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Turning to the Dark Side: the realities of life as an in-house lawyer

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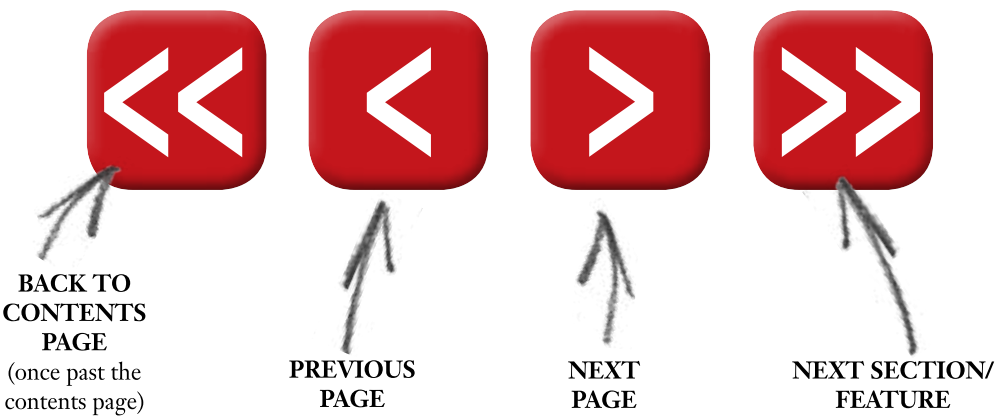

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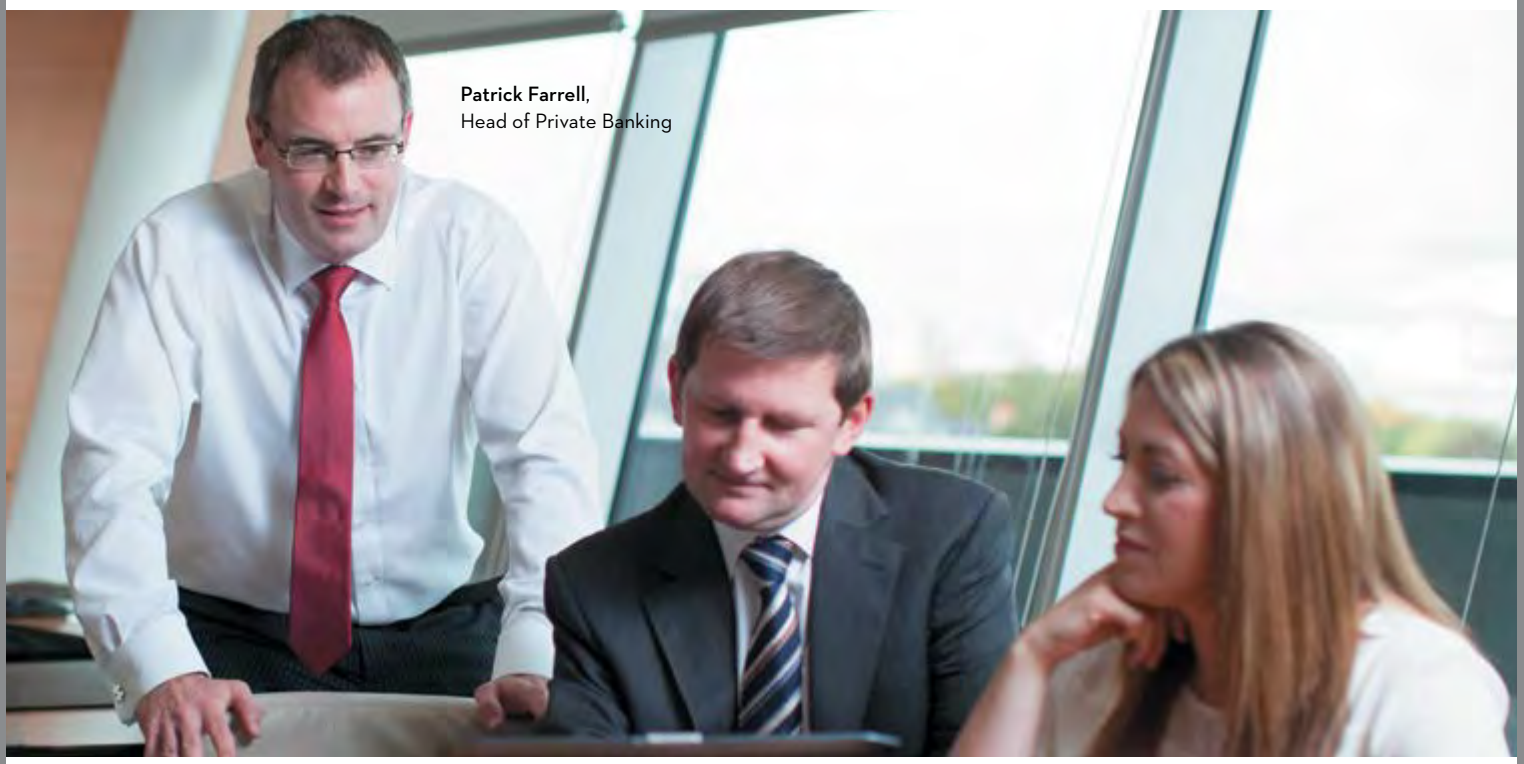

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SEEKING SOLUTIONS ON YOUR BEHALF

As a profession, we are dealing with significant change at the moment, so I am using this message to update members on some of the current problems with which we are dealing on your behalf.

Firstly, there is the issue of the recent direction of the DPP to the Garda Síochána to allow solicitors to be present in garda stations during the questioning of any suspect. Two main issues are under consideration by the Law Society's Criminal Law Committee: the establishment of a protocol for any such attendance, about which we are in discussion with the Department of Justice and the gardaí, and the question of payment for any such attendance. While we do not yet know the level of payments that will be made under the scheme, the department has indicated that it will backdate payments once the relevant rate has been determined.

> The Injuries Board's silence on the issue is deafening

Taxation of costs blockage

Another issue that arises is the blockage in the taxation of costs system. Discussions are being held with the taxing master on this matter. It is obvious that the cash flow of solicitors' businesses is being adversely affected by this delay, which is also the issue of current litigation before the High Court, so all I can say on the matter is that the Society is aware of the problem and is addressing it insofar as it can.

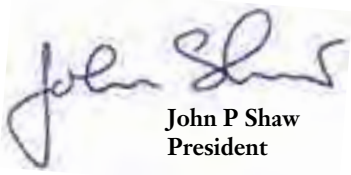
Representations have been made to the Department of Justice about the updating of IT systems in the central office of the High Court, but this is very much a funding issue for the board of the Courts Service. I am informed that legislative amendments will be required to facilitate such progress.

In relation to civil litigation, I have been in contact with the Motor Insurance Bureau of Ireland (MIBI) and the Insurance Compensation Fund with regard to the collapse of Setanta Insurance Company Ltd. I am advised that MIBI is considering its position and, at present, we await hearing from the Insurance Compensation Fund. It seems to be the case that, in the absence of any decision from MIBI or the Insurance Compensation Fund, that MIBI should be joined as a party to all personal injury claims where the defendant is insured by Setanta (see also page 18).

Unsatisfactory situation

This situation is unsatisfactory on several fronts. Claimants who have settled cases are now being advised that they are ordinary, unsecured creditors. Clearly, any plaintiff's solicitor needs to carefully consider any settlement – and also how such settlement can be recovered – as a liquidator has now been appointed to the company. Any defendant insured by Setanta needs to be advised as to their personal liability for the claim and any continuing action against them. We await hearing from the Insurance Compensation Fund in that regard.

It seems clear that MIBI and the Insurance Compensation Fund need to talk, and we have offered to facilitate such a meeting. This collapse serves to underline the necessity for claimants in personal injury cases to instruct a solicitor when making a claim to the Injuries Board. How the Injuries Board expects a lay person to deal with such issues is beyond me, and their silence on the issue is deafening.



