, other periodic or annual charges that do not affect title, and the plethora of other non-title matters that arise in property transactions, which have nothing to do with conveyancing?

(The author of this letter wishes us to point out that the opinions expressed are solely his own.)

Taking issue with advertising regulations

From: Anthony Brady, Griffith Court, Fairview, Dublin 3

As a retired solicitor, I am in position to comment on the item 'Non-compliance with advertising regulations staggering' (*Gazette*, June 2014, p6) without it appearing that I might, in some way, be seeking to feather my own nest.

It seems to me that the Society needs to revisit this whole question of advertising by solicitors in order to reflect current realities and to more effectively represent the interests of its members in this respect, in an age where there is pressure to liberalise legal services in order to (allegedly) reduce costs.

Surely the existing regulations must be contrary to rules providing for freedom for everyone to provide services and to compete in a free market?

An example of current rules that make no sense to me:

- 'First consultation free' – we live in a country where there is no access to free legal aid in civil matters. Can solicitors not be free to encourage people to seek legal advice in a situation where they feel they may have been wronged?
- 'Most cases settled out of court' – if this is a true statement by a solicitor, why cannot the fact be made known? Is it not desirable that cases be settled before everyone involved spends days in court in order to achieve an outcome that could have been achieved months and years earlier, if the parties had the will and the wit to seriously negotiate?
- Problems with the words 'medical negligence', 'accident at work', 'work accident' – if people have accidents, then the reality is that people have accidents and, surely, it is ridiculous not be able to name the nature of such accidents. If people wrongly claim to have been injured, then they should not be able to successfully extract a payment to which they are not entitled.

I could go on, but from the above, readers will understand the gist of my argument.

I am encouraged by the heading of the president's message in the same issue, 'Seeking solutions on your behalf'. This restriction of freedom to trade fairly is one that calls for a solution. If we go for it, then there is the possibility that the rating of the Law Society in the eyes of its members will improve beyond the dismal figures given in the same issue of the *Gazette*. We really have to exert more of our representative role at a time when the profession is having to adapt to a constant stream of changes, both in legislation and in regulation, which increases the responsibilities of solicitors and increases their exposure in terms of professional indemnity risks.

(And I add – for the removal of doubt – that I believe I did, during my time in practice, fully comply with the regulations.)

viewpoint

IN THE PUBLIC INTEREST

The Law Society's increased public affairs and policy role will serve to improve the quality of legislation and policies – for the good of the public and legal practitioners, says Cormac Ó Culáin

Cormac Ó Culáin is a solicitor and the Law Society's public affairs executive

That the Society should play an increased role in the formulation of public policy was a significant recommendation of the Future of the Law Society Task Force, based on the views of its members. This public policy role seeks to improve the quality of legislation and policies, so that they reflect the experience of the public who rely on them and the expertise of those who practise law.

It is, of course, a two-way street. Policymakers and public representatives also benefit from input from the Law Society. As they contend with increased pressures and demands, the opportunity to carefully consider decisions, and their wider impact, may be scarce. Added to this is the increased volume of legislation and regulation in recent years, and reduced resources in public administration. In such circumstances, a credible and trusted perspective should be welcome.

> **Pre-legislative scrutiny of bills has been introduced as one of the Government's commitments to political reform, representing increased participation by stakeholders in the legislative process**

Pre-legislative scrutiny

Pre-legislative scrutiny of bills has been introduced as one of the Government's commitments to political reform, representing increased participation by stakeholders in the legislative process.

While not entirely systematic, this scrutiny represents a key opportunity for the Society to communicate directly with the shapers of legislation and to represent the experience of its members and their clients.

Whether written submissions or oral presentations, a well-articulated and evidence-based contribution from the profession leads to greater trust and confidence on all sides. In the first six months of this year, the Law Society has advocated alongside other civil society groups on bills pertaining to criminal justice, child and family law, and intellectual property matters. In addition, the Society continues to contribute to bodies such as the Law Reform Commission, the OECD, and the European Commission.

As opportunities to engage on issues of concern to the profession expand, it must be remembered that committee and Council members contribute in a voluntary capacity.

Dynamic Society committees

The leadership and quality of the profession's voice is determined by a strong committee structure within the Law Society. The specialist knowledge of committee members is highly valued, both by the Society itself and by those drafting and formulating policy. This is confirmed by the resounding positive and welcoming comments of Government ministers and Oireachtas committee chairs on foot of Law Society participation. Dynamic, adaptive and responsive committees are the cornerstone of the Society's input to wider debates.

As part of the implementation of the recommendations of the Future of the Law Society Task Force, there will be a review of the existing committee structures in order to maximise their effectiveness both for the membership and for the Society's wider public interest and affairs function.

Brussels' agenda

With scrutiny of EU proposals for legislation at Oireachtas level, increasingly influential MEPs, together with the European Semester process, the scope to engage with Europe has never been stronger.

The effect of EU legislation on the work of legal practitioners and the lives of their clients has never been so apparent. Criminal justice, alternative dispute resolution and family law are but a few themes with an EU dimension being considered by the Society.

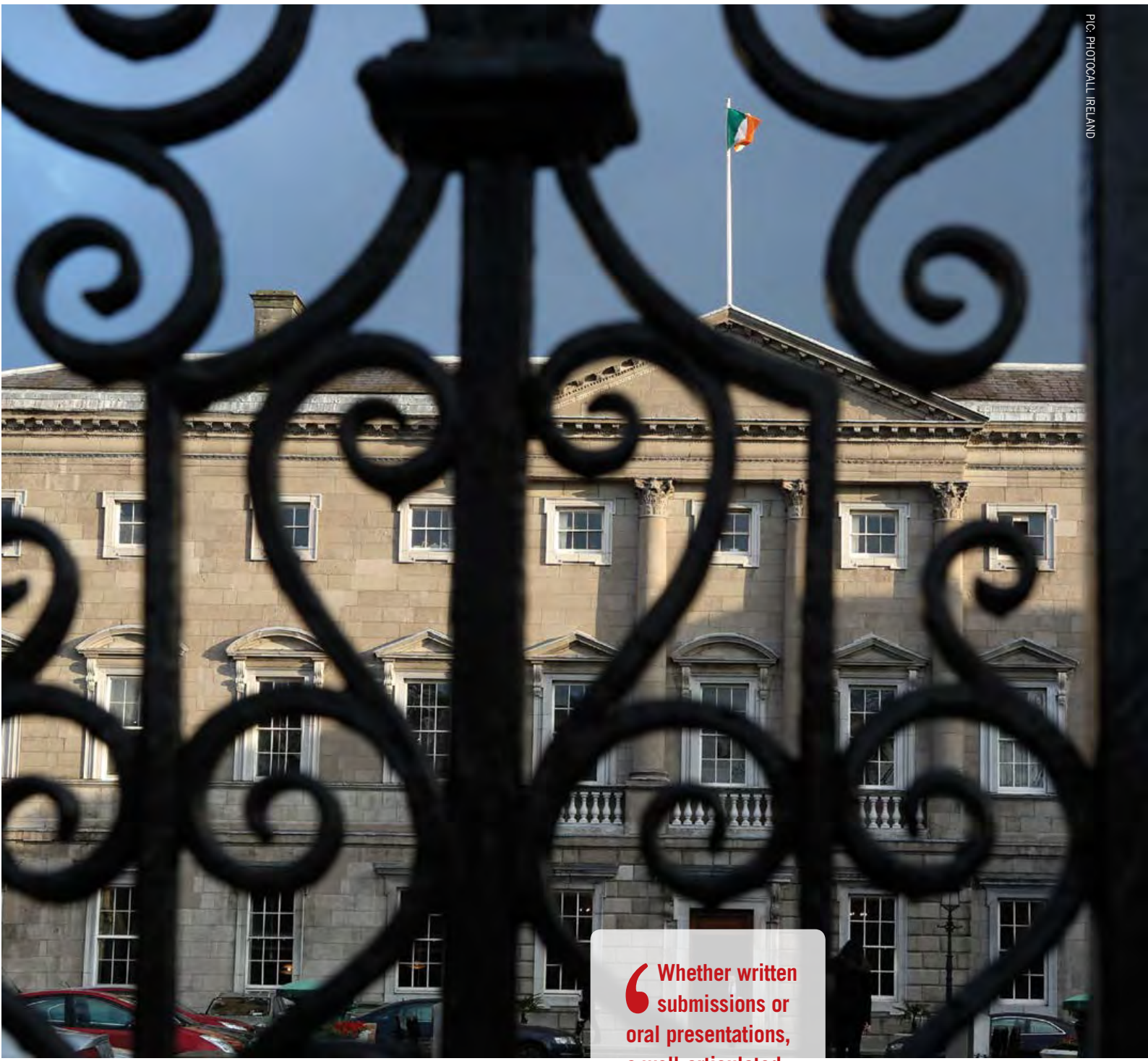
The Society is continuously in communication with our EU representatives and contacts on the potentially significant impact that the proposed fourth *Directive on the Prevention of Money Laundering* could have on solicitors. We will continue to build on this type of engagement on other EU issues as they arise.

Ripple effect

The Society works alongside other organisations and bodies in achieving common objectives. Being 'part of the conversation' – from human rights to consumer issues – informs not only the Society's position, but also represents an opportunity to share its collective knowledge. Furthermore, it helps dispel some outdated views of the profession as self-interested and inward looking.

Related to this, the Society is engaging in a study on the wider impact of the profession on the economy. Its initial findings indicate that the legal services sector as a whole contributes close to €1.5 billion to the economy and employs just under 20,000 people. Further analysis is awaited on the extent of the solicitor profession's contribution specifically – and the wider multiplier effect of firms to employment and local economies.

While we are all familiar with the one particular narrative that is spun of the profession, it is vital that an independent study should document the changes experienced during the past number of years and


PIC: PHOTOCALL IRELAND

> Whether written submissions or oral presentations, a well-articulated and evidence-based contribution from the profession leads to greater trust and confidence on all sides

the complexities of the sector, in addition to setting down a progressive approach for the future.

Engaging manner

The public affairs function of the Law Society involves building relationships with the Government and other bodies and maximising the impact of the Society's output and value. As new modes of engagement emerge – such as reforms to pre-legislation scrutiny – the Society aims to be dynamic in its response.

It is hoped that this dynamism will not only incite policymakers to engage meaningfully with the Society as initiatives are progressed, but also to incentivise the wider membership to participate in the committee structure and elections.

viewpoint

ANOTHER BRICK IN THE WALL

Requiring children who need additional support to attend mainstream schooling has wider implications for all the children in the class. While the letter of article 42 is currently being met in legal terms, the spirit of it is not, argues Sarah Reid

Sarah Reid is a Dublin-based barrister

In 2001, the Supreme Court considered the case of Jamie Sinnott and the extent to which the State had failed in its most basic obligations, given his pronounced needs as an individual with autism. The judgment makes for difficult reading as, throughout his formative years, he was subjected to degrading experiences and medical advice that has since been debunked as ignorant and counter-productive for children with this condition.

The case focused on the guarantee in article 42 regarding education and whether there was a constitutional requirement to continue providing educational services for as long as the child was deriving a benefit from them. Ultimately, the Supreme Court established that the right to an education is to be judged based on age criteria (18 in this case) rather than the child's specific needs, and so the plaintiff – aged 23 at the time – was no longer entitled to continue accessing these beneficial services.

In 1937, the range of learning difficulties that are now present within our education system were not envisaged by the drafters of the Constitution. However, in the intervening years, there have been huge strides in the acknowledgment and understanding of learning difficulties among children and, thankfully, our education system has adapted its structures to include resource teaching and training in this area. That being so, while we now accept the need for additional structures within our education system, financial provision for these has been consistently reduced.

> **'In circumstances where the traditional structures are themselves brought into question, the right to learn or rather the ability to learn in a disrupted environment is severely hindered for all involved'**

What we are left with is a system that seeks to facilitate children with learning difficulties alongside other pupils with minimal teacher resources and, even when these are provided, it is often in the form of respite for an hour rather than a meaningful ongoing teaching experience for that child. The State has, by all accounts, implemented an inappropriate schooling model and expects teachers to deliver results without the resources and support to do so.

Previous legal challenges

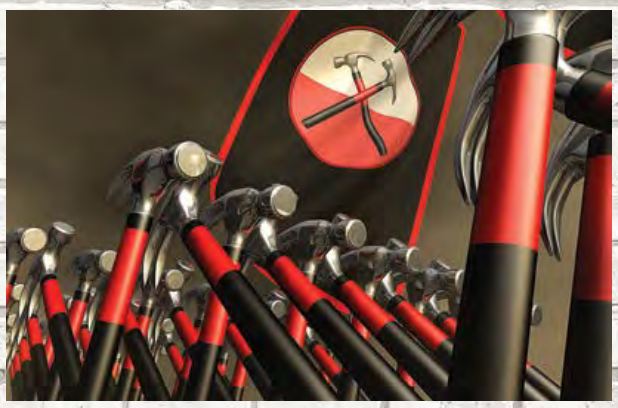
To date, the legal challenges under article 42 have focused on the extent to which the right to education could be extended to encompass alternative forms of special needs education. The courts have consistently held that while article 42 guarantees a right to education, in practical terms this translates as a right to a place in a classroom rather than a right to a meaningful education relative to a particular child's needs.

The *Education Act 1998* goes some way in acknowledging the rights of children within the education system but, unusually (given that the act supports an express constitutional right), the provisions were drafted with caveats including "as the minister deems appropriate" and "as resources permit".

Under the *Equal Status Act 2000*, schools cannot discriminate based on a child's disability but are obliged to reasonably accommodate that child's needs, provided the cost of doing so is minimal. What is clear, therefore, is that while education exists as an enumerated right within the Constitution, successive legislative provisions have created exceptions and derogations from this right where it is considered reasonable to do so. The result is that the right is not an absolute one, but is subject to additional factors, such as resources within the particular school – and the Department of Education.

Autism – a growing issue

As noted above, to date the cases taken under article 42 have largely focused on children with profound disabilities (and their corresponding educational needs), rather than on cases involving what might be described as 'learning difficulties' *simpliciter*. The rise in diagnosis of these conditions



When a teacher cannot teach to the required standard because their time is split between a child with additional needs and the rest of the children in the class, a question arises under article 42 as to the rights of the rest of the children in that class

has introduced new challenges for schools and teachers alike as ADHD, as well as other conditions on the autistic spectrum, very often involve physical as well as learning difficulties in children.

As class sizes have increased and teacher resources have been reduced, what has emerged is an education system that is creaking under the weight of the task it faces. Teachers are unable to exclusively cater to the needs of children with additional learning difficulties and, ultimately, a classroom can become dominated by a child who is disruptive because they are unable to partake in a given exercise due to their disability.

When a teacher cannot teach to the required standard because their time is split between a child with additional needs and the rest of the children in the class, a question arises under article 42 as to the rights of the rest of the children in that class and how their right to education is being affected by this difficult situation. It is an unappetising concept, and one that could be perceived as demonising an innocent child who has been placed in a system that is unfit for their needs – but it is, nonetheless, a valid question and one that has not been considered within the article 42 case law to date.

Scope of 'education'

Education within the meaning of article 42 requires that, as a constitutional guarantee, each child has the right to learn. It has been interpreted by the Supreme Court to be a right to learn within the traditional structures of national schools, but in circumstances where the traditional structures are themselves brought into question, the right to learn – or rather the ability to learn in a disrupted environment – is severely hindered for all involved.

A second issue worthy of mention is the significance of the Supreme Court decision in *Sinnott* as regards the remedy available to a plaintiff. While most of the commentary on the case focuses on the precedent set by the decision (namely the age criteria for educational services), the case was significant in that it specifically acknowledged that declatory orders were the most appropriate remedy and the courts should ward against issuing mandatory orders in cases of this kind.

In the *Sinnott* case, the mandatory order in question related to the High Court's direction that the education services be continued to the plaintiff for as long as he benefited from them, and this was criticised by the Supreme Court as being an encroachment on the separation of powers and public finances. Although the issue was somewhat moot in that case, the court affirmed its position regarding mandatory orders the following year in *TD v Minister for Education* (unreported, Supreme Court 17 December 2001).

The implication of this for any legal challenge cannot be overstated, and it appears clear that the State may only be compelled to take certain specified action in exceptional or rare situations or where a previous declaratory order has been ignored by the department.

It is interesting that the Supreme Court felt that mandatory orders against the State in the context of education were, for the most part, inappropriate, but in other areas of constitutional rights (for example the right to liberty/article 40 *habeas corpus* applications), there is no such restriction.

It would appear that the Supreme Court views education in the broad category of socioeconomic rights that are given a looser interpretation under article 45, but the drafters did not include education within these rights, and so, in spite of it being an enumerated right, the court has created a marked exception regarding enforceability of those rights without clearly explaining why education (unlike other enumerated rights such as liberty) deserve special treatment.

Constitutional breach?

Taking on board all of the above, educational services are being provided throughout the State and so, on paper, the article 42 requirement is being met by the Department of Education. However, when faced with the stark reality of teachers who are, at times, unable to teach, we have to ask if this environment is itself a breach of the constitutional guarantee to the rest of the children in that classroom.

Spending on State services is a key concern for the Government and the minister is, of course, entitled to implement cuts in areas he deems appropriate, but the *Finance Act* is, and always will be, subordinate to the express guarantees in the constitution.

We need to ask ourselves what is acceptable within the meaning of article 42, given what we now know about learning disabilities and the need for specialised teaching in this area. Requiring children who need additional support to attend mainstream schooling has wider implications on all the children in the class, and while article 42 is currently being met in legal terms, the spirit of it is not.

look it up

Cases:

- *O'Donoghue v The Minister for Health and Others* [1996] 2 IR 20
- *Sinnott v Minister for Education & Ors* [2001] IESC 63; [2001] 2 IR 505
- *TD v Minister for Education* [2001] IESC 101

Legislation:

- *Education Act 1998*
- *Equal Status Act 2000*

DOING JUSTICE TO THE LAW SOCIETY BRAND

How do you 'rebrand' an organisation like the Law Society of Ireland – and where do you begin? Mary Doherty sketches the process

Mary Doherty is managing director and creative director at Red Dog, the Dublin-based creative agency

Archimedes is famous for shouting "Eureka!" after he immersed himself in a bath and noticed that the water level rose. His discovery that water displacement could be used to measure the volume of irregular objects with precision was a milestone in the history of physics.

Design agency Red Dog realised that it had a similarly challenging task on its hands when it was awarded the tender to rebrand the Law Society. And similar to Archimedes, it found that the best place to start with the process was to immerse itself in the organisation – in order to gain a real understanding of what it is and, more importantly, of what it wants to be in the future.

All great branding strategies are based on truly understanding an organisation, so Red Dog's goal was to discover and represent the 'real' Law Society – and not to invent a new one. With such understanding, a design agency can help build personality through communications – both visual and written.

The Red Dog team launched into the project by reading the report of the Future of the Law Society Task Force. In doing so, it quickly realised that this project could start a few steps ahead of a typical branding exercise, because a lot of work had already been done and a lot of good thinking applied.