John P Shaw
President

gazette
LAW SOCIETY

cover story

features

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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

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... as well as lots of other useful information

Findlater scholarship winner

PIC: JASON CLARKE PHOTOGRAPHY

Winner of the Findlater Scholarship, Ruth Kelleher, is presented with her prize by Law Society President John P Shaw

Take a walk on the wild side

The Courts Centenary Commemoration Committee is organising a walk through Dublin's legal quarter on Saturday 28 June 2014. This will give the public the opportunity to recall events of major importance in our recent history – and to view the impressive interiors of a number of buildings in the area.

The walk will start at the Four Courts and proceed to Green Street Courthouse, King's Inns, the Law Society's headquarters at Blackhall Place, and Arbour Hill before concluding at the Criminal Courts of Justice.

Small groups of walkers will leave at designated times, starting at 11am, and will be accompanied by guides. To conclude, participants can enjoy historical films and photographs in the modern surroundings of the new Criminal Courts of Justice building.

The event is free, but places are limited, so booking is essential.

To reserve a place, email: courtscentenaryevents@courts.ie.

Dublin District Court Practice and procedure (2014)

The *Gazette* has been asked by the Courts Service to inform practitioners that information on Dublin District Court licensing practice and procedure (2014) is now available at the Courts Service website. The information includes dates of court for each type of application, notice regarding court venue, the cut-off date for lodging applications, a link to Dublin District Court Licensing application forms, and the requirements of the court in relation to the documents to be logged with each application.

Malawi fundraiser by the sea

This painting by solicitor Paula Jennings is up for auction

The Irish Rule of Law International fundraiser in June is themed 'Malawi by the Sea'. Join the IRLI for a seaside dinner with a difference, in the beautiful National Yacht Club, Dun Laoghaire, on Friday 20 June at 7pm. Ticket price: €65. All proceeds from the event will go directly towards IRLI's Access to Justice project in Malawi, which works to alleviate overcrowding in prisons and gives a voice to vulnerable members of the community.

To purchase tickets, call 01 817 5331 or email: edwyer@irishruleoflaw.ie. For more information visit www.irishruleoflaw.ie.

Innovative course spreads its wings

An innovative Law Society course in aviation leasing and finance is attracting interest from students around the world. The course is free and open to all comers. The Certificate in Aviation Leasing and Finance will be offered in autumn 2014, with the diploma course to follow in early 2015. The MOOC (massive online open course) began on 12 May.

Director general Ken Murphy said that this was the first step in the Society's next level of investment and innovation in education: "This is the first course of this kind in Ireland and allows us to open our doors to hundreds of people who want to learn more about this fascinating and dynamic area of law – and it's for free!

"Ireland is a world leader in aviation financing and leasing, with almost 40 years' experience in the area. A panel of leading experts will take participants from around the world through the key elements and give them the view from the inside."

See www.lawsociety.ie/Aviation-MOOC.aspx or email Julie Shackleton at aviationdip@lawsociety.ie.

Future collaboration with Turkey explored

Pictured at the breakfast briefing to discuss future training collaboration between Law Society Professional Training and Turkey were *(from l to r)*: John O'Malley (John P O'Malley & Co), Dr James Geary (Hon Consul General for Ireland to Istanbul), Mina Ilhan and Cem Murat Sofuogly (Istanbul Bar board members), Attracta O'Regan (head of Law Society Professional Training), TP Kennedy (director of education) and Linda Robinson

Can we build it?

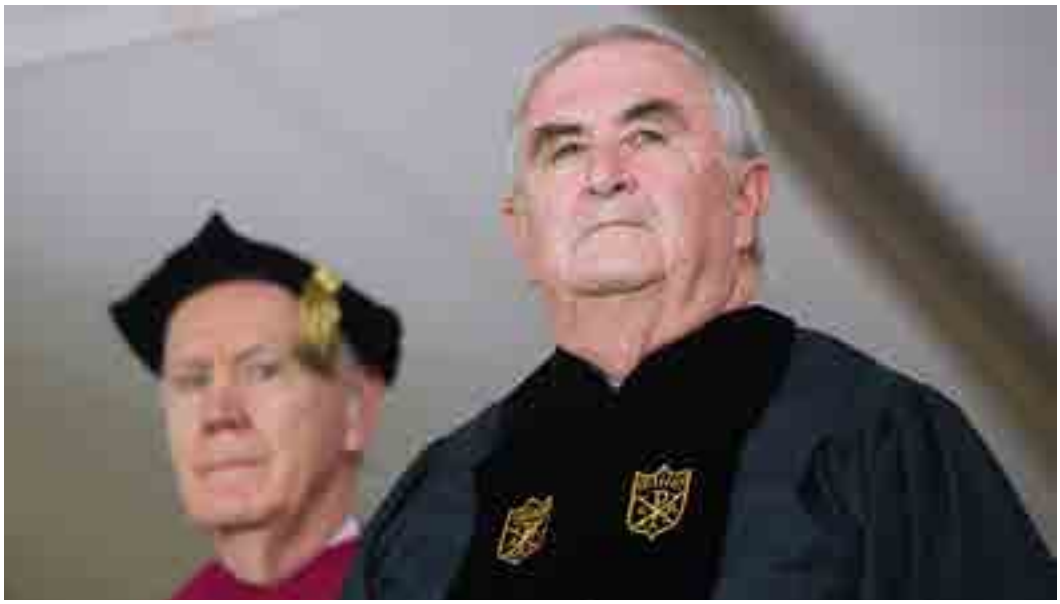
Law Society Professional Training has announced a new Certificate in Construction Adjudication that will begin in the autumn. The course has been inspired by the advent of the *Construction Contracts Act 2013*.

The course will provide participants with knowledge and experience of the skills required in effective and ethical construction adjudication. It is relevant for experienced professionals who have an interest in acting as future adjudicators and for all those involved in construction disputes, either in a representative capacity or as third parties.

Tuition will be provided by experienced construction practitioners from Ireland and Britain. Successful completion of the course will lead to certification as a Law Society of Ireland certified adjudicator. To register your interest contact: Lspt@lawsocieyt.ie or call 01 8815727.

"Pull my finger"

Former chief justice grabs the headlines!



PIC: KEN BENNETT/WAKE FOREST UNIVERSITY

Mr Justice John L Murray is awarded the Doctor of Laws degree by Law School Dean Emeritus Robert Walsh at Wake Forest University on 19 May 2014

A wonderful press release dropped into the *Gazette's* inbox recently from the Courts Service. Headlined 'Former chief justice awarded doctorate along with recently dismissed *New York Times* editor', not surprisingly, it caught our attention!

The story was about former chief justice, Mr Justice John L Murray, who had received an honorary Doctor of Laws from Wake Forest University, NC, USA. And no, the former executive editor of *The New York Times* did not come with the 'doctoral package'. Rather, Ms Jill Abramson herself received an honorary degree of Doctor of Humane Letters at the same ceremony.

College Provost Rogan Kersh described Mr Justice Murray as a noted jurist in constitutional and European law. He referred to his dedication to the people, laws and future of Ireland, and his generosity in sharing his knowledge of the law around the world.

In a challenging address to law graduates, Justice Murray spoke of the obligation of democratic states to respect the rule of law in the fight against terrorism. If democratic states sought to spread the rule of law, he said, they must demonstrate their commitment to its principles in their own countries.

Society website gets a modern makeover

The Law Society has launched its new-look website, which introduces many interactive and user-friendly features. Users will be happy to hear that www.lawsociety.ie now supports mobile and tablet devices.

The website boasts easy-to-use features, high-definition images and improved navigation. Social-media sharing buttons have been added to many pages, including the news section and legal job adverts.

The website will help to improve communication with the Society's members, trainee solicitors and the general public.