But why did the Law Society ask Red Dog to engage with it in the first place? In fact, it was simply doing what it had said it would do, by tackling the first recommendation in the task force report, which states: *Defending the profession/promoting the public image of the profession*
To promote solicitors, the Society should:

- Strengthen the brand of solicitor by developing an enhanced communications strategy, including the design of a strap line,
- Explore ways in which the Society's brand can best describe the functions of the Society and promote the brand of solicitor.

Telling the story

This project is being widely referred to as the 'new Law Society brand' – but this is not strictly correct. When Red Dog first came to work with the Society, it already was a brand – and had been since 1852. Our job has been, simply, to help tell the story of the brand as it is in 2014 – in a more relevant way – reflecting what the Law Society is today, and its vision for the future.

It was apparent from the earliest stages that it was all about the membership and that Red Dog had to help the Society meet the needs of its members in the changing context of the profession – including representation, education and regulation.

The task force report said that the membership, in general, viewed the Law Society as 'out of date' and 'old fashioned'. If we're honest, this is what Red Dog expected it to be when we began discussions with the Society.

FOCAL POINT

the evolution of lady justice

A coat of arms was traditionally used by knights to identify themselves on the battlefield, since their armour was largely indistinguishable. It makes sense that logos were always visible really, in some shape or form. The battlefield, now, is the corporate market or the global consumer landscape.

Red Dog's creative director Paula McEntee did a lot of digging on the Law Society's original coat-of-arms motif and its meaning. Being steeped in heritage and meaning is something that Red Dog really wanted to retain for the Society – a trait identified in our research. So we set out to redraw all the elements of the coat of arms and see what we could achieve – deconstructing them all and building them back up again. There were dogs (wolfhounds to be exact), harps, crowns and Lady Justices all over our studio walls in many forms. We needed to get the styling just right in order to deliver a contemporary logo.

But, in fact, we were quite wrong. We found it to be refreshing, up for a challenge and incredibly good humoured.

How far could we go?

A new visual identity is not just a pretty picture – it reinforces the brand visually and it can achieve so much. It can position an organisation correctly in its 'industry space' and at an international level, motivate staff and, in this case, help provide members with a more relevant Law Society for the 21st century. A visual identity has many elements – a logo, colour palette, typography, imagery style, graphic motifs, and so on.

Even though the current logo was widely perceived as being 'old hat', it was also clear that the Law Society is steeped in history and tradition. In looking at it from a visual perspective, the Law Society gave a clear indication that the new brand identity would be more of a 'brand refresh' in visual terms, rather than a radical departure.

> A new visual identity is not just a pretty picture – it reinforces the brand visually and it can achieve so much

The colour palette of indigo and gold was inspired by the concepts of credibility and stature. The typeface chosen, 'Merkury', is bold, modern and confident. After working on the logo itself for many weeks and really getting under the skin of the Law Society due to quite intense collaboration, we came up with a title for our logo which we think says it all: 'Proud of tradition – prepared for the future'.

Tone of voice

We were also tasked with providing new 'tone of voice guidelines' to ensure that the Society's brand development would focus not only on the visual, but on written and verbal communications also. This process was led by our strategist Mary Jennings and involved crafting the new vision, mission and values and putting them into context. (We must give credit to deputy director general Mary Keane for her contribution of the phrase to encapsulate the Society's vision – 'the trusted voice of a respected solicitors' profession'.)

A brand's values must be the foundation of everything – values should not just be ink on paper, but should underpin the very essence of an organisation and its behaviour. These values have now been 'called out' clearly, namely: of service, respect, ownership, integrity, independence.

The job is not complete, however. Now the Law Society must become active guardians of its own brand identity and ensure its correct usage and promotion at all times.

FOCAL POINT

guarding the brand

We would like to remind practitioners that the Law Society logo and its crest are *not* available for use by members or firms who might seek to reproduce them on their letterheads, websites or any other documentation that emanates from solicitors' offices. This restriction has always been in place and applies to all firms and all practitioners. From time to time, the Society receives requests for permission to use its logo or crest. Unless such requests have been pre-approved by the Society for use in specific media, they are declined in order to protect the Law Society's brand.

MEDIA AWARDS CELEBRATE CREAM OF THE CROP

The Justice Media Awards – the longest-running media awards in the country – continue to go from strength to strength, showcasing once again the remarkable journalistic talent on show in Ireland. Mark McDermott reports

Mark McDermott is editor of the Law Society Gazette

Celebrating its 22nd birthday this year, the Law Society's annual Justice Media Awards on 12 June produced a cracking set of high-end entries across the board.

Justice Media Awards (JMA) were presented in all categories – and testament to the quality of entries was the fact that all categories, barring 'National radio', managed to garner two merit awards each.

The awards aim to give national recognition to journalism that promotes the highest standards and fosters greater public understanding of the law and the legal system.

Congratulating the JMA and Merit winners, Law Society President John P Shaw commented: "Down the years at the Justice Media Awards, we've seen and heard many award-winning stories told by top-class journalists."

RTÉ received a number of awards. With the Law Society President John P Shaw and director general Ken Murphy are *(from l to r)*: Valerie Cox, Kevin Burns, Tara Peterman, Rita O'Reilly, Fergal Keane and Sandra Hurley

The winners in the Sunday newspapers category included Philip Connolly, Siobhán Brett and Ian Kehoe of *The Sunday Business Post*

Siobhán Maguire and Mark Tighe of *The Sunday Times* received a number of Merit awards in the Sunday newspapers and court reporting for print media categories

ALL PICS: LENSMEN

Category and Merit winners gather outside the Law Society's headquarters at Blackhall Place, Dublin, on 12 June 2014, following the 22nd annual Justice Media Awards

justice media awards – results

Daily newspapers

The winner was Ruadhán Mac Cormaic of *The Irish Times* for his highly engaging series 'Inside Ireland's Supreme Court'.

Merit awards were presented to Noel Baker of the *Irish Examiner* for his article 'Home away from home' and to Joe Humphreys of *The Irish Times* for his article' The prison trap'.

Sunday newspapers

The winners were Siobhan Brett, Ian Kehoe and Philip Connolly of *The Sunday Business Post* for their feature 'The Anglo trial'.

Merit awards were presented to Siobhan Maguire and Mark Tighe of *The Sunday Times* for their article 'No public right of way' and to Niall Brady of *The Sunday Times* for his article 'Fight for your consumer rights'.

Regional newspapers

The winner was Tony Galvin of the *Tuam Herald* for his thought-provoking article 'Opening a window on family law'.

Merit awards were presented to: Thomas Mooney of the *Wexford Echo* for his article 'A long day's journey into Ireland' and to Maria Rolston of the *Evening Echo* (Cork) for her article 'Domestic violence – an increasing legal issue'.

Court reporting for print media

The winner was Helen Bruce of the *Irish Daily Mail* for her article 'An "absolutely' illegal" scheme at Anglo Irish'.

Merit awards were presented to: Justine McCarthy and Mark Tighe of *The Sunday Times* for their article 'Kitchen sink drama' and to Fiona Gartland of *The Irish Times* for her article 'Protection orders given as family courts open to media'.

Court reporting for broadcast media

The winner was Caitriona Perry of RTÉ for her television news report 'Tragedy down under'.

Merit awards were presented to Fergal Keane of *Drivetime* (RTÉ Radio 1) for his radio report 'Local justice' and to John Cooke of Clare FM News and for *Drivetime* for his radio report 'Ralph Lauren's niece and the court in a pub!'

National radio

The winners were Marc Coleman (presenter) and John O'Donovan (producer) of *The Marc Coleman Show* on Newstalk 106-108fm for their 'Justice for all – legal special'.

A Merit award went to Valerie Cox of *Today With Sean O'Rourke* (RTÉ Radio 1) for her report 'Family courts'.

Local radio

The winners were Clem Ryan, Shane Beatty and Susan Webster of KFM for their engaging radio programmes on wills, reluctant landlords, and marital breakdown.

Merit awards were presented to Trudy Waters of Tipp FM for her report 'Tipperary pensioner loses right-of-way case against minister' and to Niall Delaney of Ocean FM for his report 'Inquest into the inquest'.

Television news

The winner was Brian Daly of *The 5.30* (TV3) for his reports on 'The inquest of baby Mark Molloy'.

Merit awards were presented to Sandra Hurley of the *Six One News* (RTÉ 1), for her report 'Surrogacy: a legal limbo' and to Brian O'Donovan of *The 5.30* for his reports on 'The Anglo trial'.

Television features and documentaries

The winners were Rita O'Reilly (reporter) and Tara Peterman (producer) of *Prime Time* (RTÉ 1) for their fly-on-the-wall documentary called 'Freemen – a matter of trust'.

Merit awards were presented to Ciara Doherty (reporter) and Patrick Kinsella (producer) of *Midweek* (TV3) for their engaging programme 'Mallak – one year on' and to Rita O'Reilly (reporter) and Kevin Burns (producer) of *Prime Time* (RTÉ 1) for their programme 'Backdrop to garda whistleblowers: paying the penalty' and 'Exposed'.

Overall award

As no single article or broadcast report stood out from among their counterparts, the judges decided not to present an 'Overall winner' award this year.

human rights watch

FREEDOM OF RELIGION AND BELIEF

The keynote speaker at the tenth annual Human Rights Lecture series was the deputy president of the Supreme Court of the United Kingdom, Lady Brenda Hale. Helen Kehoe reports

Helen Kehoe is policy development executive at the Law Society

Mr Justice Donal O'Donnell chaired the tenth annual Human Rights Lecture, and provided a detailed and thoughtful introduction to the complex topic of freedom of religion and belief.

Beginning the lecture proper, Lady Hale briefly considered the role played by 'state' religion in England and Wales, by which she meant the 'established' church of the Church of England. The Queen of England is head of the Church of England, and 26 of its bishops have seats in the House of Lords. However, Lady Hale referred to the 2011 British *Social Attitudes Survey* and the 2011 census, both of which indicate that self-identification as Christian is on the decline (72% in 2001 down to 59% in 2011), that there is an obvious increase in those describing themselves as of no religion (15% up to 25%), and that any obvious adherence to any religion is largely due to the growth of religions other than Christianity.

Lady Hale looked to our Constitution, notably article 44, and observed that there is a clear combination of respect for different religious denominations, as well as non-discrimination between them. Nonetheless, she noted that our 2011 census indicated that Ireland is apparently a more religious society than England, and overwhelmingly Catholic, with 84% stating so in the census.

Lady Hale then turned to a key issue at the heart of the debate of how to balance the protection of freedom of religion and belief alongside other fundamental rights: "Once we stop giving preference to a state religion and accord equal respect and protection to all religions and beliefs, all sorts of difficult questions begin to arise. There may be laws that conflict with particular religious beliefs or practices; there may be requirements imposed, most notably by employers, that conflict with particular religious beliefs or practices; and there may be other forms of discrimination against people because of their religion or beliefs – but in this case, there is also the problem that some religious beliefs may lead people to want to discriminate against people with some other characteristic to which the law gives protection, such as their race, their sex or, most notably these days, their sexual orientation."

Lady Hale: "Once we stop giving preference to the state religion and accord equal respect and protection to all religions and beliefs, all sorts of difficult questions begin to arise"

> **"If the law is going to protect freedom of religion and belief, it has to accept that all religions and beliefs and non-belief are equal"**

Freedom of thought

During the course of the lecture, Lady Hale examined the British legal framework protecting the right to freedom of thought, conscience and religion. She focused on article 9 of the *European Convention on Human Rights*, and the *Equality Act 2010*, which implements the EU *Directive on Equal Treatment in Employment and Occupation* (2000/78/EC) to protect people with a variety of "protected characteristics" – such as race, sex, age, religion, and so on – from discrimination.

Lady Hale stated that the implementation of the *Equal Treatment Directive* goes further than required by EU law, as it also protects against discrimination in the supply of goods and services – an increase in scope that has become of great importance in recent cases.

She went on to refer to a recent academic study of perceptions of religious discrimination, which reported that while, in general, there has been a reduction in the reported experience of unfair treatment on the basis of religion,

new forms of unfair treatment were also being reported, particularly by Christians. Also, non-religious groups felt that Christianity and religion in general was "still privileged in ways that could result in unfair treatment for them".

Lady Hale discussed the 2013 case of *Bull v Hall* ([2013] UKSC 73). In this case, the owners of a private hotel in Cornwall were devout Christians, who believed it was sinful for anyone, same sex or opposite sex, to have sexual relations outside marriage. Their policy (clearly stated on their website) was to only let double rooms to "heterosexual married couples only". A same-sex couple in a civil partnership booked a double room over the phone and were refused the room on their arrival. They brought a claim for discrimination on grounds of sexual orientation. The defendants, the hotel owners, argued that the discrimination was justified by their religious beliefs.

Direct and indirect

The particular legal quandary presented by the case was that, under EU law, there is no defence of justification for direct discrimination – whereas there is such a defence where the discrimination can be described as indirect. She gave the example whereby it would be direct discrimination if the criterion used to discriminate against someone was clearly on the basis of their religion – that is, to say 'no Jews here' would be direct (and obvious) discrimination.

However, to indirectly discriminate is to use a criterion that appears neutral on its face, but which in fact puts a person or group at a disadvantage because it is less easy for them to comply with, for example, requiring all employees to work on Friday afternoons without exception, as this could potentially put those of Jewish faith at a disadvantage.

The difficulty in distinguishing between what is classed as direct or indirect discrimination becomes clear in *Bull:* the Court of Appeal held unanimously that this was a case of direct discrimination, regardless of the fact that the couple were in a civil partnership; whereas the Supreme Court would have held that it was indirect discrimination were it not for the fact that the couple were civil partners. Lady Hale stated: "The hotel were denying a marriage bed to a couple who were to be regarded in UK law as in the same situation as a married couple; they were doing that precisely because the couple were not heterosexual, in other words, because of their sexual orientation."

> **'I am not sure that our law has yet found a reasonable accommodation of all these different strands'**

The court considered that the discrimination could not be justified. As had already been mentioned by Lady Hale, the *Equality Act 2010* protects against discrimination in the supply of goods and services. Thus, all businesses are subject to this prohibition of discrimination in treatment. As Lady Hale stated: "Both homosexuals and Christians are subject to the same laws requiring them not to discriminate in the running of their businesses. So if homosexual hotel keepers had refused a room to an opposite sex or Christian couple, they too would have been acting unlawfully."

She observed that the reaction to the decision in *Bull* was "interesting" and gave the example of the attorney general of Northern Ireland, who commented that the case demonstrated that Lady Hale did not understand religious belief: "The objection that believers have to same-sex relationships is morally and biblically based, whereas any objection that homosexuals might have to religious believers would be pure prejudice – (I do not know what he would have said about other supposedly biblically based objections, for example, to women or other races, or indeed to other religions)."

One true faith

Towards the end of her speech, Lady Hale observed that, while the rational inclination might be to protect one religion above all others (as adherents of any particular religion will often believe that theirs is the one true faith), "the law now protects all religions equally, without discriminating between them and without attempting to determine which are forces for good and which are not. Not only that, it also protects other belief systems, such as humanism and pacifism, and we have dropped any requirement that these be 'similar' to religion. It also protects the lack of a religion or belief."

Lady Hale concluded that the moral of the debate is that, if the law is going to protect freedom of religion and belief, it has to accept that all religions and beliefs and non-belief are equal. The law cannot inquire into the validity or importance of those beliefs, as long as they are genuinely held; therefore, the law "has to work out how far it should go in making special provisions or exceptions for particular beliefs, how far it should require the providers of employments, goods and services to accommodate them, and how far it should allow for a 'conscience clause', either to the providers, as argued by the hotel keepers in *Bull v Hall*, or to employees, as suggested by the dissenting minority in *Ladele.* I am not sure that our law has yet found a reasonable accommodation of all these different strands. The story has just begun."

Lady Hale's speech in full is available on the Human Rights Committee page at www.lawsociety.ie.

forget me NOT

A recent judgment of the European Court of Justice could represent the birth of a whole new sub-species of data-protection jurisprudence. Anna Morgan fires up AltaVista

Anna Morgan is a senior associate in the litigation and dispute resolution group in Arthur Cox. She is grateful to Rob Corbet (Arthur Cox) for reviewing this article

In a seminal judgment on 13 May 2014 concerning the application of the *Data Protection Directive*, the Court of Justice of the European Union (ECJ) ruled that, in certain circumstances, an individual has the right to have information about them removed from the results of an internet search carried out against their name. The judgment has extensive implications, not only for internet search engines, but also for the extent of the information available to the general public when carrying out name searches using internet search engines.

The ECJ judgment was made in the context of a referral by the Spanish National High Court in proceedings taken by Google Spain and Google Inc (together, Google) against the Spanish data protection agency (AEPD) and an individual, Mario Costeja González, concerning the AEPD's decision on a prior complaint made by Mr González against Google under the Spanish legislation implementing the directive.

In his complaint to the AEPD, Mr González objected to the inclusion of links to archived newspaper announcements from 1998 within search results produced by the Google search function, using his name as the search term. The newspaper announcements referenced his name in connection with a property auction relating to attachment proceedings for the recovery of social security debts.

at a glance

- Seminal ECJ judgment has significant ramifications for internet search engines and the extent of information available to the general public
- The processing of personal data by a search engine affects the fundamental rights to privacy and protection of personal data. These are protected by the *Charter of Fundamental Rights of the European Union*
- A data-protection supervisory authority in a member state can order a search-engine operator to remove links to webpages from search results based on a person's name

PIC: THINKSTOCK

The AEPD upheld Mr González' complaint (insofar as it was directed at Google) and decided that it could prohibit access to certain data by search engine operators where the locating and disseminating of it could compromise the individual's fundamental right to data protection.

Preliminary issues

In its referral to the ECJ, the Spanish court asked for clarification on:

1) Certain preliminary issues concerning the scope of the directive's application to Google and what Google did with information (personal data) when operating its search function, and
2) The substantive rights of individuals (data subjects) to request, and be granted, the removal of particular information from search results.

> The judgment does not establish an absolute or automatic right to removal of information or links from search results

Google argued that the obligations on processing personal data in the directive and implemented by the Spanish legislation did not apply to it for two reasons. Firstly, Google claimed that its search activities did not constitute processing because it did not distinguish between personal data and other types of information. However, the ECJ found that the activities underlying a Google search (including exploring the internet, collecting, storing and making available data) satisfied the definition of processing. It was irrelevant that the data was not altered by Google and was already published on the internet.

Substantive issues

Google also claimed that the search engine operator, Google Inc, was not a 'data controller' under the directive. The ECJ disagreed. It held that search engines play a decisive role in disseminating and making personal data accessible to users who would not otherwise find the webpage containing it. It was irrelevant that Google did not control personal data on third-party webpages. Furthermore, although it was not established that Google's searching activities took place in Spain, the advertising activities of Google Inc's establishment in Spain (Google Spain) paid for the activities of the search engine. This meant that the processing of personal data was carried out in the context of the activity of Google's establishment in a member state, consistent with the criteria under the directive.

Having established that Google Inc was a data controller and that it processed personal data in its searches, the court considered the substantive questions referred to it concerning the rights of a data subject under the directive to object to the processing of their personal data (article 14(a)) and to request the rectification, erasure or blocking of their personal data (article 12(b)).

The first issue related to whether, as a general principle, these rights should be interpreted as imposing an obligation upon a search engine operator to remove from a list of search results links to third-party webpages containing information on the data subject – even where that original publication was lawful and the actual information was not required to be removed from those webpages.