Feedback and queries are welcome. The webmaster can be emailed at webmaster@lawsociety.ie.

Small firms continue to 'hang on by their fingernails'

There was significant coverage in the national media of the director general's article in the *Gazette* (see May issue, page 7) on practising certificate numbers in 2013.

The major newspapers focused on the headline-grabbing figure that the 20 largest firms in the jurisdiction, as measured by practising certificates, grew by 6.8% last year. Of those 20 firms, 18 increased their practitioner numbers during the course of 2013.

Speaking to the *Gazette*, the director general pointed out, however, that "the 20 largest firms practise in what is, in most respects, a completely different market from the other 99%".

"The number of PCs for the profession as a whole (including the 20 largest firms) grew by 1.5% during the same period that the 20 increased by 6.8%. The big firms (18 of the 20) are also Dublin-based where, it is universally recognised, the economic recovery has taken place to a far greater extent than outside Dublin.

"Small firms continue to hang on by their fingernails," he said, "and hope for any crumbs of the improvement that they are hearing about – but not experiencing."

In conclusion, Murphy said that the very biggest firms sourced much, if not most of their fee income from international – indeed multinational – clients, rather than Irish ones. "They therefore contribute significantly to Ireland's income as a country."

Non-compliance with advertising regulations 'staggering'

The Law Society's Director of Regulation, John Elliot, has expressed his dismay at the number of solicitors who are advertising in breach of the *Solicitors (Advertising) Regulations*.

"The number of solicitors that the Society has come across in recent weeks advertising in breach of *Solicitors (Advertising) Regulations* is staggering," he says. "This is an issue that the Society is currently tackling."

The regulations have their source in the *Solicitors Act 2002*. "As such, they represent State policy," says Mr Elliot. "The rules restricting advertising represent the law, which must be obeyed and enforced."

'Solicitors advertising in breach of the regulations is staggering' – Director of Regulation John Elliot

He added that a strict approach was being adopted due to the fact that many solicitors were flouting the regulations "with the false belief that they will obtain the benefit until they are told to stop".

To discourage further breaches of the regulations, the director has highlighted the regulations that are most commonly breached (see below), beginning with the most frequent.

"Appropriate action will be taken against solicitors committing a breach of the regulations," Elliot warns. "Such action may include proceedings under section 18 of the *Solicitors (Amendment) Act 2002* by way of an application to the High Court for an order prohibiting a solicitor from contravening the regulations, and an application by the Law Society to the Solicitors Disciplinary Tribunal for an inquiry into the conduct of a solicitor on the grounds of alleged misconduct." *(See also the practice note on p52.)*

REGULATION	DESCRIPTION
Regulation 9(a)(i)	An advertisement published or caused to be published by a solicitor shall not include any words or phrases such as 'no win no fee', 'no foal no fee', 'free first consultation', 'most cases settled outside of court', 'insurance cover arranged to cover legal costs' or other words or phrases of a similar nature that could be construed as meaning that legal services involving contentious business would be provided by the solicitor at no cost to the client.
Regulation 8(a)	An advertisement published or caused to be published by a solicitor, which contains a reference to 'personal injuries' or other contentious business, shall also include an asterisk (*) placed after the words 'personal injuries' that would notate the presence of the following wording, which should be shown adjacent thereto: '*In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement.'
Regulation 8(b)	Extends the requirement to correlate the wording: '*In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement', to other words that may be specifically descriptive of categories of cases where claims for damages for personal injuries may arise, such as 'medical negligence', 'accident at work', 'motor accidents', 'public place accidents' or other words or phrases of a similar nature.
Regulation 9(a)(ii)	An advertisement published or caused to be published by a solicitor shall not include any cartoons.
Regulation 9(a)(iii)	An advertisement published or caused to be published by a solicitor shall not include dramatic or emotive words or pictures.
Regulation 4(a)(ix)	An advertisement intended to publicise or otherwise promote a solicitor in relation to the solicitor's practice shall be in such a form as shall not expressly or impliedly solicit, encourage or offer any inducement to any person or group or class of persons to make claims for damages for personal injuries or to contact the solicitor concerned with a view to such claims being made.
Regulation 14(b)	It shall be the responsibility of a solicitor to ensure that any advertisement published or caused to be published by him or her complies with the provisions of the *Solicitors (Advertising) Regulations 2002*.

Solicitors can now attend interviews in garda stations

Solicitors can now attend interviews in garda stations, where a request is made by a suspect to have a solicitor present. The Law Society was informed of this significant change on 7 May 2014. All members were notified by a Society e-bulletin on 8 May, and again in a 20 May e-bulletin.

Speaking on RTÉ Radio's *News at One*, the Society's director general Ken Murphy said that while this was "a major step forward", it was not particularly new.

"In other jurisdictions this would be the norm," he said. "This reflects jurisprudence of the European Court of Human Rights, it reflects the famous *Miranda* decision of the US Supreme Court back in the 1960s and it reflects the practice in England and Wales. So we are late coming to the party here."

Since 7 May, a number of steps have been taken by the Society to help solicitors meet this new requirement, including a meeting of Criminal Law Committee members on 13 May 2014 to help develop the Society's response. This meeting was attended by the president John P Shaw and director general Ken Murphy.

The Criminal Law Committee held another special meeting on 19 May 2014 with a view to finalising the Society's response.

Protocol for solicitors

The Society has been invited to liaise with the Department of Justice in relation to the drafting of a protocol that will outline the role of solicitors during interviews. It has agreed that representatives from the Criminal Law Committee will play a major role in developing this protocol.

As soon as the protocol and role of solicitors has been finalised, the Society will develop guidelines to assist practitioners with fulfilling what President Shaw has described as a "complex role".

In addition, the Society is taking part in the work of the Smyth Committee, which is examining garda interviews generally. The committee met on 27 May 2014, where the Society's aired its views on the matter.

Legal aid for suspects

On the subject of legal aid for suspects who cannot afford their own legal representation, the Society has been advised that this is being considered in the context of an extension of the Garda Station Legal Advice Scheme. The Department of Justice has invited the Society to submit its views on the proposed extension of the scheme.

Members of the Criminal Law Committee met with department representatives and the Legal Aid Board on 26 May 2014 to discuss the mechanics of the scheme.

The department has indicated that it is envisaged that payment arrangements under the Garda Station Legal Aid Scheme extension will apply. These will be settled retrospectively to cover the situation arising from the DPP's recent announcement.

Quizzed on the likely costs of the scheme by RTÉ's Jonathan Clynch, director general Ken Murphy responded that the costs had yet to be agreed: "There has been an existing scheme in place since 2001 called the Garda Station Legal Advice Scheme. We have been told by the Department of Justice that their intention is to extend that scheme to cover this new service. We will be meeting to hear what the department has in mind in that regard.

"But it is very important to ensure that whatever is required to put this in place must be done. This will inevitably increase the criminal legal aid budget, but frankly, justice has a price. And this is part of the justice system – it will have to be paid for."

Solicitors' rota

It is likely that a rota of solicitors qualified to give legal advice in garda stations and available to attend interviews will be required, particularly for situations where a suspect does not nominate their own solicitor and cannot afford to pay for their own legal advice.

The Society will be engaging with the relevant government agencies in developing and operating such a rota in due course.

Training

As regards training solicitors for this new role, a seminar entitled 'Giving legal advice to clients before and during garda questioning: are you ready?' was hosted by the Society's Criminal Law Committee and Professional Training section on 9 May 2014. Members can download the lecture notes of Jenny McGeever, James MacGuill and Richard Atkinson.

In addition, the Criminal Law Committee is liaising with Professional Training with a view to delivering nationwide training as soon as possible.

Articles by Shalom Binchy and Dara Robinson as well as a transcript of the director general's interview on RTÉ Radio's *News at One* are also available.

Members' views on this topic are welcome. Please email clc@lawsociety.ie. The Society is interested in hearing about the first-hand experiences of members who have attended interviews in garda stations since this change was announced on 7 May.

Bank instructs customers to remove legal documents

Bank of Ireland has begun instructing its customers that they must remove all legal documents and valuables from the bank's safekeeping, due to its decision to phase out the facility. From 6 May, customers visiting their branches to inspect items were being given a 30-days' notice of inspection.

"Once the notice period has expired, the item will be treated as 'archived' within the branch and may not be accessed again by the customer unless it is to remove the item from the branch," the bank said in a statement. "The bank has now decided to discontinue the service as the large amount of safekeeping is causing an unacceptable health, safety and security risk in some branches."

Managers of Bank of Ireland branches have been notified to inform customers that they will have to remove items from their local branch.

Given that banks look like they are no longer willing to offer a safekeeping service, many will turn to solicitors to keep their important documents safe. There are, however, a number of risks involved for practitioners when storing title deeds, wills, contracts and other items for clients.

The *Wills, Probate and Estates* manual, published by the Law Society and Oxford University Press, recommends that "it is best practice to keep wills in a fireproof, waterproof safe in the solicitor's office". However, the potential risk is that paperwork could be damaged due to water used to douse a fire. Alternatively, a fire-proof safe might not withstand flooding.

Another risk for solicitors storing documents can arise when offices merge or change hands, which might cause inconsistencies in the filing and storage of documents and lead to complications when they are to be retrieved.

A useful alternative might be to use a registered and accredited safe deposit facility that specialises in document safekeeping.

Employee privacy case breaks new ground

In a British case, *Warm Zones v Sophie Thurley*, ([2014] EWHC 988, the High Court granted an interim injunction allowing an employer, at its own expense, to instruct an independent computer expert to inspect and take images from the personal computers of two former employees, *writes Bill Holohan.*

The former employees were accused of having copied and/or disclosed a customer database to a competitor while still employed by Warm Zones. Their employment contracts contained express confidentiality provisions prohibiting them from using or disclosing any confidential information during employment.

When deciding whether to grant the interim injunction, the court took into account the strength of the employer's claim and the time and resources used to create the confidential information. There was strong evidence (in the form of emails) that suggested the employees had disclosed, or were prepared to disclose, information from a database containing data about householders. It was unlikely that the employees would be able to provide alternative explanations for their actions and, in the event that they could not, damages would not have been an adequate remedy for Warm Zones.

This decision is interesting because it is unusual for courts to order the inspection and imaging of a party's computers, particularly when, as in this case, the employees had already agreed to provide affidavits and to deliver up soft and hard copies of what was on their computers.

Anyone considering seeking an injunction against a former employee should bear in mind that they must:

- Obtain as much evidence as possible of the individual's wrongdoing,
- Move quickly, and
- Consider what steps can be taken to protect customers/other employees.

Fr Peter McVerry warns of 'tsunami of homelessness'

Fr McVerry – housing crisis could bring down Government

Social justice campaigner Fr Peter McVerry has warned of a "tsunami of homelessness" as rising rents, housing shortages and home repossessions worsen over the coming months.

The recent guest speaker at the Law Society's parchment ceremony on 8 May said that the traditional routes out of homelessness – social housing and the private rented sector – were out of reach for those who were most in need of support.

In addition, the fact that there were an estimated 40,000 buy-to-let mortgages in arrears meant that a "torrent of water is coming, and there's no way out". In effect, he said, thousands of additional people could be forced to find accommodation in the near future.

"In all the years I have been working with homeless people, it has never been so bad," he said. "We are, even I would say, beyond crisis at this stage."

Six new people were becoming homeless every day, he added, "and that's the official figures. It may be more than that".

Despite a near doubling in the number of people on social housing waiting lists, the output of social housing has fallen by 90% in recent years. "There is a dearth of social housing," Fr McVerry later told RTÉ. "In the cities, and in Dublin in particular, the private rental sector is out of reach for homeless people because the rents are escalating. They are going through the roof.

"The demand for rented accommodation far exceeds supply, and not only can homeless people not get into rented accommodation, but people already in rented accommodation are losing it … and becoming homeless," he said.

Fr McVerry called on the Government to buy or rent out an additional 1,500 homes as a matter of urgency in order to prevent housing shortages spiralling out of control.

Due to the nature of the crisis, he warned that "the whole issue of housing and homelessness could bring this Government down" (see p24).

THERE'S AN APP FOR THAT

The must-have app for file sharing

APP: DROPBOX **PRICE:** FREE

Dropbox **is my new best friend,** ***writes Dorothy Walsh.*** **This free-to-download app provides a free cloud-based storage solution, allowing me to access all of my files, precedents documents, pictures, presentations and the contents of my work PC from anywhere via my iPad.**

It has become a solution for me in terms of sharing documentation when briefing counsel with files that are too large to send by email, accessing my precedent bank, accessing clients' files and any documents I have on my work PC.

In terms of getting things going, the first thing is to set up a ***Dropbox*** **account. To do this, you download** ***Dropbox*** **onto your work PC (via a link on the dropbox.com website) and follow the instructions to set up an account with a username and a password.**

You then download ***Dropbox*** **onto your iPad. Having set up the account, one now has a cloud-storage system into which any of the documents and folders on the office PC can be shared or saved to that cloud via the** ***Dropbox*** **folder – much in the same way as you would save files to a folder on the PC – and accessed via the app on the iPad.**

In my ***Dropbox*** **account, which can be amended and altered via the app on iPad, I have set up various folders, such as for the counsel I brief, as well as for particular cases, precedents and case types.**

When I set up a folder for counsel, I can share a link to this folder with them. Counsel then gets an email alert to tell them the folder is there and to connect to that particular folder and access any of the contents of that folder (and ***only*** **that folder).**

This is what I have been using to brief counsel – by scanning a copy of papers and briefs from our file to the PC and saving it to the ***Dropbox*** **folder for that particular counsel.**

Dropbox **will alert the recipient to the fact that they have been 'dropboxed' and they can then access the folder. Very cleverly,** ***Dropbox*** **will also alert a recipient to the fact that a folder has been updated. The great thing about** ***Dropbox*** **is the volume of documents and material it can hold – not locally clogging up space on the device itself, but in a cloud that can be accessed anywhere via the app on iPad.**

A concern I had was in relation to the confidential nature of the material we hold for our clients and the risk of someone accessing that information on my device. The ***Dropbox*** **app, like all good apps, has settings to allow you to keep it secure by setting a password or pin code.**

All in all, the ***Dropbox*** **app is a must-have app for a must-have account.**

Protecting and promoting access to justice in Columbia

Columbia remains one of the most dangerous places in the world in which to practise law or to even attempt to advocate for basic human rights and the proper administration of justice. That's according to the recently published third report of the Columbia Caravana – *Judges at Risk* (2012), which was launched at the Law Society's headquarters at Blackhall Place on 15 May, *writes Lorcan Roche*.

Harassment, threats, attacks and assassinations of lawyers, judges and those advocating for civil rights for peoples dispossessed by, in particular, the mining and extractive industries, remain at a disturbing level, with impunity for such crimes running at an estimated and staggering 97%.

Lawyers most at risk are those who attempt to work with political prisoners, with those accused of collaborating with guerrillas, and with indigenous peoples fighting to have their lands restored (more than 5.5 million people have been displaced).

The findings of the first and second Caravanas were that, between 2002 and 2010, there were 4,400 incidents against lawyers – including murders. The third report says that "the Caravana is still profoundly disappointed with the continuing victimisation and stigmatisation of defence lawyers, and with the government's tendency to issue statements critical of their work".