In answering this question in the affirmative, the court analysed the effects of the processing of personal data by a search engine. It took the view that such processing significantly affects the fundamental rights to privacy and protection of personal data (which are protected by articles 7 and 8 respectively of the *Charter of Fundamental Rights of the European Union*) when carried out by reference to an individual's name. This is because the search results provide a structured overview of information on the internet concerning a vast number of aspects of a person's private life, establishing a more or less detailed profile of the data subject. This was a more significant interference with the right to privacy than the original publication on a third-party website, because the list of search results plays a decisive role in disseminating the information.

The rights protected by articles 7 and 8 could not be overridden by the mere economic interest of the search-engine operator. Generally, these rights of data subjects also override the interest of internet users – but this depended on the nature of the information, its sensitivity for the data subject's private life, and the public's interest in having that information, which could vary depending on the role played by the individual in public life.

The ECJ held that a data-protection supervisory authority in a member state could, therefore, order a search engine operator to remove links to webpages from search results based on a person's name, without requiring the simultaneous or prior removal of the information from the webpages.

The right to be forgotten

The second substantive issue concerned whether a data subject has a right under article 12(b) and article 14(a) of the directive to require a search-engine operator to remove from its search results links to webpages containing lawfully published and true information about him – on the grounds that the information might be prejudicial to him or that he wished it 'to be forgotten' after a certain time.

The court observed that data processing that is initially lawful may in time become unlawful by virtue of incompatibility with the directive. This might arise from the data being inadequate, irrelevant, excessive in relation to the purposes of the processing, not kept up to date, or kept longer than necessary.

The ECJ held that, having regard to all the circumstances, if the information was not being processed in a fashion that was compliant with the directives at the relevant point in time, then the information and

webpage links must be removed from the search results.

The court indicated that this was not an absolute right but was subject to a balancing test. It concluded that, generally, the rights of the data subject will override the economic interests of a search-engine operator and the interest of general public in finding the information, but exceptions could arise. The only exception enunciated by the ECJ was when the role played by the data subject in public life justified the interference with his fundamental rights by reason of the "preponderant interest of the public" in accessing the information.

Applying these principles, the ECJ found that, having regard to the sensitivity of the information in the archived newspaper announcements to Mr González' private life, and given that initial publication had taken place 16 years earlier, he had established a right that the information should no longer be linked to his name by the means of a list of search-engine results. As there appeared to be no "preponderant interest of the public" in having access through search results to the information in question, he could, by virtue of articles 12(b) and 14(a), require those links to be removed from the list of Google search results.

No automatic right

While various media reports have suggested that search engines must now amend search results upon being requested to do so, the judgment does not establish an absolute or automatic right to removal of information or links from search results. Instead, the existence of the right is dependent upon the inclusion of the information in the search results being incompatible with the data-processing rules in the directive.

This can occur where, as the court pointed out, the information is inaccurate, inadequate, irrelevant or excessive, not up to date, or is kept for longer than necessary. Absent one of these factors, an individual requesting the exclusion of information will not succeed.

Even where the right exists, it may still be overridden in favour of the economic interests of the search-engine operator or the general public's interest in finding the information that is sought to be excluded from search results.

While the court indicated that there may be a range of reasons justifying continued inclusion, regrettably it did not expand on what these might be, other than where the individual plays a role in public life. This may make it difficult for search-engine operators, and indeed national data-protection supervisors and courts, to justify the continued inclusion of disputed information in search results on any other basis.

Other identifying criteria

It is significant that the court restricted the scope of its judgment to searches against a person's name. The judgment does not apply to search results using a term other than a person's name, for example, a title or position. The question therefore arises as to whether it is permissible to retain links in non-name search results, even though the same links must be excluded from name search results.

Potentially, search-engine operators could take a conservative approach and remove disputed links from all searches, irrespective of the search term used. If this situation transpired, it would effectively prevent the information from being found and accessed by the public, other than where the originating webpage is known. This would arguably validate the criticisms of civil rights commentators that the judgment would have a chilling effect on the dissemination of information.

> It is significant that the court restricted the scope of its judgment to searches against a person's name. The judgment does not apply to search results using a term other than a person's name

Practical consequences

The judgment took many by surprise, as it departed from the advocate general's opinion, and it constitutes a significant change to the previously held view that search engines are 'mere conduits' with few direct data-protection duties to individuals.

At this point, the practical consequences for search-engine operators appear to be onerous, as the judgment seems to require a case-by-case analysis of requests to assess if removal of a link is justified. Media attention around the judgment has shone a spotlight on data subject rights and, in the immediate aftermath of the judgment, Google acknowledged that it was already receiving requests for the exclusion of information from search results.

Within three weeks of the judgment, Google had rolled out a webform for removal requests – although, at the time of publication, the notice on that webform indicated that Google was still finalising implementation and had not yet started to process requests.

While Google's removal request form indicates that it will assess each individual request and "attempt to balance the privacy rights of the individual with the public's right to know and distribute information", it remains to be seen what the output of those assessments will be, and whether other search-engine operators will follow suit.

Where a search-engine operator refuses to remove a disputed link, the requester may complain to their national data protection supervisor, whose decisions are appealable to the national courts.

Since Google's introduction of its removal request webform, the Article 29 Working Party (the EU advisory body on data protection and privacy) has issued a press release (6 June 2014). It states its intention to identify guidelines in order to develop a common approach on implementation of the ruling among EU data protection authorities. It welcomes the introduction of Google's removal request form, "even if, at this stage, it is too early to comment on whether the form is entirely satisfactory".

Given the high stakes involved for search-engine operators, the public and data subjects, and the ambiguities arising from the judgment, it seems inevitable that the judgment will spawn further litigation from those who wish to be forgotten and from internet companies seeking clarity on its scope.

look it up

Cases:

- Case C-131/12, *Google Spain SL & Google Inc v Agencia Española de Protección de Datos (AEPD) & Mario Costeja González*, opinion of Advocate General Jääskinen, 25 June 2013; judgment of the ECJ (Grand Chamber), 13 May 2014

Legislation:

- *Charter of Fundamental Rights of the European Union*
- *Data Protection Acts 1988 and 2003*
- *Data Protection Directive* (95/46/EC)

Literature:

- Opinion 1/2008 of the Article 29 Data Protection Working Party on data protection issues related to search engines
- Press release issued by the Article 29 Data Protection Working Party, 6 June 2014

TECH trends

Neil Butler is a sole practitioner based in Thurles. He is a former chairman of the Technology Committee and is a member of the eConveyancing Task force

Sole practitioners need to embrace technology as though their lives and businesses depend on it. The rewards in increased productivity, profitability – and, most importantly, time saved – can't be ignored. Neil Butler plugs into the matrix

Sole practitioners are the journeymen and women of the legal world. They've got to take work wherever and whenever it arises. To do this successfully, our sole practitioner needs to be technologically savvy. Whether it's boosting productivity in the office or on the move, lawyers are spoiled for choice in the wealth of relatively inexpensive hardware and software that can make their lives easier. The effect of using such wonderfully useful technology is to boost output – and therefore income – by multiples compared with the technological dinosaurs out there.

Here are some personal insights based on my experience of using technology to help my practice. Hopefully, you might find some useful – and inexpensive – solutions to problems that might be encountered by practitioners.

point and click

I found myself getting pain in my right shoulder, arm and wrist as I spent more time on the PC and Mac. Repetitive strain injury is real! This small change made a big difference – a joystick mouse.

adding power to pdfs

We all read them – mostly when we get them by email. But how many of us use software to create PDFs from scratch, compile multiple pages, convert other documents to PDF, annotate them with comments, use them for books of title, briefs, or for the secure sending of drafts to clients or colleagues? Do you or your staff email letters as attachments? Are these sent as *Word* docs? Do you delete the metadata within those documents? No? Then you should be using a PDF conversion programme like *Nuance Power PDF*, where you'll find information on imaging and scanning, and look up *Power PDF* on YouTube.

Clients appreciate getting copies of documents. To protect our own intellectual property rights in documents, these should not be sent as a *Word* document but as a PDF – and even then, add some security so that it can only be opened by the receiver, but not printed, edited or manipulated.

Reduce costs by increasing the use of email. If attachments are an inhibitor, get a scanner, scan that document as a PDF, or if it's one you created in-house, convert it within *Word*, add other documents, spreadsheets, photos and charts, for example, then paginate and index it. Now you can email that digital file with whatever level of encryption/protection you wish. Copy the same email to the client, counsel, associates and expert witnesses.

PIC: THINKSTOCK

> Lawyers are spoiled for choice in the wealth of relatively inexpensive hardware and software that can make their lives easier

take a message ... digital style

The move from using cassettes to store your dictation to a digital format doesn't have to be costly. Change your handset from one that uses cassettes to one that utilises a data card – just like the one in your camera (the more memory, the better).

You'll have to load the software that's needed to read what's on the memory card, so it can be typed. Suppliers like Olympus and Philips sell packages that provide a handset to dictate into, software for the PC, a food pedal and headset.

There are also versions that attach to your PC using a wired microphone – case-management systems initially offered these but now also offer links to apps that allow your phone or, indeed, the handset device mentioned above to deliver transcription into their programmes. Your dictation can also be backed up to a cloud-based server for both convenience and peace of mind.

As a 'solo', I need to be mobile. Using my smartphone for dictation is easy, but oh how it chews battery power! I add a battery case to my bag when I travel, but also often find it just as easy to bring along the 'standard' digital handset.

TIPS

- Set up a folder on the server – not on your PC – and deliver the content there. This allows anyone you allow to have access to it. It means better use of support staff if you don't channel your work to just one person.
- The server folder gets backed up, so even untyped material is safe.
- Dictation voice files, once typed, need not be deleted – these can be kept on the server for later retrieval.
- Recordings made, like meetings or instructions from elderly clients, can be added to your file.
- Dictation can be emailed to the office or transferred using automated workflow, or simple drag-and-drop, if you connect to the office remotely.
- Export the dictation to outsourced typing services anywhere in the country or abroad.

at a glance

give me some credit

Looking for a suitable credit-card reader for the iPhone, iPad and Android? Do you need to move to card payments of fees by clients? Then *SumUp* could be the answer:

- No contract term,
- No minimum transaction level,
- 1.95% charges,
- Up-front fee of €19.95 for a device that connects to your smartphone or tablet through its headphone jack,
- Client can sign on phone, tablet screen or swipe card,
- Email or text receipts to clients, and
- Record cash transactions.

get me remote access

I have been using *GoToMyPC* to allow me connect to my office PC when I am absent. I can connect from any computer worldwide – so I can use a borrowed one or a public terminal at an airport, for example. The data is encrypted going both ways, including dictation that I might want to transfer from my dictation card.

I can remotely allow access to my PC if a technical issue arises while I'm away, and I can give online access to my server to my validated tech guy.

There are several suppliers of such services – for me, I like *GoToMyPC*, especially as it has a very clever iPad / iPhone interface. See the reviews in the digital copy of the *Gazette* of a couple of similar programmes.

brilliant storage solutions

I have so many bits of things to store – like changes to my case-management plan due to new regulations, my Technology Committee assignments, an article for the *Gazette* for which I need to get webpage addresses, CPD records, diploma course materials/cases, details of office policies and manuals, professional indemnity insurance renewal information, supplier contracts, septic-tank registrations (yes, I'm truly a rural solicitor!), my son's flight details to the US, my daughter's job offer in Singapore, my family's medical history, my pension details, my Lion's Club homeless housing project work … and so much more!

I finally cracked it when I found *Evernote* (www.evernote.com). And the basic programme is free!

- Remember things you like: snap a photo, record some audio and save it.
- Save favourite webpages: save entire webpages to your *Evernote* with the nifty web clipper.
- Research better: collect information from anywhere into a single place – text notes, web pages, files, snapshots, audio and video.
- Work with colleagues: share your notes and collaborate on projects with friends and colleagues.
- Plan your trip: keep all of your itineraries, travel documents and maps in *Evernote*.

There are versions for PC and Mac. I use both, with my PC in the office, iPad, iPhone and Macbook Air laptop. Anything I put on one is synced with all of them.

I use the camera option within Evernote to use the iPhone to scan a document after a settlement, a photo of a business card, a photo of a location (it will add GPS coordinates automatically), of my current deal with my electricity provider, or my phone and broadband provider. I allocate each item to notebooks that I create within Evernote. I bought the premium version for €5 per month, which allows me to search text within scans and photos – I can find that phone number for the guy I met, or I can search by meeting or conference location.

With the premium version, I can share notes and notebooks to collaborate with others. Its search engine makes it user-friendly, even if one is not the most structured person. I can find anything stored and forgotten, including text within photos and scanned documents.

It integrates with *Outlook* with a button added to the toolbar, allowing me to easily add an email to an *Evernote* notebook.

It will allow me set up whatever categories/notebooks I wish. Notes are the documents that you put into notebooks. They can be audio files, podcasts, dictation, meeting recordings, videos from the web, or a video you make of an accident scene.

Evernote also owns *Penultimate*, a handwriting recognition app for the iPad. You can use your finger or a stylus to take notes as you would at any meeting. It will then automatically sync that note to your *Evernote* account. It is also immediately backed up to the cloud. Or you can simply email it to yourself or to someone in the office.

going dutch – with *WeTransfer*

Sending large files can run into transmission problems. Having learned how to compile that PDF booklet, you may be unable to get it to the recipient. But email is not the only way. File-transfer utilities allow such movement. *WeTransfer* is produced by an Amsterdam-based company. Its basic version is free, but it also offers a business option called *WeTransfer Plus*. The latter gives better security and more control.

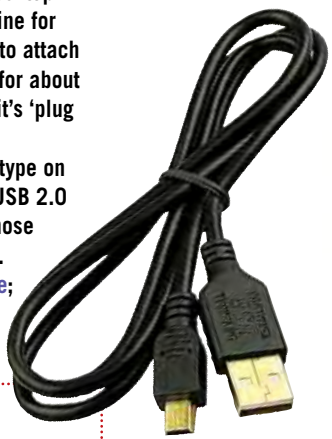
Log on to their site and follow the very simple instructions by inputting the recipient's email address, your address, a message, then attach the file. Press 'send'. *WeTransfer* stores the file in encrypted fashion for seven days, during which time your recipient receives an email telling him that there's a document waiting for download. Once downloaded within the seven days, it is deleted from *WeTransfer's* systems. You also get a confirmation mail that your colleague has received the file. Over 10 million users, including Toyota, Amazon, Adidas, Sony Music and Disneyland use this method.

the power of two compels you

One of the simplest productivity enhancements was to affix a second screen to my desktop PC. A new monitor can be bought online for between €85 and €150. The device to attach it to your PC – a USB to VGA adapter for about €50 – uses one of the USB slots, so it's 'plug and play'.

Don't forget to match the USB port type on your PC to the adapter you buy. Is it USB 2.0 or 3.0? Recent PCs will be 3.0 and those from 18 months or so ago will be 2.0.

See: www.elara.ie; www.pixmania.ie; www.amazon.co.uk.



PIC: THINKSTOCK

TIPS

- Case management on one screen, email, *Word*, web and so on the other,
- Compare documents – spread them across both screens,
- Use precedents more quickly and effectively,
- Drag files, documents, pictures, webpage sections and charts from one to the other,
- Compile reports and create PDF documents with indexing, pagination, and so on,
- Collaborate using video conferencing – utilise Skype/Google Hangouts on one, and discuss a document on the other – including sharing one screen with the other caller, and
- Better visibility of network resources.

> The modern-day sole practitioner needs to be technologically savvy

plug me in!

It has happened to all of us – long day out of the office, forgot to bring the charger, have to make that call – what do I do?

There are many options for additional power accessories, but for proven track record, quality and range of inventiveness, I like products from Mophie (www.mophie.com/shop/universal-batteries).

A battery pack – provided you charge it in the previous week or so – will keep you right. It will power an iPad and an iPhone without needing a recharge.

An easy alternative (for the phone at least) is a protective case that doubles as a battery.

Finally, this quote resonates with me: "We need to stop being proud of overworking ourselves. It's unhealthy, it stunts the growth of the business and it's unsustainable. Instead, we should be proud of or working in an environment that is efficient, organised and diligent enough to allow people to work regular hours on meaningful work" ("Your 60-hour work week is not a badge of honour" – Jeff Archibald).

Hopefully these elements will go some way to help to ease the burden on hard-pressed practitioners.

To access the extensive hyperlink features included in this and other articles, look for the digital version of the magazine at www.gazette.ie.

building BRIDGES

Although the construction industry has been temporarily stymied in Ireland and most of Europe, the industry continues to boom in several overseas markets. Alan Del Rio and Alison Bearpark discuss dispute resolution in construction contracts

Alan Del Rio is a solicitor and attorney in New York. He has worked on various construction projects in Ireland and overseas

Alison Bearpark is a solicitor and has been working on construction projects with LDR Construction Consultants

There is a simple equation at play in construction: the employer (or client, or owner – the public authority for which the project is being built) has control of the purse strings, and so exerts most of the power in the relationship with contractors. We can refer to this as the 'golden rule' (in that, he who has the gold, makes the rules). Most of the purpose of dispute resolution clauses in construction contracts has been to ensure that, when disputes occur, this balance of power is … well, more balanced.

There are several different standard form contracts that are used in construction (and quite a few one-off bespoke contract forms). Two standard form contracts – the FIDIC (Fédération Internationale Des Ingénieurs-Conseils) and NEC3 (New Engineering Contract) – contain markedly differing dispute resolution clauses.

Dispute resolution in construction contracts has been spurred on largely by organisations such as the World Bank, which is responsible for financing large international construction projects. Organisations such as this see dispute resolution clauses as a way of ensuring that projects finish on time and on budget through equitable and swift dispute resolution.

> **'Some employers, on having unfavourable adjudication decisions made against them, simply ignore the decision'**

The Kariba Dam project – located on the Zambezi River between Zambia and Zimbabwe and built between 1955 and 1959 – is a salutary warning of what can occur when there is no effective means of dispute resolution. There was no fast-track means of dispute resolution in the contract governing this project and, as a result, when disputes occurred, they were left to languish in the local legal system while the contractor and owner continued to work under the burden of losses suffered but not apportioned. The project ran significantly over budget, and at one stage it seemed as though the dam would not be finished at all.

However, since then arbitration, and now adjudication, have grown in popularity as methods of resolving disputes on an expedited basis.

FIDIC is the older and more established of the two forms of contract under discussion, whereas NEC3 is the new kid on the block and is gaining popularity since it was used during construction for the London 2012 Olympics. Obviously, even these standard forms of contract can be heavily amended prior to agreement, but for these purposes, maintenance of standard terms is presumed.

Construction disputes broadly boil down to claims for extra time to complete the construction project and/or extra money. The process of dealing with claims (which

PIC: REX FEATURES

at a glance

- Construction disputes broadly boil down to claims for extra time to complete the construction project and/or extra money
- Awareness of the event giving rise to the claim is a key factor under both forms of contract (FIDIC and NEC3), and numerous cases have been litigated on the issue of when a contractor can be considered to be aware of a matter
- Neither standard form has yet gained prevalence over the other (FIDIC is still widely used today and is the World Bank contract of choice)
- However, NEC3 brings some new ideas to the table in its attempt to further redress the balance of power in the contractor/employer relationship

PIC: THINKSTOCK

may or may not become disputes) under both forms of contract can be categorised in several broad steps.