At the launch of the third report of the Columbia Caravana, *Judges at Risk*, at Blackhall Place were *(l to r)*: Sean T O'Reilly (Sean T O'Reilly & Co, Dundalk), Ken Murphy (Law Society director general), Mr Justice Roderick Murphy, Sara Chandler (Chair of Colombian Caravana) and Jeffrey Forrest

Substantial risk

While welcoming the peace talks between the government and guerrillas – which started as the 2012 delegation arrived – the third report states that the Caravana was concerned at the lack of participation by civil society organisations in these talks. It was also concerned that, despite the enactment of the *Victims and Law Restitution Act*, those attempting to use the law to retrieve their lands faced "substantial risk". Indeed, 30 community leaders who demanded the return of their lands since the law was enacted in 2011 have been killed.

Across Columbia, judges described three key problems affecting their independence and their ability to guarantee justice:

- Their authority and their decisions are undermined by negative statements by government and local authorities,
- Their decisions are often not implemented or followed up on, and
- They face frequent threats.

Judicial killings

The 2012 Caravana delegates were told of four judges who had been murdered in the previous three years:

- José Fernando Patiño Leaño, single sentencing judge of Fusagasugá, was killed on 22 March 2010. He had been in charge of major trials of drug smugglers, guerrillas and paramilitaries.
- Judge Diego Fernando Escobar Mineral, a judge of the Medellin criminal court, who had spent 19 years in the judiciary, was killed while waiting for a taxi on 22 April 2010.
- Judge Gloria Constanta Gaona was killed in Saravena (Arauca) on 22 March 2011. Judge Gaona had been in charge of complicated criminal proceedings relating to drug trafficking, as well as the case of a massacre of three children, for which an army second lieutenant was being detained.
- Judge Jorge Alberto Restrepo Gonzalez, who served as a municipal judge for 39 years, was shot dead in the centre of Medellin on 19 July 2012.

The third report cites, as background to its own findings, the *Annual Report of the Inter-American Commission on Human Rights 2010* (see chapter IV on Colombia), which reported that it, too, had received information about threats and intimidation against judges.

Mrs Gabriela Knaul, the UN Special Rapporteur on the Independence of Judges and Lawyers, pointed out that more than 300 *actores judiciales* had been murdered in the preceding 15 years. The rapporteur stressed the seriousness of the fact that the majority of these crimes had not been "investigated adequately" and that there had been "few prosecutions or convictions".

Sean T O'Reilly, a Dundalk-based solicitor who has twice visited Columbia, and who became involved with the Caravanas after completing the Certificate in Human Rights at the Law Society, explained: "The Caravanas will be going back to Columbia in August. They need assistance from Irish judges, legal researchers, law students and anyone with an interest in human rights."

For more information, or to download sponsorship forms, visit: www.colombiancaravana.org.uk.

Winning ways at the Irish Law Awards 2014

A lifetime achievement award was presented to 'Father of the Bar' Maurice Gaffney SC. The 97-year-old has practised law for almost 60 years and was recognised for his outstanding and continuous contribution to the Irish legal sector

Flor McCarthy and John McCarthy (McCarthy Solicitors) were winners of the 'Legal Website of the Year' at the Irish Law Awards

Miriam O'Callaghan presents Myra Garrett (managing partner at William Fry) with the 'Law Firm of the Year Award' (sponsored by Friends First) at the Irish Law Awards on 2 May. The awards recognise outstanding achievement and exemplary practice by law firms, legal practitioners and in-house legal teams in Ireland

Husband and wife, Colm Kelly (principal of Healy Crowley Ahern) and Eleanor Daly (general counsel FEXCO), celebrate receiving respective Irish Law Awards. Eleanor's received the 'International Transaction of the Year' award, while Colm took the 'Munster Firm of the Year' (for firms of less than five solicitors). Colm and Eleanor live and work in Killorglin, Co Kerry

Jenny Fenton and Josepha Madigan (Madigan Solicitors) received the prestigious 'Family Lawyer/Law Team of the Year' award

LOVE/HATE'S FRAN STARTS CALCUTTA RUN WITH A BANG!

Participants in this year's Calcutta Run needed no encouragement to run for their lives at the start of the 5k and 10k courses around Dublin 7 and the Phoenix Park – given the spine-tingling fact that *Love/Hate* star Fran (aka Peter Coonan) was the man in charge of the starting pistol at the Law Society's headquarters at Blackhall Place. Fran was in fine fettle as he urged participants to "run like hell" or some hot lead would be heading in their direction. It was the fastest start in years!

The sun shone on the Calcutta Run as over 1,100 runners and walkers legged it for the annual event on 17 May. This was the 16th year of the event, which has raised almost €3 million for the Peter McVerry Trust and GOAL.

Following an energetic warm up from One Escape, words of encouragement from the Law Society's junior vice-president Michael Quinlan, and the gentle coaxing of Fran's menacing pistol, the participants surged forward in their efforts to raise €200,000 for the worthy charities.

ALL PICS: LENSMEN PHOTOGRAPHIC AGENCY

Booming barbecue

Having crossed the finishing line to the booming sound of the MaSamba drummers, the runners and walkers relaxed in the grounds of Blackhall Place, enjoying the barbecue, entertainment and refreshments.

Children also got their time to shine in the mini-athletics activities, followed by an afternoon on the bouncy castles.

The Dublin Civil Defence brought along their fire engine, so children (and even some adults) could explore the truck, turn on the sirens and take a turn at using the hose. This year also saw the introduction of a

tennis tournament, where teams from various law firms and the Bar Council competed.

Firm supporters

This year, over 40 firms signed up as 'firm supporters' of the Calcutta Run. Firms from across the country as well as a large number of runners from the Bar Council were on hand to lend their support.

While the final amount of sponsorship raised is still unknown, the organising committee is hopeful of achieving its €200,000 target. It expresses its thanks to everyone for the support received this year. Participants and firms who have not yet sent in their sponsorship donations should do so by sending them via DX to: Calcutta Run, DX 79, Dublin.

The Calcutta Run committee expresses its thanks all of its sponsors, including: Bank of Ireland, Clada, Compass, Datapac, Diageo, Doran's, DX, Kefron Filestores, Keyhouse, Lensman Photography, Musgrave Market Place, Octopussy's Seafood Tapas, One Escape, Pearl Audio Visual, The Oar House, The Panel, Thorton's Recycling, TMS – Traffic Management Services, WASP Technologies and Zenergy.

Finally, a sincere thanks goes to all the legal firms that signed up as Calcutta Run supporters and firm champions, everyone who raised sponsorship, the volunteers, registrars, stewards and anyone who helped in the lead-up to the event. Here's to next year!

‘Small business’ proves huge boost for Emma and Seán

Two PPCI trainees, Emma Farrell and Seán O’Connor, have won the prestigious Brown-Mosten International Client Consultation Competition. The contest was held at the InterAmerican University of Puerto Rico from 8-12 April 2014.

Farrell and O’Connor (trainees at Matheson) beat 19 other global teams to claim the title, following four days of competitive rounds.

The competition simulates an initial consultation with a new client in which students are presented with a client matter, are required to elicit the relevant information from the client, explore the preferred outcome, outline the nature of the problem, and present the client with a range of resolutions. Professional actors play the role of the client, while a panel of judges – comprising practising lawyers, academics and counsellors – oversee the consultation. The theme for 2014 was ‘Small Business’.

Emma and Seán topped the poll in each of the competition’s four rounds. The judges noted that they displayed excellent teamwork, developed an excellent rapport with their clients and succinctly analysed each of their client’s issues in a supportive and empathetic manner.

Seán O’Connor and Emma Farrell – winners of the prestigious Brown-Mosten International Client Consultation Competition 2014

On returning from the contest, they said: “We were honoured to represent Ireland in this competition and we are very proud of the result. This experience is one we will not forget. We have formed strong ties with lawyers from all over the world and have learned a lot from their different approaches to dealing with clients. The standard was exceptional.”

They praised the welcome they received from their Puerto Rican hosts, particularly in the culinary and salsa-dancing departments! “Despite the geographical distance between our two islands, our cultural interests and personalities are not miles apart,” they said.

“We wish to thank most sincerely the Law Society and our training firm Matheson for supporting our attendance at this competition. In particular, we are most grateful to our coach Jane Moffatt who guided us through the competition and provided invaluable insights, advice and encouragement. We could not have done it without her.”

The Law Society has participated in this competition since 2000. The only other Irish winners were Michelle O’Mahony and Melanie Evans in 2007. On the strength of the overall performances by Irish teams, the Law Society hosted the international event in 2012.

Certificate in Conveyancing and Property Law

PIC: CIAN REDMOND PHOTOGRAPHY

A selection of the 90 lawyers who attended the Diploma Centre’s Certificate in Conveyancing and Property Law on 10 May in Blackhall Place

letters

Complaints over clients' data access requests

From: Bill Holohan, Holohan Law, Sundays Well Road, Cork

The office of the Data Protection Commissioner has received a number of complaints in relation to the failure of solicitors to comply with access requests from former clients. Often the reason cited by the solicitor for not complying with the access request is that they have a common law lien on all documents and papers that constitute work carried out on the client's behalf, for which payment remains outstanding.

This issue, where a common law lien on a client's file is considered to apply, is one that the Office of the Commissioner has dealt with on a number of occasions. It is not in any way unsympathetic to the scenario for the solicitor in question where a former client is seeking not to pay outstanding fees that are the subject of a dispute.

Equally, in the context of a file handled by a solicitor's practice, the office is of the view that it is undoubtedly the case that there is far more information on a file than could reasonably be considered to be the requester's personal data – and no requirement to provide any information that is not strictly the personal data of the requester arises. However, the *Data Protection Acts*, which transpose the EU's *Data Protection Directive*, do not provide any exemption to the provision of the personal data of a person in these circumstances.

A solicitor who has been engaged by an individual is a data controller of that individual's personal data that is subsequently processed. Personal information held by a data controller falls to be released in response to an access request, unless a valid exemption as provided for under sections 4 and 5 of the *Data Protection Acts* can be relied upon.

The complaints to the Office of the Data Protection Commissioner were resolved to the satisfaction of the complainants and the solicitors concerned, on the basis of the following guidance from the office.

The exemption provided for under section 5(1)(g) of the *Data Protection Acts*, which relates to personal data "in respect of which a claim of privilege could be maintained in proceedings in a court in relation to communications between a client and his professional legal advisers or between those advisers" applies to personal information held in respect of a solicitor's capacity as legal adviser to its clients (not the requester), rather than information held in their capacity, or former capacity, as legal representative for the requester.

In relation to letters from the solicitor acting for another client, it is possible that the restriction to the right of access in section 5(1)(g) of the *Data Protection Acts* may apply to any personal data of the requester contained within them.

Regarding letters generated by a solicitor on behalf of the requester who was a client, a large number of which may have already been sent to them in the normal course of events, that is, when generated, it is difficult to see how a claim of privilege under section 5(1)(g) would apply where the letters have previously been sent to the requester.

It is difficult to anticipate that section 5(1)(g) would apply to attendance notes created by the solicitor in relation to their client. Where notes relate specifically to the client and were created in that context, we would deem the personal data contained in those notes to be valid for release.

Singapore sling for General Percival!

From: BJ O'Beirne & Co, Solicitors, 3 Church Buildings, Main Street, Arklow, Co Wicklow

It was very nice to read your article on Edward O'Driscoll (*Gazette*, Jan/Feb 2014, p44).

Halfway down the first page of the article, a memory was triggered of a story that my late father told me. My father served in the Irish Medical Corps during the so called 'Emergency'. I think he may have been stationed in Cork at some time. I do remember him telling me a postscript to the Singapore surrender, which goes something like this.

On hearing that General Percival was about to surrender 125,000 empire troops to a lesser force of 40,000 Japanese in the Ford Works at Singapore, some of the Cork citizens (probably members of the former flying column) went to the Ford Works in Cork, accessed the newly installed state-of-the-art telex, and sent a hearty telex of "congratulations to General Percival on your fine achievements from the people of Cork".

This caused consternation among the Japanese, who suspected it was something else, and delayed the negotiations of surrender until it was explained to them where Cork was and what the telex really meant.

I am not sure if it is a true story or just a yarn. Maybe Edward O'Driscoll might know better, or better still, maybe he acted for some of the good citizens who sent this historical telex – if it really happened!

My dad, who died in 1980, always remembered with fondness the years he served in the Irish Medical Corps in various locations around the country between 1940 and 1945.

Best wishes to Mr O'Driscoll in his retirement.

viewpoint

WHISTLING IN THE WIND

The fates of former Justice Minister Alan Shatter and former Garda Commissioner Martin Callinan, following their failure to deal adequately with allegations made by Garda whistleblowers, will resonate for years to come, argues Lauren Kierans

Lauren Kierans is a Dublin-based barrister

The Sword of Damocles has fallen from a great height on former Minister for Justice Alan Shatter and former Garda Commissioner Martin Callinan. If the allegations made by garda whistleblowers Maurice McCabe and John Wilson had been dealt with appropriately from the outset, both Shatter and Callinan would still hold the positions they were in at the beginning of this controversy.

The power of whistleblowing has been felt by those who were never intended to be affected so adversely by it. When Sgt McCabe and Garda Wilson blew the whistle on allegations of corruption and malpractice in An Garda Síochána, their aim was to bring those perpetrators to justice and to effect a positive change in the force. This has been achieved somewhat by the release of the Garda Inspectorate report in March that vindicated the whistleblowers' allegations of corruption in respect of the penalty-point system.

> **The OECD has advised the Irish Government that this whistleblowing law could be the strongest in Europe**

The report found that there were "consistent and widespread breaches of policy" by those charged with administering the penalty-points system. It made 37 recommendations, some of which have been implemented already, such as the deactivation of the Pulse access of members of the force when they retire or leave, and the taking into consideration of previous cancellations when a new petition for cancellation is made in relation to the same driver and vehicle.

Cause for concern

However, the much more serious allegations disclosed in the dossier handed over by Sgt McCabe to Micheál Martin has only now been considered for a commission of investigation following the publication of Sean Guerin SC's report into those allegations. Guerin found that there is cause for concern as to whether all the appropriate steps to investigate and address the complaints made by Sgt McCabe were taken by Alan Shatter.

The treatment of the garda whistleblowers during this controversy reflects an attitude that has been repeated down the years in Ireland. Sgt McCabe and Garda Wilson were subjected to adverse treatment that affected them, both personally and professionally. Unwarranted formal and informal sanctions were imposed by colleagues and management, which included a denial of access to the Pulse system unless they were supervised or authorised by a senior officer, and denial of access to the confidential recipient without prior authorisation.

They were also subjected to harassment and intimidation, such as the tying of a rat to the front door of Wilson's family home. Sgt McCabe has filed an official complaint in relation to allegations of bullying by members of the force and this is currently under investigation. The *Guerin Report* confirms that there was no malice on the part of Sgt McCabe in the making of his disclosures and it found further that, as a result of the disclosures being made, there is a cause for concern about the personal and professional consequences for Sgt McCabe. He expressed the view that Sgt McCabe's experience needs to be examined.

Protection of workers

With the introduction of generic whistleblowing legislation in the form of the *Protected Disclosures Bill 2013*, future whistleblowers will be protected when making disclosures of wrongdoing. The bill passed committee stage on 14 May and it is anticipated that the report and final stage will be in June.

The introduction of this legislation fulfils a commitment in the Programme for Government to introduce a single, overarching framework for the protection of workers in the public, private and non-profit sectors. It aims to protect workers who disclose information that, in their reasonable belief, tends to show a relevant wrongdoing.