Notification

The claim must firstly be flagged to the engineer (the employer's representative charged with managing the contract). This process ensures that the engineer and employer are aware that the contractor intends to claim and allows the engineer to monitor the matter.

FIDIC sets the time for notification as within 28 days of when the contractor became aware, or should have become aware, of the matter giving rise to the claim. NEC3 provides for a period of eight weeks for this notification to be made (however, there are certain exceptions to this rule).

Both contracts are similar at this stage, the only difference being the time within which notification must be made. Awareness of the event giving rise to the claim is a key factor under both forms of contract, and numerous cases have been litigated on the issue of when a contractor can be considered to be aware of a matter.

These clauses are important as (depending on jurisdiction) they can exclude the contractor's right to claim. Writing as practitioners, we can say definitively that these clauses are the single biggest problem faced by contractors. Compliance with strict time limits, especially early in project execution when resources are limited and priorities do not necessarily rest on claims, is frequently overlooked and can be costly in the long term.

Following on from the notification stage, the difference between the two forms of contract becomes more marked.

Post-notification, pre-dispute

While not necessarily a reaction to the FIDIC dispute resolution provisions, the NEC3 form of contract does attempt to address some of the perceived shortcomings of the FIDIC form of contract. Although FIDIC contains effective dispute-resolution provisions, there is a point in the process of dealing with disputes at which there is no time limit within which the next step must be taken. This allows the contractor to 'park' one (or several) disputes at the post-notification stage, revisiting them towards the end of the contract. This is generally a more palatable option for contractors as, for commercial

DIPLOMA CENTRE

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

LAW SOCIETY OF IRELAND

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	Tuesday 7 October	€2,200
Diploma in Mediation Law	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 French Law	Wednesday 24 September	€990
Certificate in Commercial Contracts (iPad)	Wednesday 1 October	€1,490
Certificate in Conveyancing and 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 Marks	Wednesday 8 October	€1,200
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.

PIC: THINKSTOCK

reasons, the general tendency is to try to show actual results in construction before attempting to resolve any disputes, both to ensure repeat business and a more favourable reaction from the employer when claims are made. However, this approach results in a forensic analysis of disputes, which is more costly, more time consuming, more open to partisan interpretation, and less likely to produce a correct result than if disputes were dealt with contemporaneously.

Under FIDIC, the contractor must submit detailed particulars within 42 days of providing his notification. These are elaborated details of the event giving rise to the claim, including the time and cost incurred by the contractor. If the event is ongoing, particulars can be submitted over several instalments. Again, this clause (depending on jurisdiction) is a strict time bar. The engineer then has 42 days to consider the detailed particulars and respond with his decision.

NEC3 does not require particulars of the claim to be provided directly after the notification. However, if the engineer responds rejecting the contractor's claim, the contractor must submit a notice of dispute within four weeks of the date of the engineer's rejection. As mentioned above, this is one of the distinguishing factors of the NEC3 suite of contracts.

Dispute

Once the engineer responds under FIDIC, if he rejects the contractor's claim, the 'parking' point is reached (for the purposes of this article, all roads lead to dispute, but it is possible to receive positive responses and solve the matter before that stage). The next step in the process is for the contractor to respond, stating that a dispute has crystallised (dispute crystallisation is a topic in and of itself and is used to describe the point at which a claim becomes disputed between the parties). However, there is no time limit for this action in the FIDIC suite of contracts, and so the claim may be left inactive as a dispute until the contractor responds.

NEC3, on the other hand, attempts to present an unbroken path from notification to dispute resolution through adjudication.

Once the contractor presents his notice of dispute under NEC3, he must then (between two to four weeks after the notice of dispute) present his referral of dispute to the appointed (or as yet unappointed) adjudicator. As can be seen, this represents an incredibly tight timescale between the event giving rise to the claim occurring and referral to adjudication (a maximum time period of 16 weeks), a path that is fraught with the further potential for time bars if actions are not taken within certain time periods.

> The Kariba Dam project is a salutary warning of what can occur when there is no effective means of dispute resolution

Quantification

To take account of the fact that the effects of the event might not have ended when a dispute is referred to adjudication, NEC3 allows for a system of quotations. FIDIC provides for recovery only of actual costs incurred, which suits their more forensic model.

So, when a claim event occurs under NEC3, the costs of the event are divided using what is known as a 'switch date'. This is a point in time (defined as the date when the engineer instructed or should have instructed the contractor to submit his assessment of costs incurred due to the claim event) used to segregate the use of actual (past) costs incurred and the use of estimated (future) costs to be incurred.

Resolution and enforcement

Historically under FIDIC, there has been an ongoing quandary regarding enforcement of adjudication decisions. This is due to the fact that adjudication decisions are generally only temporarily binding, pending arbitration. Some employers, on having unfavourable adjudication decisions made against them, simply ignore the decision. Others dispute its binding nature. There has been ongoing debate about the manner in which this situation can best be remedied, with practitioners generally agreed that the best recourse is to the same adjudicator (or panel) to rule on the nature of their original decision.

The NEC3 contract seeks to remedy this situation by stating in the form of contract itself that adjudication decisions are binding as a matter of contractual obligation between the parties to the contract. Although no solution can completely solve the problem (if a party does not want to pay, they will find some method of avoidance), it at least provides the contractor with some ammunition in the ensuing fight.

Balance of power

Neither standard form has yet gained prevalence over the other (FIDIC is still widely used today and is the World Bank contract of choice).

However, in our opinion, NEC3 (while not without its faults) does bring some new ideas to the table in its attempt to further redress the balance of power in the contractor/employer relationship, both in the concept of an unbroken chain of actions between notification of a claim and resolution of the resulting dispute in adjudication at first instance, and in resolving the old FIDIC problem of enforcement of adjudication awards. g

The authors wish to thank Donal Larkin (consultant engineer and managing partner in LDR Construction Consultants) for reviewing the article.

ORDER *in the court*

Paula McCarthy is a Cork-based barrister

'Rule of court' versus 'court order' – when it comes to the enforcement of consent agreements in family law, is a 'rule of court' an oxymoron? Paula McCarthy goes definition-hunting

Settlement of family law proceedings can be an inherently challenging process and, thus, the parties will require that the agreement reached is enforceable in the event of default, without any additional hurdles to overcome.

In general, family law proceedings are settled by reducing the terms to writing, in order to then rule these by making the terms either a court order or a 'rule of court'. As an important recent High Court judgment in *DL v ML* illustrates, there may be a significant difference of the effect in practical terms of an order of court as opposed to a rule of court.

DL is the first Irish reported judgment that addresses the precise status of a consent settlement, and whether a consent settlement made a rule of court is equivalent, in effect, to an order and enforceable as such – or merely an agreement that requires further steps to be taken in relation to it before it becomes an order or equivalent of an order.

> **'And, with that, the husband's entire lump sum redundancy payment was snaffled by the bank'**

Ex parte like it's 1999

DL was an appeal against a Circuit Court order, made in July 2013, that a sum of €81,500 – the remaining proceeds of a redundancy payment to the appellant (the husband) – be paid instead to Allied Irish Bank in discharge of the joint liability of the husband and the respondent (the wife) to the bank in respect of a commercial premises.

The parties had earlier compromised divorce proceedings in 2009. However, a crucial part of the settlement (contained in clause 4) had not been implemented by the husband, providing for the release of the wife from the obligations under a mortgage to the bank in respect of a commercial property. There followed a series of applications and motions to the Circuit Court from 2011 onwards, as a result of a provision in the settlement permitting re-entry.

The wife, on becoming aware that the husband was to receive a substantial redundancy payment, made an *ex parte* application to the Circuit Court in February 2013, and an order was granted directing the husband to lodge the entire redundancy sum to his solicitors' account and restraining him from dissipating that sum without further order of that court. The notice of motion of February 2013, on foot of which the *ex parte* order was made, sought, among other things, an order directing the husband to apply such portion of the redundancy funds in discharge of the mortgage in respect of which the wife was still liable. In July 2013, the Circuit Court made this order, effectively granting the relief sought.

The husband appealed and sought a stay on a number of grounds, including, among other things, that the Circuit Court did not have the jurisdiction to make the order, as clause 4 (in the original divorce consent of July 2009) was merely made a 'rule of court'.

It was submitted that clause 4 was, therefore, unenforceable in the circumstances against the husband, unless and until the wife made a separate application to the court and obtained an order giving effect to the terms of clause 4. This had not been done and, therefore, it was suggested that the court had no legal basis upon which to make orders arising out of the failure of the husband to comply with the terms of the clause. Fresh enforcement proceedings, it was argued, would be required whereby the husband would be sued on foot of the settlement for breach of the terms.

A *Shaw* thing

McDermott J considered the submissions made on behalf of the husband in support of this argument and, in particular, the 1918 case of *Re Shaw*, where Warrington LJ

> The court is satisfied that making the clause of an agreement a 'rule of court' does not have the same effect as making an order in the terms of the clause

PIC: REX FEATURES

at a glance

- A recent High Court judgment illustrates that there may be a significant difference of the effect in practical terms of an order of court as opposed to a rule of court
- It is the first Irish reported judgment that addresses the precise status of a consent settlement, and whether a consent settlement made a rule of court is equivalent, in effect, to an order and enforceable as such
- Making the individual provisions of the settlement agreement an order of the court, where possible, is paramount in order to avoid any unnecessary confusion, delay or uncertainty in enforcing an agreement

Whose copy of the Gazette are you reading?

Why not subscribe ...

€60 FOR 10 ISSUES

I would like to subscribe to the *Law Society Gazette*

- ☐ I enclose my cheque for €60 (Subscribers in the Republic of Ireland)
- ☐ I enclose my cheque for €90 (Overseas subscribers)

Please charge my ☐ Access ☐ Visa ☐ Mastercard ☐ Eurocard

Credit card number: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiry date: ☐☐☐☐ MONTH/YEAR

Name: _____

Address: _____

_____ Telephone: _____

Signature: _____

Please return to *Law Society Gazette*, Blackhall Place, Dublin 7.

FOCAL POINT

steps to enforcing a rule of court

Settlement of family law proceedings is often a testing and time-consuming process. As is apparent from the judgment in *DL v ML*, the ruling of the settlement is a further step that will have to be given close consideration to ensure it is enforceable.

Two matters arise immediately from the decision:

- **The correct approach in ruling a judicial separation or divorce settlement is to seek that the court "make such orders as may be made in terms of paragraphs XYZ and to receive the balance", that is, to receive such terms in the settlement as fall outside the pleadings and make those a rule of court. If this does not happen and in any case where enforcement of an order is likely to arise, it may be necessary to seek that the order be clarified by the court by "speaking to the minutes of the order". If this is not on consent, an application should be made on motion on notice to the other side, to correct the written order. The solicitor should check the order when it issues to ensure that it reflects what occurred in court.**
- **In *DL v ML*, McDermott J allowed the provision made a rule of court to be enforced, notwithstanding the fact clause 4 was not a court order. There may be divergent views as to whether this decision will have wider application or be solely confined to the facts of this particular case.**

Therefore, any party seeking to enforce a term of such an agreement would be well advised to issue an application seeking relief in the alternative, that is, seeking enforcement of a term as an order; or alternatively, if not an order, as a term of the agreement that contains default provisions that allow for enforcement in the event of non-compliance.

held that: "The parties to the probate action compromised it by an agreement … By the decree following those terms, the terms were directed to be filed and made a rule of court, but there was no judgment in which those terms were merged. In my opinion, notwithstanding that the terms were made a rule of court, the liability to pay the annuity remains contractual. The effect of making the terms a rule of court enables the terms to be summarily enforced without the necessity of bringing an action."

Accordingly, the provisions of that agreement that were made a rule of court were deemed to be contractual and did not automatically obtain the status of a court order.

Having considered the matter and the authorities in an extensive section of the judgment, McDermott J held against the husband and found that: "The court is satisfied that making the clause of an agreement a 'rule of court' does not have the same effect as making an order in the terms of the clause. It provides a shortened procedural route to enforcement of the term by way of application within the proceedings, whereby an order may be made merging the terms of the clause with the existing order of the court, thereby providing a means for the enforcement of the agreement without recourse to separate proceedings. In formulating the precise terms of the order to be made, the court may have regard to the nature and extent of the settlement. It may be inappropriate to make such an order, if it were to affect a third party's rights who is not a party to the proceedings or, if the terms of the clause relied upon are so vague or imprecise as not to be capable of formulation as an order by the court. Normally, it would be prudent to ensure that when seeking to convert such an agreed clause into the form of an order, that this specific relief should be claimed in the notice of motion relied upon. However, given the executory nature of many orders, particularly in family law proceedings, and the exigencies often dictated by changing circumstances, as in this case, strict adherence to this procedure may cause injustice on occasion."

> **'The husband appealed and sought a stay on a number of grounds, including, among other things, that the Circuit Court did not have the jurisdiction to make the order, as clause 4 (in the original divorce consent of July 2009) was merely made a 'rule of court'**

DL or no DL

Mr Justice McDermott concluded: "I am satisfied, because of the unexpected events that required urgent action by the respondent to preserve her position and the necessity for determination of the core issue in respect of the lump sum, that the application should be regarded in substance as one to clothe clause 4 in the form of an order and made such ancillary order as may be appropriate to ensure that the agreement is enforced and, in particular, that a substantial part of its benefit to the respondent is not lost. I recognise that, in most cases, the better approach is to adopt the two-stage process, but it would not be in the interests of justice to apply such a process inflexibly. The issue in this case has been fully canvassed, and the appellant has not been disadvantaged or prejudiced by what might be regarded as a telescoping of the two-stage process. In the special circumstances of this case, I do not consider that a reliance on legal formalism should be allowed to defeat the respondent's entitlement to relief. I am, therefore, satisfied that the lump sum presently held on account be paid to the bank in part discharge of the capital sum due on foot of the mortgage account."

And, with that, the husband's entire lump sum redundancy payment was snaffled by the bank.

To avoid any unnecessary confusion, delay or uncertainty in enforcing an agreement, making the individual provisions of the settlement agreement an order of the court, where possible, is paramount. The judgment of McDermott J supports this view and, practically speaking, family law practitioners and their respective clients will have greater certainty as to the status of the terms of the agreement and their enforcement in the event of default. g

look it up

Cases:

- *DL v ML* [2013] IEHC 441
- *Re Shaw* [1918] P47 at pp53-54

Literature:

- Foskett, David, *The Law and Practice of Compromise* (7th edition; 2010), para 11-04 to 11-20; para 24-121 to 24-125
- Delaney, Hilary, and David McGrath, *Civil Procedure in the Superior Courts* (3rd edition; 2012), para 19-23 to 19-26

In a recent High Court decision, significant emphasis was placed on the requirement for PIAB authorisation in the hazy procedural context of trespass to the person claims. Sarah O'Dwyer explains

TRESPASS *against us*

Sarah O'Dwyer is a Dublin-based barrister

'Trespass to the person' umbrellas the torts of assault, battery, intentional or reckless infliction of emotional suffering, and false imprisonment. Such claims are governed by the *Civil Liability and Courts Act 2004* and the *Personal Injuries Assessment Board Act 2003* in a somewhat awkward provisional mesh. As noted by Justice Baker recently in *PR v KC*, the acts are substantially *in pari materia* despite any legislative provision providing for their collective interpretation.

Statute of Limitations

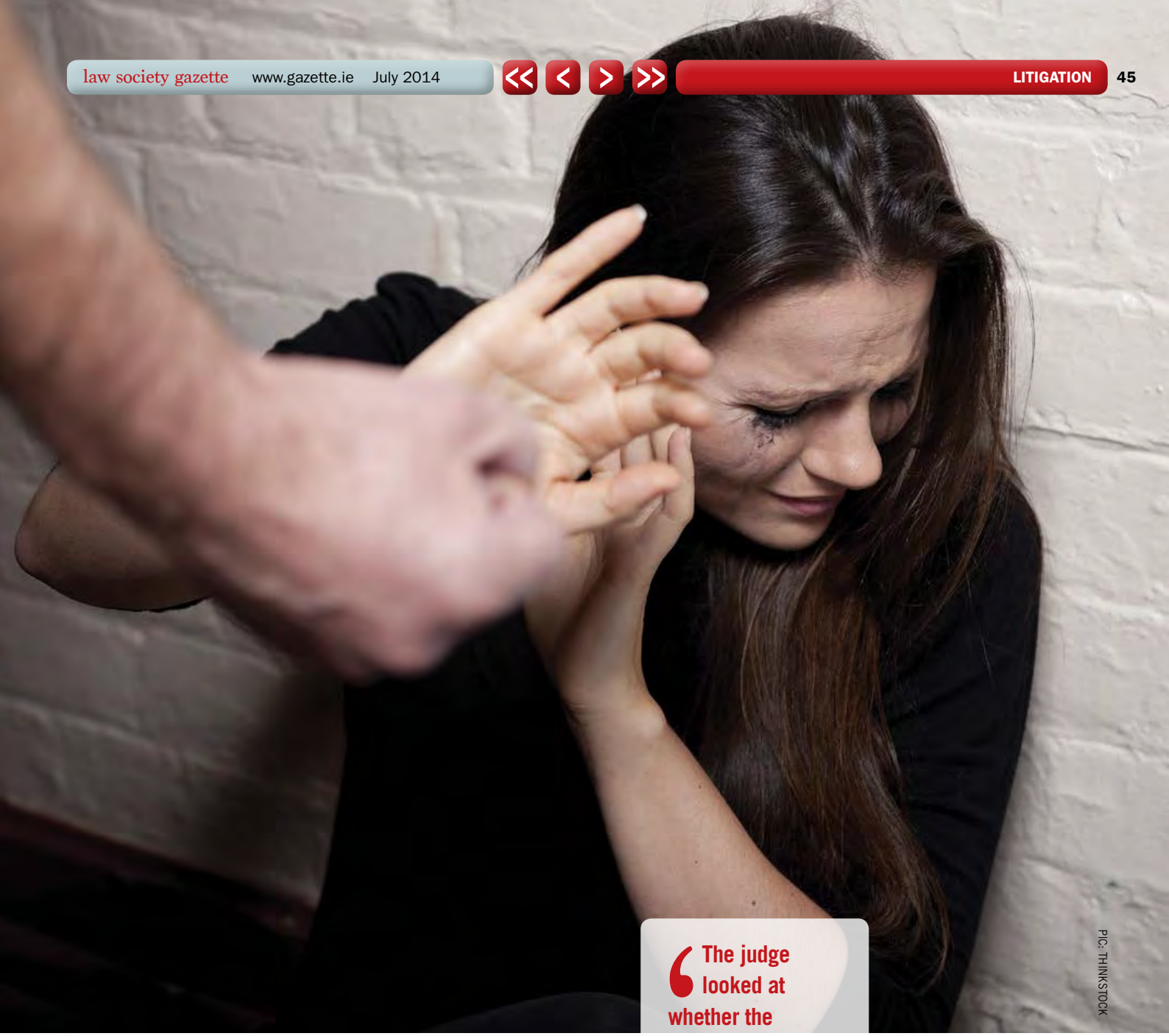
Cases where personal injuries have been sustained on foot of a trespass to the person are subject to a six-year limitation period (section 11(2)(a) of the *Statute of Limitations 1957*). Section 2(1) of the 2004 act states that a 'personal injuries action', for the purposes of that act, does not include a claim where damages for trespass to the person are sought, and such claims are unbound by the requirement to commence proceedings on a personal injuries summons within a two year statute of limitation period – as seen in the Supreme Court in *Devlin v Roche*.