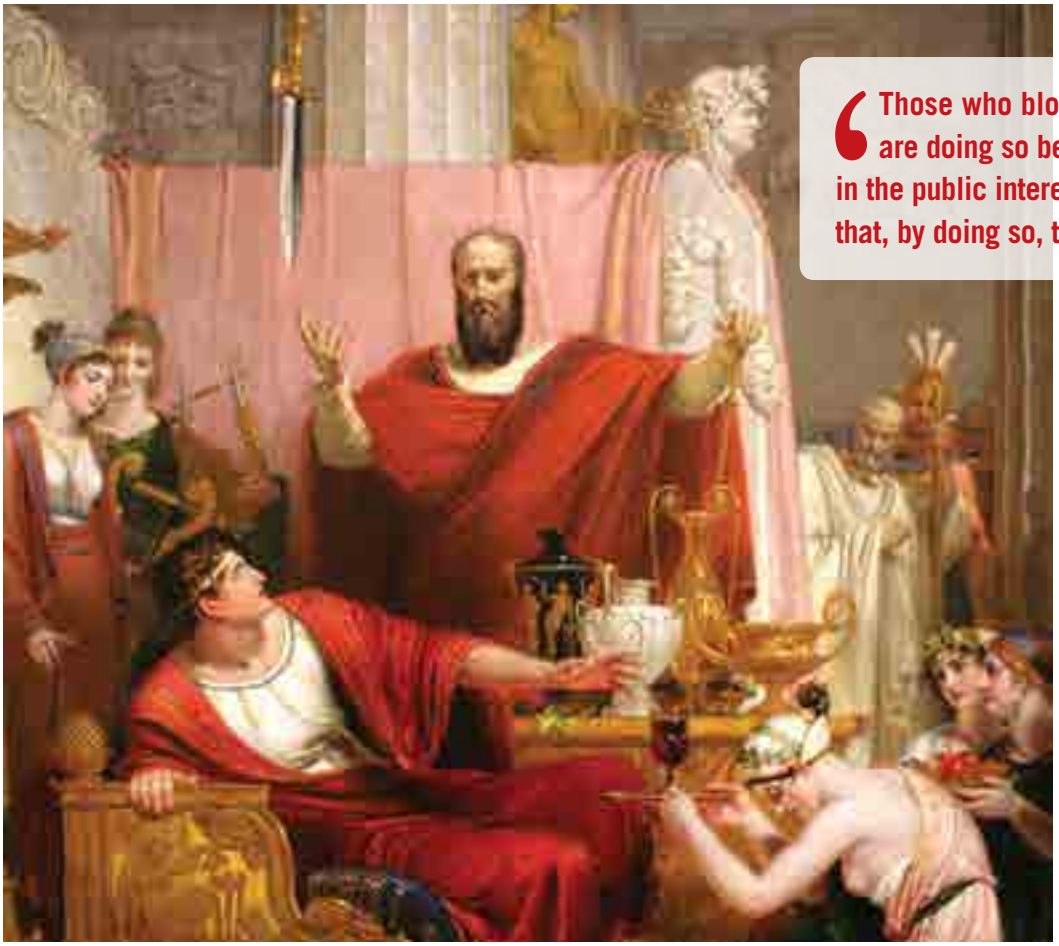
The scope of 'relevant wrongdoing' under the legislation is quite comprehensive and includes:

- Criminal offences,
- Failure to comply with legal obligations (excluding the worker's terms of employment),
- Miscarriages of justice,
- Health and safety matters,
- Environmental damage,
- Unlawful or improper use of public money,
- An act or omission by a public body that is oppressive, discriminatory, grossly negligent or constitutes gross management, and
- Information in relation to any of the above that is concealed or destroyed.

The definition of 'worker' covers employees, contractors, consultants, agency staff, former employees, temporary employees, interns and trainees.

Compensation

The legislation provides protection for employees from penalisation that includes, but is not limited to, suspension, dismissal, demotion, and unfair treatment. Compensation of up to a maximum of five years' remuneration may be awarded to an employee for unfair dismissal on foot of making a protected disclosure. This exceeds the normal maximum compensation of two



> Those who blow the whistle on wrongdoing are doing so because they believe that it is in the public interest – and because they hope that, by doing so, the wrongdoing will cease

years' remuneration for unfair dismissal.

Tort action is available to workers for any detriment suffered as a result of making a protected disclosure. This protection extends to third parties, such as family members who may suffer detriment as a result of a protected disclosure being made. Detriment includes harassment, adverse treatment, injury and threat of reprisal.

The protections in the legislation will not apply, however, to false disclosures deliberately made, thus protecting employers from malicious claims.

An amendment was made at committee stage to provide protections for members of An Garda Síochána to the same extent as other workers. According to Minister Brendan Howlin, speaking at the Open Government Partnership Regional Meeting for Europe on 9 May 2014, the bill is expected to be enacted before the end of the Dáil's summer session.

Strongest in Europe

The OECD has advised the Irish Government that this whistleblowing law could be the strongest in Europe. With the implementation of a robust whistleblower protection regime, it is hoped that this will encourage those who have information relating to alleged wrongdoing to disclose this information in the confidence that they will not face severe personal and professional repercussions.

The bill, however, is silent as to how the recipient of the information must deal with it once it has been disclosed to them. The bill does establish an Office of Disclosures Recipient that is required to deal with disclosures relating to security, defence, international relations and intelligence. This recipient is obliged to make a report referring relevant information received by it to the appropriate public body for consideration, and to include recommendations as to what actions should be taken. There is no obligation contained elsewhere in the bill to ensure that other recipients of disclosures act on the information received.

An amendment was made at committee stage, which provides that the Garda Síochána Ombudsman Commission, if prescribed as a prescribed person under the legislation, may investigate any disclosure that is made to it if it appears to be desirable in the public interest. This provision was included on foot of the *Guerin Report* in order to prevent a similar situation occurring again, whereby information disclosed by a garda whistleblower is not investigated. However, by failing to include similar provisions for disclosures made by workers in other sectors, wrongdoing may remain unaddressed similar to the disclosures made by Sgt McCabe and Garda Wilson.

In the public interest

Those who blow the whistle on wrongdoing are doing so because they believe that it is in the public interest – and because they hope that, by doing so, the wrongdoing will cease. Unless the recipient acts on the information disclosed to them, there is no reason for the whistleblower to come forward.

The bill does require that all public bodies establish whistleblower procedures, but it remains to be seen whether this obligation will extend to a requirement to include provisions as to how recipients must deal with the information disclosed.

There are sectoral statutory requirements applicable to some disclosure recipients, such as to employers under the *Safety, Health and Welfare at Work Act 2005*, which obliges employers to ensure the safety, health and welfare of their employees at work. Thus, if an employer fails to investigate information disclosed by a worker that the health and safety of an employee is being, or is likely to be endangered, and the information disclosed is correct, the employer could be found guilty of failing to discharge their duty to protect their employees. Such requirements, however, do not apply across the board, and this may result in certain disclosure recipients failing to deal with the information disclosed. Nonetheless, the fates of Shatter and Callinan, following their failure to deal adequately with the allegations made by the garda whistleblowers, will, no doubt, resonate with future recipients of disclosures for a long time to come.

SETANTA COLLAPSE – CLIENTS' INTERESTS IN QUESTION

The death of legendary hero Setanta is said to have caused panic, mayhem, and uncertainty in the populace and warriors on the Cooley Peninsula, in Ulster and indeed the rest of the island. David Curran sorts fact from fiction

David Curran is a partner in Holohan Law and was formerly head of financial lines claims for AIG Ireland

On 24 January, Setanta Insurance ceased business, including renewal of insurance policies, and by an announcement from the board of directors on 16 April, it was determined that they were insolvent. Leaving aside the insurance industry jargon, this meant that they believed, after analysis, that there were not sufficient reserves to meet known claims. Their liabilities to their policyholders outweighed their assets. The announcement of 24 January was, in itself, not very concerning, as the mere cessation of new business occurs from time to time in the insurance industry. This can be for a wide variety of reasons, both insurance and commercial.