The 2004 act does not specify the type of trespass to the person that must be claimed in order for the case to fall outside the definition of 'personal injuries action'. The existence of the plea *per se* appears to suffice in order to render a claim subject to the six-year *Statute of Limitation* period. While the 2004 act does not expressly state that the inclusion of a claim for damages for trespass to the person be *bona fide*, it seems prudent to avoid surmising the plea as legitimate and instead to ensure that it is a real claim for trespass to the person.

Proceedings for trespass to the person are brought by way of plenary summons. As set out above, under the 2004 act, all claims that include a plea for damages for trespass to the person are excluded from the meaning of 'personal injuries action' and are not required to

at a glance

- A recent High Court decision highlights how the courts are required to establish the real substance of a trespass to the person claim in order to determine whether or not it has jurisdiction to hear such cases in the absence of a PIAB authorisation
- PIAB authorisation is still required in claims that include damages for trespass to the person where personal injuries sustained are the only cause of action
- PIAB authorisation is not required in a trespass to the person claim where the cause of action is other than personal injuries sustained (where there is a claim for damages for any other cause of action together with the personal injuries claim, and in cases where a real breach of constitutional rights are asserted



PIC: THINKSTOCK

> The judge looked at whether the plaintiff's claim was in reality an action for trespass to the person and assault – or if it was really a civil action for personal injuries

be drafted on a personal injuries summons. An application can be made to the court by a defendant to strike out proceedings if brought by a plaintiff in an incorrect form (a personal injuries summons), and the court has discretion to decide whether or not to strike out proceedings on that basis – and will consider the prejudice (if any) as suffered by the defendant on foot of the incorrect constitution of the proceedings.

PIAB authorisation

The *PIAB Act* states that PIAB can decline to assess damages in trespass to the person claims where it is of the view that such an assessment would not respect the dignity of the claimant, due to the limited means PIAB can employ. In *Cunningham v North Eastern Health Board*, Justice Hedigan observed how PIAB authorisation was still required in a case that involved a trespass to the person action. In that case, damages were sought for breach of fiduciary duty, assault, trespass, and intentional infliction of emotional distress, along with a number of declaratory reliefs. The claim arose on foot of an assault that took place while the plaintiff was a patient in Monaghan General Hospital. Monaghan County Council were joined as a co-defendant by the plaintiff on the basis that it was the owner, operator, occupier and manager of Monaghan General Hospital.

Justice Hedigan dismissed the plaintiff's claim against Monaghan General Hospital on foot of the plaintiff's failure to seek authorisation from PIAB before commencing proceedings. The judge noted that it was "a jurisdictional matter" and, without the authorisation from PIAB, the court had no jurisdiction to entertain the proceedings against Monaghan General Hospital. In reaching his decision, the judge referred to the provision in section 12(1) of the *PIAB Act* that requires that PIAB authorisation must be sought before court proceedings may be brought. He noted that the *PIAB Act* contains a "statutory prohibition on actions being

Summer BBQ at Blackhall Place

The perfect way to get together with your work colleagues, friends and family on the beautiful grounds of Blackhall Place.




BBQ Menu A

Chargrilled Beef Burgers with a Sesame Seed Bun and a Selection of Condiments

Pork Sausage with a Mini Baguette and a Selection of Condiments

A Selection of Chef's Salads

Summer Dessert

€20.00 per person

BBQ Menu B

Chargrilled Beef Burgers with a Sesame Seed Bun and a Selection of Condiments

BBQ Chilli Sausages with a Mini Glazed Baguette and a Red Onion Compote

Grilled Teriyaki Salmon with Cucumber and Chilli Raita

A Selection of Chef's Salads

Summer Dessert

€25.00 per person

BBQ Menu C

Chargrilled Beef Burgers with a Sesame Seed Bun and a Selection of Condiments

Pork Sausage with a Mini Glazed Baguette and a Red Onion Compote

Grilled Teriyaki Salmon with Cucumber and Chilli Raita

Baby Gem Caesar Salad with Grilled Chicken and Shaved Parmesan

Chef's House Coleslaw

Mediterranean Penne Pasta Salad

Summer Dessert

€30.00 per person

All of the above Packages also include the following:

- Inside area with full bar facilities
- Complimentary parking
- Service Charge

Minimum numbers of 20 people apply
An alternative setup will be provided in case of bad weather

For further details contact us on:
Blackhall Place, Dublin 7
Email: events@lawsociety.ie | Ph: 00353 (0) 1 672 4918
Web: www.lawsociety.com/venuehire

Blackhall Place
Headquarters of the Law Society of Ireland

instituted at all, unless and until an application is made to PIAB and an authorisation is issued".

Further, the judge observed the significance of the cause of action in such cases. In this case, personal injuries sustained were the only cause of action, and he noted that "the other matters raised in the pleadings are just different ways of seeking the same thing [that is] damages for personal injury". The fact that the cause of action was solely personal injuries sustained meant that the claim fell within the definition of a civil action for the purposes of rendering the *PIAB Act* applicable.

PR v KC

In the recent decision of Justice Baker in *PR v KC*, the plaintiff brought a claim for damages for assault and battery, trespass to the person, the intentional infliction of emotional suffering, and breach of the plaintiff's constitutional right to bodily integrity. It was alleged that the plaintiff had been wrongfully sexually assaulted and abused by the defendant. Justice Baker addressed the preliminary issue of whether the proceedings were barred (by virtue of section 12(1) of the *PIAB Act*) on the basis that the plaintiff had not sought PIAB authorisation prior to issuing proceedings. Justice Baker held that PIAB authorisation was not required in this case, and the plaintiff could proceed with the claim.

The judge drew a distinction and looked at whether the plaintiff's claim was in reality an action for trespass to the person and assault – or if it was really a civil action for personal injuries. The judge cited a number of cases (see the 'Look it up' panel) where the courts had taken the view that a consideration of the factual circumstances was the key to understanding the nature of the cause of action and ascertaining whether PIAB authorisation was required. She noted how the absence of PIAB authorisation in a case to which the *PIAB Act* applied is not a mere fault in procedure, but goes to the root of the court's jurisdiction to hear and determine the claim.

> It seems counterintuitive that authorisation from PIAB is still required in cases that are not a personal injuries action by definition, and further are drafted on a plenary summons and subject to a six-year statute of limitation period

Justice Baker considered the substance of the claim, as opposed to the way in which the claim was pleaded. The substance of the action was found to be one in which the plaintiff sought to vindicate his personal and constitutional right to bodily integrity and the person, and not a civil action for personal injuries. The judge noted how trespass to the person is a claim founded in a tort that is actionable *per se* (without proof of actual damage or injury) and that such a claim is one that "does not as a matter of law require the plaintiff to establish personal injury". No proof of actual damage is required to succeed in recovering damages arising from the tort of trespass to the person or assault. A plaintiff is entitled to damages merely on account of having been subjected to the trespass and, in those circumstances, the plaintiff does not have to show that any injury resulted from the assault.

Another factor that led to the judge's decision to hold the claim outside the PIAB authorisation requirement was the fact that the plaintiff's claim included a claim for breach of constitutional rights, which was not one ancillary to the claim for trespass to the person and therefore was excluded from the operation of the *PIAB Act*.

Current position

PIAB authorisation is still required in claims that include damages for trespass to the person where personal injuries sustained are the only cause of action. PIAB has the discretion to decline to assess the damages in such cases, but authorisation to proceed with one's claim is still required. It seems counterintuitive that authorisation from PIAB is still required in cases that are not a personal injuries action by definition, and further are drafted on a plenary summons and subject to a six-year statute of limitation period.

PIAB authorisation is not required in a trespass to the person claim where the cause of action is other than personal injuries sustained (bearing in mind the fact that medical negligence actions are not subject to PIAB authorisation), where there is a claim for damages for any other cause of action together with the personal injuries claim, and in cases where a real breach of constitutional rights are asserted. The recent decision of Justice Baker highlights how the courts are required to establish the real substance of a trespass to the person claim in order to determine whether or not it has jurisdiction to hear such cases in the absence of a PIAB authorisation.

look it up

Cases:

- *Campbell v O'Donnell & Ors* [2008] IESC 32; [2009] 1 IR 133
- *Cunningham v North Eastern Health Board* [2012] IEHC 190
- *Devlin v Roche & Ors* [2002] 2 IR 360
- *Gunning v National Maternity Hospital & Ors* [2008] IEHC 352; [2009] 2 IR 117
- *Carroll v Mater Misericordiae Hospital* [2011] IEHC 230
- *PR v KC Legal Personal Representative of the Estate of MC Deceased* [2014] IEHC 126

Legislation:

- *Civil Liability and Courts Act 2004*
- *Personal Injuries Assessment Board Act 2003*
- *Statute of Limitations 1957*

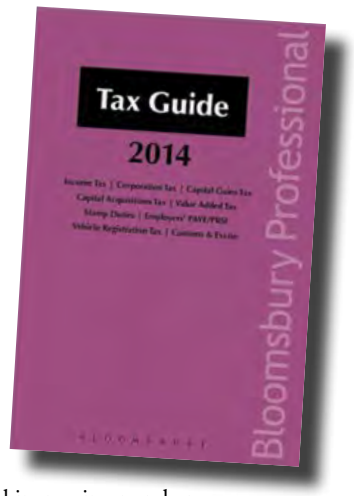
FOCAL POINT

medical malpractice exempt

Medical malpractice actions are exempt from the requirement to submit to prior assessment through PIAB. Section 3(d) of the *PIAB Act 2003* provides for the exclusion of claims that arise out of the provision of any health service to a person, the carrying out of a medical or surgical procedure in respect of a person, or the provision of any medical advice or treatment to a person.

Tax Guide 2014

Bloomsbury Professional (2014), www.bloomsburyprofessional.com. ISBN: 978-1-78043-461-2. Price: €130.



With tax rates increasing and the reliefs being scaled back, this guide provides concise commentary on key provisions, detailing the relevant provisions and making extensive use of examples. Footnotes reference cases of note, Revenue publications, and published articles.

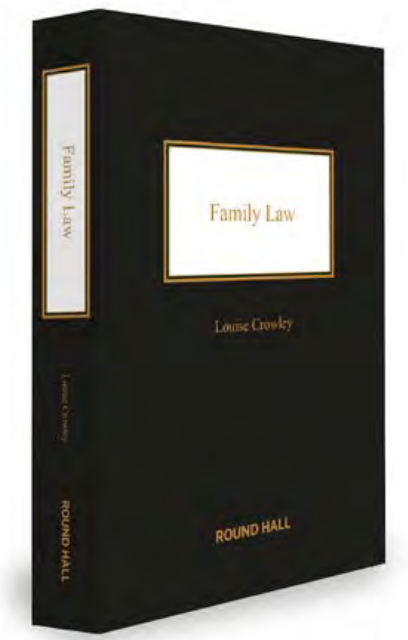
The topics covered have each been written by experts in their respective areas. Each section follows a standardised format, beginning with basic principles, moving through exemptions, the charge to tax, relief, anti-avoidance and appeals. Of particular note are the chapters devoted to the powers of the Revenue Commissioners, with details of offences and applicable penalties also outlined – information that is not always easily accessible to those not practising tax on a daily basis.

This is an invaluable reference tool for practitioners. With tax laws essentially reviewed and revised on an annual basis under the *Finance Act*, and increasing numbers of prosecutions and challenges being taken by Revenue, one cannot afford to assume that what was known to be the case last year is still so.

Sonia McEntee is principal of Dublin firm Sonia McEntee Solicitors.

Family Law

Louise Crowley. Round Hall (2013), www.roundhall.ie. ISBN: 978-0-41403-228-6. Price: €245.



The area of family law has developed and expanded at an unprecedented rate in recent years, both domestically and internationally. How does one gather and assemble all those strands of change and knit them into the established and spreading fabric?

Well, Dr Louise Crowley (lecturer at University College Cork) has done so as a result of "almost 20 years of research in respect of all aspects of family law, following my early years in family law practice".

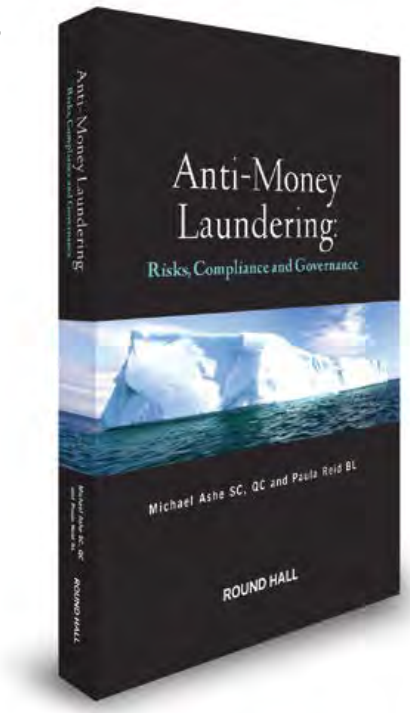
Family Law contains 17 chapters, an 11-page table of cases, and 36 pages in the table of legislation. The delineation, division and subheadings of the chapters are extensive, adding further speed of reference. The writing is clear and there is an abundance of extracts from and references to a myriad of sources including, but not limited to, conventions, Dáil debates, Law Reform Commission reports, foreign case law, European law and Seanad debates.

The book's first chapter focuses on the family, marriage and the law, with Chapter 2 devoted to the non-marital family. Following are detailed treatments of guardianship, custody and access; child law; State intervention in the family; adoption law; child abduction – and by now you are halfway through the book. Judicial separation, divorce, private ordering, ancillary relief on marital breakdown, law of nullity, domestic violence and European influences on family law are closely explored in the final chapters of a volume that has almost 800 pages of text.

Peter Groarke is a solicitor with Cork law firm Ronan Daly Jermyn.

Anti-Money Laundering: Risks, Compliance and Governance

Michael Ashe and Paula Reid. Round Hall (2013), www.roundhall.ie. ISBN: 978-1-85800-620-8. Price: €165.



For solicitors, bankers, and all those who advise on the anti-money-laundering area, this book deals with the setting up of systems in businesses. By extension, this also applies to solicitors' practices with regard to the role of money-laundering reporting officer. How many firms have such a position? It is still a problem that, when the Law Society investigates practices, anti-money-laundering procedures have not been followed and in many cases don't exist.

For the vast majority of practitioners, the anti-money-laundering requirements are relatively straightforward and do not cause problems. However, this book is valuable in preparing you to be risk adverse and to be wise to the possible perils in every transaction – and also to set up systems that can prevent problems for practices.

For solicitors, reaching the stage of actually knowing a client to be involved in money laundering is thankfully a rarity. That said, this book is invaluable for financial institutions, and the authors have gone to great lengths to make a difficult subject manageable and readable.

This is an excellent and very detailed guide to a complex area of legislation, compliance and governance. It contains a very detailed index, together with a wide index of legislation and case law reference. A very good, easy to use reference source for solicitors and financial institutions.

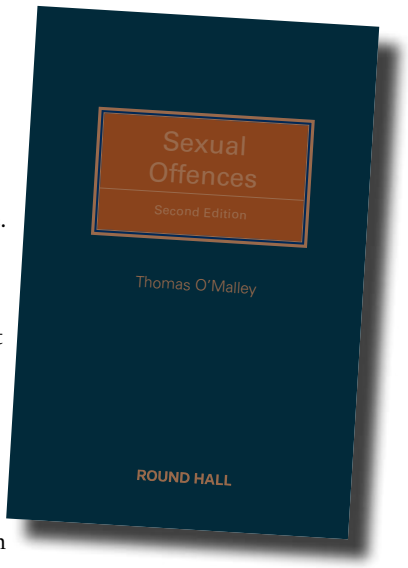
Michael Quinlan is principal of Dublin firm Dixon Quinlan.

new books available to borrow

- Arlidge, Anthony *et al*, *Arlidge and Parry on Fraud* (4th ed; Sweet & Maxwell, 2014)
- Coppel, Philip, *Information Rights Law and Practice* (4th ed; Hart, 2014)
- Dorgan, Theo, *Foundation Stone: Notes Towards a Constitution for a 21st Century Republic* (New Island, 2014)
- Edwards, Anthony, *Advising a Suspect in the Police Station* (8th ed; Sweet & Maxwell, 2013)
- Gleeson, Simon, *A Practitioner's Guide to the Regulation of Investment Banking* (3rd ed; Sweet & Maxwell, 2013)
- Hooper, Martyn, *A Practitioner's Guide to the Law and Regulation of Market Abuse* (Sweet & Maxwell, 2013)
- Kelly, James and Mary Anne Lyons, *The Proclamations of Ireland 1660-1820* (five volumes; Irish Manuscripts Commission, 2014)
- Kramer, Adam, *The Law of Contract Damages* (Hart, 2014)
- Meenan, Frances, *Employment Law* (3rd ed; Round Hall, 2014)
- Sinclair, Neil, *Sinclair on Warranties and Indemnities on Share and Asset Sales* (9th ed; Sweet & Maxwell, 2014)
- Townsend, Heather and Jo Larbie, *How to Make Partner and Still Have a Life* (Kogan Page, 2013)
- Van Lynden, JH, *Enforcement of Judgments, Awards and Deeds in Commercial Matters: Jurisdictional Comparisons* (Sweet & Maxwell, 2013)
- Williams, Michael, *Serving the People: the Need to Reform the Irish legal System* (Liffey Press, 2013)
- Wood, Kieron, *Family Breakdown: a Legal Guide* (Clarus Press, 2014)

Sexual Offences

Thomas O'Malley. Round Hall (2013), www.roundhall.ie. ISBN: 978-1-85800-715-1. Price: €365.



In the preface to this second edition, Thomas O'Malley notes that "very little has been salvaged from the first edition". Interestingly, such wholesale changes have been made without the law having developed significantly in the 17-year period. Instead, the author dedicates new chapters to some of the few areas of change, law including human trafficking, child pornography, harassment and false complaints. Further, chapters on aspects of criminal procedure and evidence most relevant to sexual offences have also been included. This combination makes for a comprehensive overview of a broad area of law.

As noted by the author, recorded sexual crime has greatly increased over the past decade. Perhaps the most pronounced and well publicised since the first edition has been the growth of prosecutions for historic child sexual abuse. On foot of this, the author conducts an in-depth analysis of the area. In addition, he has provided an important review and analysis in Chapter 13 on false complaints and other offences against the administration of justice. This chapter is an important reference and is essential reading for practitioners working in this area.

The second section relates specifically to the criminal justice process. The issue of delay in the making of complaints of abuse is examined in some detail. O'Malley explores whether a fair trial is possible after the elapse of years and in many instances decades, since the alleged abuse. The third section examines sentencing and associated considerations.

This text makes an important contribution to an area of law that is of significant contemporary interest and concern. The author draws attention to areas of improvement that have taken place in terms of new legislation and developments in legal processes and procedures. He achieves this with a writing style that is both accessible and interesting. Expertly drawing on available literature and research in the subject area, O'Malley develops and extends his critical commentary and analysis throughout. The text will be of interest to academics, students and practitioners alike.

Shane McCarthy is a solicitor based in Skibbereen, Co Cork, and is a member of the Criminal Law Committee of the Law Society.

NIALL DOLAN 1962 – 2014

The untimely death of Niall Dolan at the age of 52, after a brave and tough fight against illness, has left his family and friends bereft.

Niall was an extraordinary man, blessed with a superb intellect, yet he never lost the common touch. Niall was one of the foremost solicitors in the country. His practice – based in Cootehill, Co Cavan – was one of the largest operating outside of the capital. To those who knew him, this was no surprise: at everything he did in life, he excelled.

Niall was born in Belfast in 1962 to Frank (who survives him) and Phyllis (deceased in 2009). He was the second-eldest of five children and was gifted both as an athlete and academic. He attended St Macartan's College, Monaghan, as a boarder, winning a Rannafast Cup medal (Ulster Junior Cup) in 1977. He went on to study law in UCD, completing his honours BCL in 1982, during which time he excelled as a boxer at featherweight level. He was Irish Varsity Champion in 1981 and 1982 and became Dublin novice Featherweight Champion in 1982. In that same year, as captain of UCD Boxing Club, he was the British and Irish University Featherweight Champion, being the star of the UCD team that won the British-Irish Inter-Varsity Cup in 1982. He was also a member of the UCD team that won in 1981.

Niall qualified as a solicitor in 1986. After a short period working in LB McMahon in Dublin's O'Connell Street, he returned to his native Cavan and became the Dolan in AB O'Reilly Dolan & Co. Over the next 25 years, he helped turn the firm into a huge and thriving practice,

operating at the very top end of defence civil litigation and dealing with some of the largest cases ever litigated.

He was a fearless advocate who had honed his skills on behalf of clients from all backgrounds, primarily in the District and Circuit Courts of Cavan and Monaghan. It was his shrewdness as a master tactician and his unrelenting work ethic that set him apart.

He had the very rare ability of combining these skills with a humility and generosity of spirit. He was always conscious of those less fortunate than him, striving to achieve resolution to conflict that would assist and improve the lives of his many clients. In particular, he was very giving of his time to colleagues whenever they might find themselves in difficulty, professionally or otherwise, and, to that end, he devoted considerable time and energy at his own expense.

Niall had a passionate interest in all sports, including rugby, boxing and soccer, but his favourite was Gaelic football. He played it skilfully and passionately for almost all of his life. He was tenacious, with a low centre of gravity, and could 'turn on a sixpence'. He captained his local club, Ramor Utd GFC, to a county minor championship in 1980. He won two Cavan under-21 county championship medals with Ramor Utd in 1980 and 1982, as well as two senior Cavan club championship medals, also with Ramor in 1985 and 1992. He continued to play and starred with the county's over-40s team. He served as the club's representative on the Cavan County Board, was a member of the GAA disciplinary authority and, of course, was the legal advisor to the Cavan County Board and team.

Niall's life touched so many people throughout the north-east and further afield. He will be especially missed by his legal colleagues. In the last decade of his life, his presence in the Square and Round Halls of the Four Courts was ubiquitous, and his unfailing courtesy and good humour set him apart.

He will be missed most of all by his family, to whom he was devoted. He married Anne (née O'Connell) in 1992. She, too, is a hard-working and popular solicitor who left her native Dublin to join Niall in life and practice. They were the epitome of a happy and devoted couple. He leaves behind four wonderful children, Catherine (16), Clare (14), Roisin (13) and John (12), who will be an enormous source of strength and comfort to Anne in the times ahead. It is of particular satisfaction that each of the children have, in turn, acquired those rare abilities and characteristics of their late lamented father.

Niall is also survived by his father Frank and four siblings, John, Aiveen, Fergus and Tony, brother-in-law Michael and sisters-in-law Annette and Siobhan. They were an enormous solace to Niall, particularly in the last difficult weeks of his final journey.

Ar dheis Dé go raibh a anam.

HM

council report

Council meeting – 6 June 2014

Legal Services Regulation Bill

The director general reported on a meeting with then Minister for Justice Alan Shatter on 28 April 2014 and several communications between the Society and department officials in recent weeks on the detail of the bill. The Society's principal concerns remained the transfer of staff, transitional provisions, financial regulation, MDPs, LLPs and confidentiality of solicitor/client communications.

At the Bar Council conference in Westport the previous weekend, the new minister, Frances Fitzgerald, had indicated that she was willing to engage and discuss matters with the Society and the Bar Council. However, it also appeared that the bill would proceed through the parliamentary process as before, with a proposed date for report stage in mid-July and a proposed enactment date before 1 January 2015. A meeting of the director general and president with the minister would be held, at which the Society would raise its list of priority issues.

Professional indemnity insurance

The Council discussed the consultation process initiated by the Solicitors Regulation Authority in England and Wales in relation to the possibility of requiring a minimum credit rating for solicitors' professional indemnity insurers. While it did not appear that this proposal would proceed for the forthcoming indemnity period, the market share held by unrated insurers in England and Wales and in Ireland remained a matter of concern. It was agreed that the Society would conduct another information and consultation process with practitioners in the lead-up to the renewal period.

Recording of phone calls in garda stations

The Council noted correspondence between the Society, An Taoiseach and Mr Justice Nial Fennelly in relation to the recording of telephone conversations between clients in garda stations and their solicitors. The Council was also briefed on a meeting with Judge Michael Reilly in relation to recordings by the Prison Service. It appeared that the scale of recordings was likely to be immense.

eConveyancing Project

Patrick Dorgan noted that the recently published Government Construction 2020 Strategy contained a laudatory reference to the Society's eConveyancing Project, which had also been mentioned in an article in *The Irish Times*. Subsequently, the Oireachtas Committee on Justice had invited all interested parties to attend a hearing of the committee on Wednesday 25 June, at which each would be provided with an opportunity to state their position and answer questions.

Garda station interviews

The Council was briefed on discussions between the Law Society and the Department of Justice in relation to the preparation of guidelines for practitioners on the system being put in place by the State to provide for the attendance of solicitors at garda station interviews. It was noted that competition law prevented the Society from engaging in any negotiations, agreements, or recommendations in relation to solicitors' fees. It was the responsibility of the State to establish a system that would work with a reasonable level of remuneration for those involved, and it was hoped that this would occur in early course.

Delays in taxation of costs

The Council discussed the difficulties being faced by practitioners as a consequence of the delays in the taxation of costs. It was agreed to reiterate the Society's call for the appointment of a third taxing master with the new minister.

Backdating practising certificates

A practising certificate must be applied for on or before 1 February in each year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the year. Any applications for practising certificates that are received after 1 February in each year will result in the practising certificate being dated the date of actual receipt by the Registrar of Solicitors of the properly completed application form and full payment, rather than 1 January in that year. There is no legal power to allow any period of grace under any circumstances whatsoever.

Where a solicitor commences practising during the year, a practising certificate must be in force on or before the date the solicitor begins to provide legal services. The practising certificate will be dated the date of actual receipt by the Registrar of Solicitors of the properly completed application form and full payment.

It is professional misconduct and a criminal offence for a solicitor (other than under exceptions provided for in legislation) to practise without a practising certificate. A solicitor shall be deemed to practise as a solicitor if he or she engages in the provision of legal services, whether in reserved or unreserved areas. 'Legal services' are services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor.

As such, any solicitor whose practising certificate is dated after the date that they commenced providing legal services in any year is advised to make an immediate application to the President of the High Court to have their practising certificate backdated to the date on which they commenced providing legal services in that year. The Society has no legal power to backdate a practising certificate.

The Society is a notice party to backdating applications to the High Court. It is matter for each solicitor to prepare their own affidavit with regard to this application. The Society seeks its costs of €350 per solicitor for each application.

Once the High Court has heard the notice of motion and consented to the backdating of the practising certificate, it is necessary to take up a copy of the order and furnish same to the Society together with payment in full of the costs awarded and to surrender the original practising certificate to the Society. On receipt of this documentation, original practising certificate and payment, the Society will issue the backdated practising certificate.

The actions that can be taken against a solicitor found to have practised or be practising without a practising certificate include a referral to the Solicitors Disciplinary Tribunal, an application to the High Court, and a report to An Garda Síochána.

Further information on backdating practising certificates, including a precedent notice of motion, can be obtained from the Practice Regulation Section of the Society by emailing pc@lawsociety.ie.

John Elliot,
Registrar of Solicitors and Director of Regulation

In-house solicitors – requirement to hold a practising certificate

In-house solicitors (that is, solicitors practising as a solicitor by providing legal services as an employee of a non-solicitor) are required to hold a practising certificate regardless of the areas of law in which they practise.

Section 56(1) of the *Solicitors (Amendment) Act 1994* provides that no solicitor shall practise as a solicitor unless a practising certificate in respect of him or her is in force. This prohibition does not apply to solicitors in the full-time services of the State or to solicitors employed to provide conveyancing services for a non-solicitor employer.

Section 56(2) of the *Solicitors (Amendment) Act 1994* provides that a solicitor shall be deemed to practise as a solicitor if he or she engages in the provision of legal services, whether as a sole practitioner or as a partner in a solicitor's practice, or as an employee of any solicitor or of any other person or body, or as a solicitor in the full-time service of the State.

'Legal services' are services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor, includes any part of such services, and includes any investment business services provided by a solicitor who is not an authorised investment business firm.

Other than the exceptions mentioned above, it is professional misconduct and a criminal offence for a solicitor, including in-house solicitors, to provide legal services of any kind without holding a current valid practising certificate.

Section 58 of the 1954 act sets out the so-called 'reserved areas' in which legal services can only be provided by solicitors and, in some cases, barristers. These reserved areas deal primarily with conveyancing, litigation and probate work. It should be noted that the requirement for solicitors, including in-house solicitors, to hold a practising certificate applies whether the legal services being provided are in reserved or unreserved areas.

The actions that can be taken against a solicitor found to be practising without a practising certificate include a referral to the Solicitors Disciplinary Tribunal, an application to the High Court, and a report to An Garda Síochána.

Any queries relating to practising certificate requirement should be addressed to the Practice Regulation Section at pc@lawsociety.ie.

John Elliot,
Registrar of Solicitors and Director of Regulation

practice notes

BUSINESS LAW COMMITTEE

Publishing of annual accounts by unlimited companies

At present, it is possible for an unlimited company incorporated in Ireland not to publish its accounts in the Companies Registration Office by virtue of the provisions of regulation 6 of the *European Communities (Accounts) Regulations 1993* (part III of the *European Communities (Accounts) Regulations 1993* implement Council Directive 90/605/EEC, which amended the fourth and seventh *Company Law Directives* as regards the scope of those directives), which provides as follows:

"6. This part shall apply to the following undertakings:

1) Unlimited companies and partnerships where all the members thereof who do not have a limit on their liability are
   a) Companies limited by shares or by guarantee, or
   b) Bodies not governed by the law of the State but equivalent to those in paragraph (a), or
   c) Any combination of the types of bodies referred to in subparagraphs (a) and (b), and
2) Unlimited companies and partnerships where all the members thereof who do not have a limit on their liability are
   a) (i) Unlimited companies or partnerships of the type referred to in paragraph (1) that are governed by the laws of a member state, or
   (ii) Bodies governed by the laws of a member state that are of a legal form comparable to those referred to in paragraph (i), or
   b) Any combination of the types of bodies referred to in subparagraph (a) and subparagraphs (a) and (b) of paragraph (1)."

Accordingly, where an Irish unlimited company has a member that is a limited company incorporated outside the EU and at least one member that is an unlimited company incorporated outside the EU, that Irish unlimited company may avoid having to publish its accounts. This exemption is available notwithstanding the fact that the shares in the unlimited company incorporated outside the EU may be wholly owned by a limited company incorporated outside the EU, thus affording the benefit of limited liability within the group structure.

Directive 2013/34/EU

In October 2011, the European Commission published the provisional text of a directive to repeal and replace the fourth and seventh *Company Law Directives* (78/660/EEC and 83/349/EEC respectively). The directive on annual financial statements, consolidated financial statements, and related reports of certain types of undertakings (2013/34/EU) aims, among other things, to create a single directive on the form and content of financial statements.

On 26 June 2013, the European Council adopted the revised text of the directive, which included in its recitals (at recital 6) the following statement: "The scope of this directive should be principles-based and should ensure that it is not possible for an undertaking to exclude itself from that scope by creating a group structure containing multiple layers of undertakings inside or outside the union."

Article 1 of the directive goes on to detail the types of entities that are to fall within the scope of the directive, once implemented into the local law of a member state. Article 1.1(b) provides that the directive shall apply to the following types of Irish undertaking (annex II – types of undertaking referred to in point (b) of article 1(1)):

- Unlimited companies,
- Partnerships, and
- Limited partnerships,

but only in circumstances where **all of the direct or indirect members** of the undertaking, having otherwise unlimited liability, in fact have limited liability by reason of those members being undertakings which are (i) of the types listed in annex 1 (that is, limited liability undertakings of any type in each of the members states) or (ii) not governed by the law of a member state but which have a legal form comparable to those listed in annex 1 (that is, limited liability undertakings established outside of the EU).

Implementation in Irish law

The Department of Jobs, Enterprise and Innovation is currently engaged in a consultation process with regard to the directive in which the Business Law Committee is participating. The legislation to implement the directive has to be enacted by 20 July 2015.

It would appear from the text of the directive that certain non-disclosure structures currently in use in Ireland will no longer be available. Accordingly, practitioners may wish to advise clients who have availed of the exemption under the 1993 regulations that they will need to be considering their options under the directive in the next 12 to 18 months, as these changes will, unless the department opts to bring forward the date, affect financial statements for 2016 (assuming the financial year will begin on 1 January 2016), which would need to be filed in 2017. In a group structure with any level of complexity, altering the current arrangements will take some time to agree and implement – accordingly the earlier discussions with clients begin, the better.

legislation update

7 May – 9 June 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

Central Bank Act 2014
Number: 9/2014
Extends the application of part III of the *Central Bank Act 1971* to building societies as well as banks. This will enable the transfer of assets and liabilities pursuant to part III of the 1971 act from building societies to banks. Also enables payment to be made out of the central fund to an account established by the European Stability Mechanism as agent on behalf of the euro area member states to receive payments for the purpose of providing financial assistance to Greece.
Commencement: 4/6/2014

SELECTED STATUTORY INSTRUMENTS

Commission of Investigation (Certain Matters Relative to An Garda Síochána and Other Persons) Order 2014
Number: 192/2014
Establishes a commission to investigate matters that are considered by the Government to be of significant public concern and make any reports required under the act in relation to its investigation.
Commencement: 30/4/2014

Immigration Act 2004 (Visas) (Amendment) Order 2014
Number: 195/2014
Amends the *Immigration Act 2004 (Visas) Order 2012* (SI 417 of 2012) (as amended by the *Immigration Act 2004 (Visas) (Amendment) Order 2013* (SI 428 of 2013)) by deleting 'Venezuela' in schedule 1.
Commencement: 24/6/2014

Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (Prescribed Organisations and Prescribed Persons) Order 2014
Number: 197/2014
Prescribes Pieta House CPSOS Limited for the purposes of section 4 of the 2012 act. Each of the classes of persons specified in the schedule employed or otherwise engaged by Pieta House is prescribed for the purposes of section 4 of the act.
Commencement: 2/5/2014

Public Service Pension Rights Order 2014
Number: 199/2014
The later date specified for the purposes of section 9(1)(b)(ii) of the *Financial Emergency Measures in the Public Interest Act 2013* is 30 June 2015.
Commencement: 30/4/2014

Student Support Regulations 2014
Number: 200/2014
Prescribe 'approved institutions', 'approved courses' and 'classes of persons' for the purposes of the *Student Support Act 2011*.
Commencement: 7/5/2014

Student Grant Scheme 2014
Number: 201/2014
Made pursuant to powers conferred on the Minister for Education and Skills under the *Student Support Act 2011*.
Commencement: 7/5/2014

Health Insurance Act 1994 (Section 11 (E)(2)) (No 2) Regulations 2014
Number: 202/2014
Specify that the Health Insurance Authority is satisfied that certain relevant contracts do not provide for advanced cover.
Commencement: 9/5/2014

European Union (Application of Patients' Rights in Cross-Border Healthcare) Regulations 2014
Number: 203/2014
Implement three key provisions of Directive 2011/24 concerning the national contact point, the reimbursement process, and the prior authorisation process. Enable patients resident in Ireland to seek reimbursement of the costs of treatment received in other EU member states, subject to terms and conditions.
Commencement: 1/6/2014

Civil Partnership (Recognition of Registered Foreign Relationships) Order 2014
Number: 212/2014
Declares certain classes of registered foreign relationship to be entitled to be recognised in the State as a civil partnership.
Commencement: 19/5/2014

Occupational Pension Schemes (Professional Guidance) (Amendment) Regulations 2014
Number: 217/2014
Extend the provisions in the *Occupational Pension Schemes (Professional Guidance) Regulations 2005 and 2012* to include guidance made by the Pensions Authority in accordance with section 34 of the *Pensions Act 1990*.
Commencement: 1/6/2014

Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2014
Number: 218/2014.
Prescribe that a transfer payment shall be calculated in accordance with guidance issued by the Society of Actuaries in Ireland and by the Pensions Authority.
Commencement: 1/6/2014

Local Government (Representational Payment for Members) (Amendment) Regulations 2014
Number: 235/2014
Extend the requirement to record details of elected members' attendance at meetings to attendance at meetings of municipal district members and committees of municipal district members, and at training events, and to extend the minister's powers of direction in relation to non-attendance at meetings to include non-attendance at meetings of municipal district members and committees of municipal district members.
Commencement: 1/6/2014

Local Government (Expenses of Local Authority Members) Regulations 2014
Number: 236/2014
Provide for the payment of expenses to members of local authorities in accordance with section 142 of the *Local Government Act 2001*, and for payment of allowances to cathaoirligh and leaschathaoirligh of local authorities, and cathaoirligh of municipal districts in accordance with section 143.
Commencement: 1/6/2014

Civil Legal Aid Act 1995 (Section 11) Order 2014
Number: 237/2014
Solicitors of the board are designated as civil servants in the civil service of the State. Where, immediately before the date of the making of this order, a solicitor of the board holds a position by virtue of a contract that is one for a definite period, his or her designation pursuant to regulation 2 shall not operate to effect a change in the period of employment specified in that contract.
Commencement: 1/6/2014

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 Aiden Barry, solicitor, formerly practising as Aiden Barry Solicitor, Roche House, 8 Bank Place, Limerick, Co Limerick, and in the matter of the *Solicitors Acts 1954-2011* [7243/DT89/13]
Law Society of Ireland (applicant)
Aiden Barry (respondent solicitor)
On 7 January 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

a) Failed expeditiously, within a reasonable time or at all, to comply with an undertaking dated 4 August 2006, given to the complainant on behalf of his clients over property in Co Limerick,
b) Failed to reply adequately or at all to the complainant's correspondence, in particular, letters dated 13 August 2009, 12 November 2009, 11 February 2010, 19 February 2010, 29 June 2010, 19 January 2011, 28 April 2011, 14 July 2011 and 7 September 2011 respectively,
c) Failed to reply adequately or at all to the Society's correspondence, in particular, letters dated 22 November 2011, 15 December 2011, 20 March 2012, 11 April 2012, 25 April 2012 and 17 May 2012 respectively.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay the sum of €1,000 to the compensation fund,
c) Pay the whole of the costs of the Law Society including witness expenses as taxed by a taxing master of the High Court in default of agreement.

In the matter of James O'Mahony, a solicitor previously practising as James O'Mahony, Solicitors, at 16 Stoneybatter, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [4831/DT109/12; 4831/DT110/12; 4831/DT111/12; 4831/DT112/12 and High Court record 2013 no 102SA]
Law Society of Ireland (applicant)
James O'Mahony (respondent solicitor)

4831/DT109/12

On 9 April 2013 and 10 September 2013, the Solicitors Disciplinary Tribunal sat to consider an application against the respondent solicitor and found him guilty of misconduct, in that he failed to comply with an undertaking furnished to EBS Building Society, dated 12 March 1996, in respect of his named clients and a property at Ennis, Co Clare, in a timely manner or at all.

4831/DT110/12

On 9 April 2013 and 10 September 2013, the Solicitors Disciplinary Tribunal sat to consider an application against the respondent solicitor and found him guilty of misconduct, in that he failed to comply with an undertaking furnished to EBS Building Society, dated 14 August 2002, in respect of his named clients and property at Dunboyne, Co Meath, in a timely manner or at all.

4831/DT111/12

On 9 April 2013 and 10 September 2013, the Solicitors Disciplinary Tribunal sat to consider an application against the respondent solicitor and found him guilty of professional misconduct, in that he failed to comply with an undertaking furnished to EBS Building Society, dated 18 April 2008, in respect of his named clients and a property at Stoneybatter, Dublin 7, in a timely manner or at all.

NOTICES: THE HIGH COURT

In the matter of Aiden Barry, solicitor, formerly practising as Aiden Barry Solicitor, Roche House, 8 Bank Place, Limerick, Co Limerick, and in the matter of the *Solicitors Acts 1954-2011* [2014 no 46 SA; 2014 no 47 SA; 2014 no 48 SA; 2014 no 49 SA; 2014 no 50 SA]
Take notice that, by orders of the President of the High Court made on 28 April 2014, it was ordered that the name of Aiden Barry, formerly practising as Aiden Barry Solicitor, Roche House, 8 Bank Place, Limerick, Co Limerick, be struck off the Roll of Solicitors.

In the matter of David Walsh, solicitor, formerly practising as David Walsh & Co at 12 Mount Street, Mullingar, Co Westmeath and at Kilree Street, Bagenalstown, Co Carlow, and in the matter of the *Solicitors Acts 1954-2011* [2014 no 36 SA; 2014 no 37 SA; 2014 no 38 SA; 2014 no 39 SA; 2014 no 40 SA; 2014 no 41 SA; 2014 no 70 SA]
Take notice that, by orders of the President of the High Court made on 27 May 2014, it was ordered that the name of David Walsh, formerly practising as David Walsh & Co at 12 Mount Street Mullingar, Co Westmeath and at Kilree Street, Bagenalstown, Co Carlow, be struck off the Roll of Solicitors.

John Elliot,
Registrar of Solicitors,
Law Society of Ireland,
12 June 2014

4831/DT112/12

On 9 April 2013 and 10 September 2013, the Solicitors Disciplinary Tribunal sat to consider an application against the respondent solicitor and found him guilty of professional misconduct, in that he failed to comply with an undertaking furnished to EBS Building Society on 29 July 2001 in respect of his named clients and property at Leopardstown, Dublin 18, in a timely manner or at all.

The tribunal in the four matters ordered that the matters should go forward to the President of the High Court and, on 31 January 2014, the President of the High Court ordered that the respondent solicitor be struck off the Roll of Solicitors and that he pay the Society its costs when taxed and ascertained.

In the matter of Sean McGlynn, a solicitor formerly practising as Sean McGlynn & Company, Solicitors, Suite 41, Town Centre, Justice Walsh Road, Letterkenny, Co Donegal, and in the matter of the *Solicitors Acts 1954-2011* [5520/DT152/12]
Law Society of Ireland (applicant)
Sean McGlynn (respondent solicitor)
On 6 February 2014, 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 two undertakings, one given on 20 January 2004 and the second given on 3 November 2004 in respect of his named client, whereby he undertook that he would ensure that the borrower had or would acquire a marketable title to the property free from encumbrances, save for the proposed charge in favour of Bank of Scotland Ireland, in a timely manner or at all,
b) Failed to reply to the Society's correspondence and, in particular, the Society's letters of 16 July 2010, 6 August 2010, 30 August 2010, 15 September 2010, 30 September 2010, 14 December 2010, 6 January 2011 and 18 March 2011 in a timely manner or at all,
c) Failed to attend at the meetings

of the Complaints and Client Relations Committee on 7 October 2011 and 25 November 2011, despite being required to do so.

The tribunal ordered that the respondent solicitor:
a) Do stand censured;
b) Pay a sum of €10,000 to the compensation fund,
c) Pay a sum not exceeding €5,000 as a contribution to the whole of the costs of the Law Society of Ireland.

In the matter of John R Fetherstonhaugh, a solicitor previously practising as Fetherstonhaugh Solicitors at 34 Patrick Street, Mountmellick, Co Laois, and in the matter of the *Solicitors Acts 1954-2011* [3270/DT19/13 and High Court record 2014 no 34SA]
Law Society of Ireland (applicant)
John R Fetherstonhaugh (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) Allowed a deficit of €112,703 on the client account as of 31 July 2012,
b) Allowed the existence of debit balances of €63,705 on the client account as of 31 July 2012, in breach of regulation 7(2) of the *Solicitors' Accounts Regulations*,
c) Between September 2011 and March 2012, made 12 separate transfers of funds totalling €46,507 from the client to the office account in a named probate file, in a case where there was no section 68(1) letter or any bill of costs issued to the executor,
d) Made three transfers from the client to the office account totalling €3,960 without bills of cost being issued and in cases where funds should not have been transferred from the client account to the office account.

The tribunal ordered that the matters go forward to the President of the High Court and, on 31 March 2014, the President of the High Court made the following order:
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 Law Society of Ireland,
b) The respondent solicitor pay the sum of €2,000 as a contribution towards the whole of the costs of the Society.

In the matter of Martin J Kearns, solicitor, practising as Martin J Kearns & Co, Solicitors, 1 Devon Place, The Crescent, Galway, and in the matter of the *Solicitors Acts 1954-2011* [4403/DT163/12]
Law Society of Ireland (applicant)
Martin J Kearns (respondent solicitor)
On 10 April 2014, 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 5 July 2005 furnished to the complainant in respect of property in Co Galway in a timely manner or at all,
b) Failed to respond to 12 letters sent to him by a firm of solicitors between 14 September 2006 and 14 January 2012,
c) Failed to respond to three letters sent to him by another firm of solicitors acting on behalf of the complainant on 4 May 2011, 14 June 2011 and 21 July 2011,
d) Failed to respond to the Society's correspondence within the time specified in a timely manner or at all and, in particular, the Society's letters of 1 November 2010, 17 December 2010, 31 March 2011, 16 May 2011, 14 June 2011 and 4 August 2011.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €10,000 to the compensation fund,
c) Pay the whole of the costs of the Society as taxed by a taxing master of the High Court in default of agreement.

In the matter of Aiden Barry, solicitor, formerly practising as Aiden Barry Solicitor, Roche House, 8 Bank Place, Limerick, Co Limerick, and in the matter of the *Solicitors Acts 1954-2011* [7243/DT58/13 and High Court record 2014 no 46 SA]
Law Society of Ireland (applicant)
Aiden Barry (respondent solicitor)
On 7 January 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed expeditiously, within a reasonable time or at all, to pay stamp duty on behalf of the complainants in relation to the purchase of a site in Co Clare, despite being put in funds to do so,
b) Failed expeditiously, within a reasonable time or at all, to register the interest of the complainants on the property in Co Clare,
c) Misrepresented in an email of 26 April 2012 that he had a certificate from the Revenue Commissioners, but it was lost and a new certificate would be reissued, where this was not the position as confirmed in an email of 25 June 2012,
d) Failed expeditiously, within a reasonable time or at all, to comply with the directions of the Complaints and Client Relations Committee made at its meeting on 15 May 2012,
e) Failed expeditiously, within a reasonable time or at all, to comply with the directions of the Complaints and Client Relations Committee made at its meeting on 26 June 2012,
f) Failed to respond to correspondence from the Society either in a timely manner or at all, in particular, letters dated 16 March 2012, 17 May 2012, 2 July 2012 and 10 September 2012,
g) Failed to attend a meeting of the Complaints and Client Relations Committee on 15 May 2012 as required by letter from the Society dated 9 May 2012,
h) Failed to attend a meeting of the Complaints and Client Relations Committee on 16 October 2012 as directed by the committee on 4 September 2012.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 28 April 2014, made the following orders:
a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
b) That the respondent pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses to be taxed in default of agreement.

In the matter of Aiden Barry, solicitor, formerly practising as Aiden Barry Solicitor, Roche House, 8 Bank Place, Limerick, Co Limerick, and in the matter of the *Solicitors Acts 1954-2011* [7243/DT59/13 and High Court record 2014 no 47 SA]
Law Society of Ireland (applicant)
Aiden Barry (respondent solicitor)
On 7 January 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed expeditiously, within a reasonable time or at all, to register a charge on a property and transfer €50,000 to a third party in accordance with the instructions of the complainant,
b) Caused or allowed the complainant to be exposed to civil litigation for the payment of the €50,000 plus damages, interest and costs,

c) Failed to respond adequately or at all to the Society's correspondence, in particular, letters dated 21 February 2012, 8 March 2012 and 21 March 2012 respectively,
d) Through his failure to respond to the Society's correspondence, caused the Society to have to make an application to the High Court pursuant to section 10(A) of the *Solicitors (Amendment) Act 1994* (as amended by substitution) for orders requiring him to respond to the Society's correspondence and attend before the Complaints and Client Relations Committee meeting on 15 May 2012,
e) Breached an order made by the President of the High Court on 30 April 2012 directing him to attend a meeting of the Complaints and Client Relations Committee on 15 May 2012 by not so attending,
f) Failed expeditiously, within a reasonable time or at all, to honour an agreement made with the complainant whereby he agreed to pay the outstanding sum of €50,000 to a specified third party, as set out in his email to the Society of 14 May 2012 and advised to the President of the High Court on 11 June 2012,
g) Failed without reasonable excuse to attend a meeting of the Complaints and Client Relations Committee on 3 April 2012, as required by letter from the Society dated 26 March 2012.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 28 April 2014, made the following orders:
a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
b) That the respondent pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses to be taxed in default of agreement.

In the matter of Aiden Barry, solicitor, formerly practising as Aiden Barry Solicitor, Roche House, 8 Bank Place, Limerick, Co Limerick, and in the matter of the *Solicitors Acts 1954-2011* [7243/DT60/13 and High Court record 2014 no 48 SA]
Law Society of Ireland (applicant)
Aiden Barry (respondent solicitor)
On 7 January 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed, within a reasonable time or at all, to expeditiously comply with the totality of directions made by the Complaints and Client Relations Committee at a meeting on 10 July 2012 and 26 July 2012, respectively, to furnish documentation and information regarding the transaction of the sale of the complainants' share of a named business,
b) Failed to provide a proper account and breakdown to the complainants in respect of the sale of their share of a named business expeditiously, within a reasonable time or at all, despite being requested to do so.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 28 April 2014, made the following orders:
a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
b) That the respondent pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses to be taxed in default of agreement.

In the matter of Aiden Barry, solicitor, formerly practising as Aiden Barry Solicitor, Roche House, 8 Bank Place, Limerick, Co Limerick, and in the matter of the *Solicitors Acts 1954-2011* [7243/DT65/13 and High Court record 2014 no 49 SA]
Law Society of Ireland (applicant)
Aiden Barry (respondent solicitor)
On 7 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 comply expeditiously, within a reasonable time or at all, with an undertaking given by him to the complainant on behalf of his named clients over property in Co Clare, dated 4 March 2004,
b) Failed to respond adequately or at all to the correspondence of the complainant and, in particular, letters dated 14 March 2005, 12 September 2005, 13 March 2006, 3 April 2006 and 30 March 2010 respectively.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 28 April 2014, made the following orders:
a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
b) That the respondent pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses to be taxed in default of agreement.

In the matter of Aiden Barry, solicitor, formerly practising as Aiden Barry Solicitor, Roche House, 8 Bank Place, Limerick, Co Limerick, and in the matter of the *Solicitors Acts 1954-2011* [7243/DT96/13 and High Court record 2014 no 50 SA]
Law Society of Ireland (applicant)
Aiden Barry (respondent solicitor)
On 7 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 refund the sum of €18,000 to a named client in a timely fashion or at all,
b) Failed to account to a named client in a timely fashion or at all,
c) Failed to respond adequately or at all to the Society's correspondence, in particular letters dated 7 November 2011, 23 November 2011, 7 December 2011, 20 December 2011, 14 February 2012, 29 February 2012, 14 March 2012, 2 April 2012, 19 April 2012 and 24 April 2012 respectively,
d) Failed to attend a meeting of the Complaints and Client Relations Committee on 11 September 2012, despite being required to do so,
e) Failed to respond in a timely fashion to requests from a named client and his new solicitor to hand over the files,
f) Released moneys held for the payment of stamp duty to a named client, despite having given an undertaking to the complainant's lending institution.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 28 April 2014, made the following orders:
a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
b) That the respondent pay the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses to be taxed in default of agreement.

Edited by TP Kennedy, Director of Education

Recent developments in European law

EMPLOYMENT

Case C-118/13, *Gülay Bollacke v K+K Klaas & Kock BV & Co KG*, 12 June 2014

Mr Bollacke was an employee of K+K from 1 August 1998 to 19 November 2010, the date of his death. He had been seriously ill since 2009, as a result of which he was unfit to work until the date of his death. On that date, he had accumulated 140.5 days of outstanding annual leave. His widow applied for an allowance in lieu corresponding to the untaken annual leave. This was rejected by K+K, claiming that an inheritable entitlement did not exist.

The German Higher Labour Court referred the matter to the CJEU. It asked whether losing the entitlement to paid annual leave at death without giving rise to an allowance in lieu is compatible with EU law.

The Court of Justice noted that the right to paid annual leave is a particularly important principle of social law. The right to annual leave and to a payment on that account are two aspects of a single right. EU law precludes national legislation or practices under which an allowance in lieu is not due to the work at the end of the employment relationship, although the worker could not benefit from the right to paid annual leave due to his illness. The expression 'paid annual leave' means that, for the duration of annual leave, the worker's remuneration must be maintained. Receipt of financial compensation if the employment relationship ends by reason of the worker's death ensures the effectiveness of the entitlement to leave. The unintended occurrence of the worker's death must not retroactively lead to a total loss of the entitlement to paid annual leave.

LITIGATION

Case C-360/12, *Coty Germany GmbH/ First Note Perfumes NV*, 5 June 2014

The German-based claimant, Coty Germany Gmbh, sells and manufactures perfumes and cosmetics in Germany. One of its products is a perfume that is sold in a bottle corresponding to a community trademark that it is the proprietor of. First Note (the defendant) is a Belgian-based perfume wholesaler. One of its perfumes is sold in a bottle similar to the one that is protected by Coty's trademark. It sold this perfume in Belgium to a German intermediary, Stefan Warenhandel. The intermediary then sold its perfume in Germany. Coty argued that the distribution of the perfume by First Note in Belgium constituted an infringement of its community trademark and commenced proceedings before the German courts. It argued that First Note had committed a tort (unfair competition) in Belgium, the effects of which were felt in Germany. This would give the German courts jurisdiction to try the case on the basis of article 5(3) of the *Brussels I Regulation*.

The CJEU upheld the jurisdictional claim on this basis. It referred to a line of earlier decisions where it had held that the occurrence of damage in a member state is subject to the protection of that state. It held that this applied to infringements of unfair competition. The court held that, "in circumstances such as those of the main proceedings, an action relating to an infringement of that law may be brought before the German courts, to the extent that the act committed in another member state caused or may cause damage within the jurisdiction of the court seised". Jurisdiction would be limited to the damage within that state rather than damage suffered throughout the EU. In reaching this decision, the court seems to have disregarded the fact that the damage was done in Germany by another undertaking. It appears to be effectively attributing the effect of that damage to the defendant, a different legal entity.

MEDICINAL PRODUCTS

Joined Cases C-358/13 and C-181/14, *D and G*, opinion of Advocate General Yves Bot, 12 June 2014

Between 2010 and 2012, D and G sold a mixture of aromatic herbs containing synthetically produced cannabinoids. These substances are intended to reproduce the effects of cannabis when smoked. At the time, the German law on combating narcotics did not allow prosecution for the sale of these substances. D and G were sentenced on the basis of the law relating to medicines, as they had marketed a "dubious medicinal product". The Federal Court of Justice asked whether this product fell within the scope of Directive 2001/83/EC on the community code relating to medicinal products for human use. This defines a 'medicinal product' as "any substance or combination of substances that may be used in or administered to human beings ... with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action".

The substances in question have a pharmacological action, but they do not produce any therapeutic benefit. The advocate general found that the concept of medicinal product referred to in the directive is not capable of covering a combination of substances such as that at issue. Its use for purely recreational purposes is intended neither to prevent nor treat an illness. The concept of medicinal product in the directive refers to the product's "properties for treating or preventing disease in human beings". The criterion relating to the "modification of physiological functions" cannot be interpreted independently of the intended medical use of the substance. The directive uses the word 'modify' but also the verbs to restore and to correct. Those verbs referred to an improvement of human organic function or the restoration of human physiological function. This implies the existence of a medical or therapeutic benefit.

The directive is based on the protection of public health and the free movement of goods. It precludes the marketing of substances presenting risks to human health similar to those presented by narcotics the use of which has no medical application.

By regulating the marketing authorisation, manufacture, importation, labelling and the distribution of medicines, the directive seeks to allow the marketing and free movement of safe and effective products. Those rules are therefore not applicable to substances intended to be excluded from the market because they lack any medical benefit and present risks to human health. In any case, the sale for purely recreational purposes of psychoactive substances is clearly outside the legal economic sphere of the internal market.

In accordance with the case law of the court, "narcotic drugs that are not distributed through channels strictly controlled by the competent authorities to be used for medical and scientific purpose are, because of their very nature, subject to a prohibition on their being imported and offered for sale in all the member states". It is understandable that the German authorities, when confronted by a legal vacuum, sought to apply legislation relating to medicinal products in order to be better able to control and prevent the marketing of these new substances. However, the advocate general warned that such an aim is not capable of warranting a broad interpretation, indeed a distortion, of the concept of medicinal product. Consequently, only enforcement measures based on the control of narcotics are suitable in order to the respond to the appearance of psychoactive substances on the market.

professional notices

WILLS

Cavanagh, Charles (deceased), late of Lyre, Banteer, Co Cork, and also late of Harlesden, London NW10, England. Would any person having knowledge of any will made by the above-named deceased, who died on 21 March 2014, please contact Mullaneys Solicitors, Thomas Street, Sligo; DX 5009 Sligo; tel: 071 914 2529, email: michael@mullaneys.ie

Corcoran, Peter (deceased), late of Ballygarrun, Kilnadeema, Loughrea, Co Galway, who died on 9 October 2013. Would any person having knowledge of the last will made by the above-named deceased, or its whereabouts, please contact Greg Nolan, Solicitors, 5 Sherwood Avenue, Taylor's Hill, Galway; tel: 091 582 942, email: greg@gns.ie

Curtin, John J (deceased), late of Abbeyfeale, Co Limerick. Would any person having knowledge of any will made by the above-named deceased, who died on 6 February 1978, please contact Stephen J Daly, Solicitors, The Square, Abbeyfeale, Co Limerick; tel: 068 31300, fax: 068 31005, email: stephendalysolicitor@gmail.com

Fallon, Emily (deceased), late of 6 Castleknock Court, Castleknock, in the county of the city of Dublin. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased, who died on 1 April 2013, please contact Kieran E O'Brien at Bowler Geraghty & Co, Solicitors, 2 Lower Ormond Quay, Dublin 1; tel: 01 872 8233, fax: 01 872 8115, email: bg@bowlergeraghty.ie

Good, Rachel (deceased), late of 'Spendthrift', 33 Church Road, Dalkey, Co Dublin, and also of Vergemount Clinic, Clonskeagh, Dublin 6. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 30 January 1995, please contact Dermot McNamara & Company, Solicitors, Main Street, Rush, Co Dublin; DX 213001 Rush; tel: 01 843 8766, fax: 01 843 8940, email: frances@dermotmcnamara.ie

Good, Mary Elizabeth (deceased), late of 'Spendthrift', 33 Church Road, Dalkey, Co Dublin, and also of Castleclare Nursing Home, Greystones, Co Wicklow. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 8 January 1998, please contact Dermot McNamara & Company, Solicitors, Main Street, Rush, Co Dublin; DX213001 Rush; tel: 01 843 8766, fax: 01 843 8940, email: frances@dermotmcnamara.ie

McCarthy, Philomena (deceased), late of 18 St Thomas Terrace, Dungarvan, Co Waterford. Would any person having knowledge of any will made by the above-named deceased please contact David Burke & Company, Solicitors, 24 Mary Street, Dungarvan, Co Waterford; DX 75 005 Dungarvan; tel: 058 44533, fax: 058 44848, email: info@dermotobrien@davidburke.ie

McDonagh (otherwise McDonaugh), Elizabeth (otherwise Betty) (deceased), late of Eyrefield Manor Nursing Home, Church Lane, Greystones, Co Wicklow, and previously of 192 East Wall Road, East Wall, Dublin 3 (and who resided for a short time at 62 Ballygal Crescent, Finglas, Dublin 11), who died on 2 August 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Fagan Bergin Solicitors, 57 Parnell Square West, Dublin 1; tel: 01 872 7655, email: info@faganbergin.com

Maher, Denis Gerard (known as Gerry) (deceased), late of 50 Woodlawn Park Drive, Firhouse, Dublin 24, and formerly of Ballyvake, Oylegate, Enniscorthy, Co Wexford. Would any person having knowledge of any will made by the above-named deceased, who died on 8 April 2014, please contact Alan Maher, tel: 086 857 9212 or 053 924 3596, email: alan@maherconsulting.ie

O'Brien, William Dermot (Derry) (deceased), late of Meadstown, Dunderry, Navan, Co Meath. Would any person having knowledge of any will made by the above-named deceased, who died on 11 December 2013, please contact Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath; tel: 046 943 1202, email: law@reganmcentee.ie

RATES

professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for Aug/Sept 2014 *Gazette*: 19 August 2014. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877).

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*.

professional notices

O'Sullivan, Mary (deceased), late of 136 Road 1, Park Drive Avenue, Castleknock, Dublin 15. Would any person having knowledge of any will made by the above-named deceased, who died on 11 April 2014, please contact Culhane Judge & Co, The Square, Newcastle West, Co Limerick, tel: 069 62969 or 069 62510, fax: 069 62396, email: culhanejudgeandco@eircom.net

Perkins, John (deceased), late of 1 Iona Park, Glasnevin, Dublin 9. Would any person having knowledge of any will made by the above-named deceased, who died on 11 April 2014, please contact Julie G O'Connor, solicitor, Joseph T Deane & Associates, St Andrew's House, 28/30 Exchequer Street, Dublin 2; tel: 01 671 2869, fax: 01 671 2814, email: julieoc@joedeane.com

Plunkett, Joseph (deceased), late of 8 Hayestown, Rush, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 23 November 1991, please contact Dermot McNamara & Company, Solicitors, Main Street, Rush, Co Dublin; DX 213001 Rush; tel: 01 843 8766, fax: 01 843 8940, email: frances@dermotmcnamara.ie

Quinn, Michael Brendan (deceased), late of Sonas Retirement Village in Enniscrone, Co Sligo, and formerly of Market Square, Castlebar, Co Mayo, and Paceo De Cuba 11 Los Cumbres EL Veria 29600 Marbella, Malaga, Spain 745. Would any person having knowledge of any will made by the above-named deceased, who died on 17 November 2013, please contact JV Geary, Solicitors, Linenhall Street, Castlebar, Co Mayo, Ireland; tel 094 902 8444, fax: 094 902 5945, email: law@jvgeary.ie

professional notices

Redmond, Martin (deceased), late of 42 Ropewalk Place Apartments, Ringsend, Dublin 4, who died on 10 April 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Malone & Potter Solicitors, 7 Cope Street, Dublin 2; tel: 01 671 2644, fax: 01 671 2735, email: office@maloneandpotter.ie

Reilly, Anne Theresa (deceased), late of 55 Glasanaon Road, Finglas East, Dublin 11, who died on 22 September 2010. Would any person having knowledge of any will made by the above-named deceased please contact Fitzpatrick Gallagher McEvoy Solicitors, Orby Chambers, 7 Coke Lane, Smithfield, Dublin 7; tel: 01 872 9730, fax: 01 872 4602, email: info@fgmcsolicitors.ie

Ryan, Thomas (deceased), late of Seanchara Community Unit, Glasnevin, Dublin 9, and formerly of 70 Fr Scully House, Granville Street, Dublin 1. Would any person having any knowledge of the whereabouts of any will made by the above-named deceased, who died on 3 June 2006, please contact McEntee & O'Doherty, Solicitors, 20 North Road, Monaghan; tel: 047 82088, email: law@mceodsolicitors.ie

Sexton, John (deceased), late of Gleneely, Co Donegal, date of birth 17 April 1933, date of death 10 August 1989, please contact Nicholas O'Dowd, solicitor, MacDermott, McGurk & Partners, Solicitors, 12 Clarendon Street, Derry BT48 7ET; tel: 0044 287 126 4415

Walsh, Peter (deceased), late of 7 Windmill Lands, Brackenstown, Swords, Co Dublin. Would any solicitor holding or having knowledge of any will made by the above-named deceased, who died on 22 April 2014, please contact Byrne & Company, Solicitors, 11 Malahide Road, Swords, Co Dublin; tel: 01 840 4346, fax: 01 840 6528, email: reception@byrnesolicitors.ie

Weldon, Esther (deceased), late of 56 Greenlawns, Skerries, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 14 February 2014, please contact Gerard L McGowan, Solicitors, The Square, Balbriggan, Co Dublin; tel 01 841 2115, fax: 01 841 2037, email: info@glmcgowan.ie

TITLE DEEDS

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 Patricia McCabe

Any person having a freehold estate or any intermediate interest in all that and those premises at Bridge Street, Tullow, Co Carlow, the subject of an indenture of lease dated 12 December 1933 between Arthur Robert Verschoyle of the one part and William Stone and Michael Lennon of the other part for a term of 99 years from 29 September 1932 at a rent of £9.2s.6d per annum and described therein "all that and those that plot or piece of ground with the dwelling houses thereon and the garden attached thereto in Bridge Street in the town of Tullow containing in front 36 feet, six inches in breath, in the rear 34 feet and in depth from front to rear on the east side 233 feet and on the west side 133 feet and 119 feet bounded as therein" other than all that and those the portion thereof assigned to Tom Fox by indenture of assignment dated 19 July 1979, which excluded portion is now registered in folio 13703F Co Carlow, the freehold in same having been acquired by Tom Fox.

Take notice that Patricia McCabe, being the person deemed, for the purposes of the *Landlord and Tenant (Ground Rents) Acts 1967-2005*, to hold the interest of the lessee under the lease, intends to apply to the county registrar of the county of Carlow for the acquisition of the fee simple and all intermediate interests in the aforesaid property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Patricia McCabe intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Carlow for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the fee simple and any intermediate interests in the aforesaid premises are unknown and unascertained.

Date: 4 July 2014

Signed: PJ Byrne & Co (solicitors for the applicant), Athy Road, Carlow

habeas porcus

Fat sack

A Florida man known as 'Biggie' is alleged to have stashed 23 grams of marijuana under his stomach fat – a great hiding place when you weigh 32 stone. Unfortunately, he forgot to put on his seat belt – which led to the initial police interest.

The *New York Daily News* reports that a county sheriff's deputy observed the car being driven by an acquaintance and saw that his passenger, Christopher 'Biggie' Mitchell, was not wearing his seat belt.

When the officer pulled the car over, Mitchell told him that he was too fat to wear it – unfortunately not a solid defence to a seat-belt violation. The officer also noted that Mitchell and Roberts were nervous – possibly due to Mitchell having a criminal record that included a conviction for conspiracy to traffic cocaine.

A drug-sniffing dog was called in, which reacted to the presence of drugs in the car. The officers say they found a gun, cash in a sock, and cocaine. The meatiest find was a plastic bag containing 23 grams of marijuana – purportedly discovered beneath a layer of Biggie's stomach fat.

World Cup clashes – of the domestic kind

It's no surprise to hear that alcohol consumption rises in England during their big World Cup matches. And so do the levels of violence. In fact, police callouts to incidents of domestic violence rise by more than a third after England lose a match – but unexpectedly rise by more than a quarter after they win!

During the last World Cup in 2010, *The Guardian* reports, 15 British hospitals recorded an average rise of 37.5% in A&E admissions due to assaults during the competition. Alcohol-related arrests in central Manchester during the month of June have been consistently higher during the years when the World Cup or European Championship takes place. This may be a distinctly English problem.

In Uruguay, for example, a recent study found that property crime falls when the national team is playing – perhaps because everyone is glued to the telly.

This year, English police took to warning known violent offenders before the tournament and assembled special callout teams for match days. No doubt they were ordered to stand down on 20 June when Costa Rica beat Italy 1-0 – sending England crashing out of the competition.

'Not so good, bad and ugly' leads to $10m lawsuit

A New York lawyer is suing a woman for $10 million for ruining his Pink cover band with her "subpar" musicianship and unattractiveness.

According to *The New York Post*, Charles Bonfante had great plans for the cover act, dedicated to the pop star Pink – until those plans were foiled by 40-year-old singer Collette McLafferty. Bonfante's lawsuit claims that McLafferty was a "mediocre vocalist at best" who had pitch problems and sang flat for "extended periods of time." Furthermore, Bonfante alleges that McLafferty "didn't look the part" of the peroxide-haired Pink and didn't "contribute to the overall aesthetics of the band". He told his partner in the band, Rik Nevone, that he didn't want to work with her.

Undeterred, Nevone booked a gig with McLafferty.The show netted the singer $75, but now sees her facing a $10 million civil lawsuit.

Here lies one man and his dog

New regulations adopted in New York State are set to allow pet owners to be buried with their pets, the *New York Daily News* reports. The regulations are set to take effect in August. Under the regulations, cremated human remains will be allowed to be interred alongside the remains of pets in licensed New York pet cemeteries.

Pet cemeteries will not be allowed to advertise the availability of the human burial service, nor can they charge for burying human remains – though legislation is also pending in order to remove this last restriction.

HRM RECRUIT

HRM Recruit's Legal Selection Team works with Partners and Solicitors at all levels to identify the next step in their highly successful legal careers.

IN-HOUSE RISK SOLICITOR — Ref 7211

This top tier firm seeks to appoint a litigator to its in-house risk team. The appointee will play a central role in driving best-in-class practice in relation to client engagement and terms, conflicts, data protection, money laundering and Chinese walls. In addition, the appointee will also assist in administering the firm's professional indemnity insurance cover. Reduced / flexible working arrangements may be available to the successful candidate. Applicants should have 5 years+ commercial litigation or professional indemnity experience.

CORPORATE M&A ASSOCIATE — Ref 7213

This well regarded, top ten firm seeks to appoint a high performing corporate associate to its growing team. The appointee into this role will have a strong partnership career trajectory within the firm. Dealing with a combination of domestic and international M&A, you will be joining a collegiate, future focused team and will enjoy a better work / life balance in the corporate department of a Big 6 firm. In addition to taking a lead role on transactions, you will also be involved in client management, mentoring and strategic business development.

REGULATORY & COMMERCIAL LITIGATION — Ref 7216

The niche financial regulatory and investigations unit of this award winning top tier firm seeks to appoint a talented litigator to the team with 4 years commercial litigation experience. In addition to contentious FS litigation and risk minimisation advice, the team also deal with general commercial contract disputes and the appointee will also deal with partners from the broad commercial litigation department. Suitable candidates should have 4 years commercial litigation experience gained with a top tier firm in Dublin or London.

CORPORATE M&A ASSOCIATE — Ref 7218

Considered by many to be the top corporate team in Dublin, this award winning firm continues to win key mandates across all industry sectors. A combination of a collegiate working environment, a transparent management culture and highly structured approach to career development have ensured this corporate department continue to attract some of the best of lateral hires in Dublin. The department is interested in ambitious M&A lawyers with 3–5 years relevant experience gained with a top tier firm in Dublin or London.

STRUCTURED FINANCE ASSOCIATE — Ref 7212

One of the top ranked structured finance groups in Dublin seeks to appoint an additional associate to its specialist team. Working closely with the tax, capital markets and banking groups, the appointee will advise major financial institutions on securitisations, fund-linked structured products, repackagings and securities lending. The ideal candidate will have 5 years relevant experience gained with a top tier firm in Dublin or London. Tax / general banking solicitors wishing to move into structured finance will also be considered.

EMPLOYMENT ASSOCIATE — Ref 7214

The high profile employment law group of this top tier firm seeks to hire an ambitious senior associate to the team with a partnership career trajectory. Advising high profile domestic and international clients on both contentious and advisory employment law, the successful candidate will also be involved in the development of the juniors and participate in a meaningful way in client marketing initiatives. Suitable candidates will have gained 5–8 years relevant experience with a top employment law team in Dublin.

IP LITIGATION ASSOCIATE — Ref 7217

Highly regarded for its working environment, progressiveness, its blue-chip client base and entrepreneurial culture, the firm has shown an impressive track record of consolidated growth over the last decade. The commercial litigation department now seeks to appoint a talented IP litigator to the team in line with headcount strategy. The successful candidate will have 5 years+ relevant IP litigation experience, gained with a top tier firm in Dublin or London. In addition, the appointee will be commercially focussed and ambitious.

TAX ASSOCIATE — Ref 7215

This award winning tax department of this upper tier one firm has advised on some of the largest tax based transactions in Ireland over the last decade, including domestic acquisitions and MBOs, FDI and inversions, cross border M&A, aircraft financing, the tax components of debt capital markets, tax litigation and Revenue powers. In line with business strategy, this collegiate and future focussed team now seeks to appoint a talented tax associate with 4 years+ relevant experience gained with a top tier firm in Dublin or London.

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

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

www.hrmrecruit.com

ASSOCIATES

Internationally recognised as one of Ireland's leading commercial law firms, our client seeks to appoint a number of talented associates, with a high level of career ambition to its Dublin office.

EU and Antitrust
Advising high profile public and private sector organisations on big ticket contentious and non-contentious matters. Expert in EU / Antitrust, candidates will have worked with a top tier firm in Dublin, Brussels or London.

Funds
Dominating the Irish funds industry, the department advises high profile institutional investors on the full spectrum of UCITS and alternative products. Candidates will have funds experience in a top tier team in Dublin.

Banking
Advising domestic and global institutions, the firm benefits also from having practices in aviation finance, DCM, derivatives and insurance. Candidates should have banking experience in a top tier firm in Dublin or London.

Employment
Advising high profile domestic and international clients on contentious and advisory employment law, along with involvement in client development and should have experience with a top employment law team in Dublin.

These outstanding opportunities require 4 to 7 years' experience and will be remunerated appropriately and in line with the level of the appointment. For further information on all of these positions, interested candidates should contact:

Bryan Durkan
t: (+353 1) 632 1852
e: bryan.durkan@hrmrecruit.com

All conversations and applications will be treated in strict confidence.

www.hrmrecruit.com

HRM RECRUIT

Recognising talent's one thing...

finding the truly successful

fit is another

Talk to the Irish Legal Recruitment Specialists

We have significant new opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the roles our clients are seeking to fill. Please make sure to visit our website for other positions.

Asset/Aircraft Finance Solicitor – Assistant level
The successful candidate will be working with the Asset Finance Group of this highly respected firm. The Group specialises in aircraft and big ticket leasing matters and boasts an extensive domestic and international client base, to include aircraft owners, lessors and a range of financial institutions.

Commercial Property Solicitor – Assistant level
Candidates will have strong commercial property experience and demonstrate excellent technical expertise coupled with proven business development skills with the drive and personality to market the firm's services to existing and potential clients.

Corporate Commercial Solicitor – Assistant to Associate level
Candidates will have good exposure to commercial law in order to advise an impressive client base consisting of globally recognised corporations and investment institutions. You will have excellent drafting and analytical skills with the ability to prioritise effectively and meet deadlines. You will have trained with a well-established firm and have a strong academic background.

Employment/Litigation Solicitor – Assistant to Associate level
An established commercial practice is seeking an experienced employment/litigation solicitor. You will be dealing with an interesting and varied mix of work covering employment and commercial litigation matters in a 50:50 split. The employment side will entail both contentious and non-contentious work.

Environmental & Planning Solicitor – Assistant to Associate level
Appropriate candidates will demonstrate a strong knowledge and understanding of current legislation and have experience in planning applications. Experience of judicial review cases will be an advantage.

Insurance Defence/Professional Indemnity – Senior Associate level
A leading Dublin based law firm is seeking a high calibre senior commercial litigator with insurance defence/professional indemnity experience to join a team with a view to partnership. This role will suit a practitioner wishing to make a lateral move within this sector who has strong contacts in the industry.

Tax Lawyer – Senior Associate level
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.

Risk Management & Compliance Lawyer – Assistant to Associate level
Our client seeks an Assistant to join the regulatory risk management and compliance team. The role will include advising clients on the practical implications of new regulatory developments, assisting clients with resolving regulatory issues, advising on the various regulatory issues across the financial services industry as well as marketing and practice development.

Contentious IT/IP/IT Solicitor – Assistant to Senior Associate
This is an excellent opportunity to join a first rate practice where the IP/IT team advises on contentious issues facing suppliers and users. You will be advising on issues relating to Internet and ecommerce, computer software and services, data protection, outsourcing, distribution agreements, Intellectual Property, Licensing, Telecommunications, Regulation and Competition.

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

Benson & Associates
Legal Recruitment Specialists