The 16 April announcement, however, was the tsunami that many practitioners could be forgiven for not foreseeing. Setanta Insurance was registered in Malta as a Maltese licensed insurance holder as of 12 July 2007. It was noted at the time by the Malta Financial Services Authority that the company were passporting their business outside Malta, specifically to Ireland. As a result, Setanta was not part of the Maltese Protection and Compensation Fund. To avail of such a fund, unpaid claims against the Maltese insurer would have to be for risks situated in Malta. On 30 April, at a meeting of the company's creditors, Paul Mercieca CPA was appointed as liquidator. He can be contacted at setantaliquidator@outlook.com.

> **In reality and applying a common-sense approach, the MIBI should be approached on matters that are due before the courts in the very near future. A request should be made, seeking from them a letter of comfort…**

The insolvency of the company – a financial entity that is subject to so much scrutiny, due diligence and regulatory reporting – was, I would suggest, not to be foreseen by the profession. We are all aware of the ICI, PMPA and the Independent Insurance company, but that was bygone days, before the days of European financial regulation and the international financial solvency requirements of insurers, before the Consumer Protection Code and the stringent due-diligence process that should be associated with any application for a licence to write insurance business. The post mortem is for another day – but what now for the policyholders, claimants and practitioners who are representing both plaintiffs and defendants in ongoing actions?

"Ah, there is a safety net," I hear you say! To paraphrase the immortal words of the Trojan priest Laöcoon, "beware Greeks bearing gifts!" We have the Insurance Compensation Fund set up by the *Insurance Act 1964* (as amended), as well as the Motors Insurance Bureau of Ireland (MIBI). Then of course, there is whatever money is in the Setanta pot, which is now under the control of the liquidator, Mr Mercieca.

The Insurance Compensation Fund will, in the case of liquidation, pay up to 65% of the value of any valid claim, up to a maximum payment of €825,000. Any sums due to commercial policyholders may not be paid from the fund unless there is a sum due on foot of a liability to an individual.

MIBI (as per the 2009 *Compensation of Uninsured Road Accident Victims Agreement*) outlines the circumstances that must exist and the conditions that must be met before a payment can be made by it to a victim of an uninsured driver. Plaintiffs' solicitors should give due regard to their professional obligations and take appropriate steps to protect their client's interests pending determination of the matter.

In matters where court orders have not been made, practitioners should comply with section 2 of the 2009 MIBI agreement by joining the MIBI to all proceedings in being, or notify the MIBI on matters that have just occurred or are going through PIAB. Firstly, correspondence should be sent by registered post to MIBI advising of the circumstances. A copy of this correspondence should also be sent to Setanta for good order, in accordance with clause 3.14 of the MIBI agreement. Compliance with clause 3.14 of the agreement is a condition precedent to MIBI's liability.

Common-sense approach

In reality, and applying a common-sense approach, MIBI should be approached on matters that are due before the courts in the very near future. A request should be made, seeking from them a letter of comfort outlining that MIBI is aware of the action and that it will meet any award made. No case should be brought on for hearing until MIBI have been afforded reasonable opportunity to appraise the claim.

Practitioners should note that, with respect to matters settled or where a court order has been made against the policyholder of Setanta – and MIBI have

> Extreme caution should be exercised in allowing a defendant to sign up to any MIBI mandate with a reimbursement provision

not been a party to the proceedings – the provisions of clause 4.1.1 of the 2009 MIBI agreement will *not* apply. Clause 4.1.1 makes provision for MIBI to discharge any order for payment made by the courts or PIAB after the expiry of 28 days from the date the order can be enforced. However, there is a caveat to the application of clause 4.1.1 by reason of clause 2.3 of the 2009 MIBI agreement, insofar as MIBI must be cited as co-defendants in any proceedings that are the subject of the order before MIBI will make payment. It is a condition precedent that MIBI cannot be held liable where they were not on notice.

Practitioners approached by or representing former policyholders of Setanta Insurance should give due consideration to the administrative process of MIBI's involvement in any case relating to an uninsured driver. MIBI will, in the ordinary course of events, seek a mandate from the uninsured driver allowing for recovery of all monies expended by them in meeting any claim for damages. In short, while they may pay out, they will ask the policyholder to pay them back. It is not unusual for MIBI to robustly pursue recovery of such monies. There is a reimbursement provision contained in the mandate and also at section 9 of the 2009 MIBI agreement. Extreme caution should be exercised in allowing a defendant to sign up to any MIBI mandate with a reimbursement provision where heretofore they held a valid policy of insurance in accordance with their statutory obligations.

The question must be asked – why should a road user holding a bona fide policy of motor insurance in accordance with section 56 of the *Road Traffic Act 1961* (as amended) be subject to a reimbursement pursuit from MIBI when their policy of insurance was cancelled by the insurer? *Uberrima fides* applies in this instance between the insurer and insured and should extend to MIBI given the exceptional circumstances.

Any former policyholder who has been asked to sign a mandate in favour of MIBI should be advised not to do so. Endeavours should be made to reach agreement with MIBI to allow the assignment of any claim a Setanta policyholder has against the liquidator to MIBI. Thereafter, MIBI and the Insurance Compensation Fund custodians should reach agreement that any monies paid by MIBI will be the subject of a recovery from the liquidator of Setanta Insurance and the Insurance Compensation Fund only.

SWIFT MOVEMENT ON TASK FORCE RECOMMENDATIONS

The Law Society is proceeding apace with implementing the recommendations of the Future of the Law Society Task Force. Mark McDermott reports

Mark McDermott is editor of the Law Society Gazette

The Law Society has been forging ahead with implementing the recommendations of the Future of the Law Society Task Force, which were published in its report in April 2013.

The initial driving force for these recommendations was the publication of the *Legal Services Regulation Bill* in 2011 by the then Justice Minister Alan Shatter.

The Society swiftly established two task forces to address issues arising from the bill for the Society and its members. The *Legal Services Regulation Bill* Task Force has been working hard to ensure that amendments proposed by the Society will be taken on board prior to the bill's enactment.

The Future of the Law Society Task Force was established to review the operations of the Society given the changes proposed by the bill. Last year, it engaged widely with the profession, seeking its views through the most comprehensive survey of members in the history of the profession. The survey's findings, allied with a countrywide consultation process, showed that members wished to see more, better and stronger representation by the Society (see panels).

In attempting to meet the needs of its members – and acting on the specific recommendations of the Future of the Law Society Task Force – the Society has been progressing at considerable pace to bring about change where members feel that it is most needed.

In all, this task force made a total of 31 recommendations to the Council based on its findings. During the Council meeting in March 2014, Law Society President John P Shaw presented a progress report on the Society's implementation of these recommendations.

Mary Keane heads up the new Policy and Public Affairs Department

Teri Kelly is Director of Representation and Member Services

> **The ultimate aim of the task force's recommendations is to deliver a stronger representation service for members**

"Most of the major recommendations are progressing according to schedule," he observed.

The ultimate aim of the task force's recommendations is to deliver a stronger representation service for members. The goal is to tackle the perception of the Society as being 'an old boys club', so that members come to regard it as more relevant to them, adding value to existing membership services and encouraging greater participation by members in their organisation.

The major recommendations that have been delivered already, or are in the process of being implemented, include:

- The establishment of two new Society departments: Policy and Public Affairs, and Representation and Member Services,
- The selection of an agency to carry out an analysis of the economic impact of the solicitors' profession on the economy,
- The development of a new communications strategy,
- The introduction of a new Law Society brand,
- A new tone-of-voice project,
- The rebuild and redesign of the Society's website,
- The delivery of a new social media campaign,
- The recent appointment of a public affairs executive to drive the Society's lobbying function,
- The recent appointment of a public relations coordinator to maximise the Society's impact in the media, and

PIC: THINKSTOCK

FOCAL POINT

better representation

The findings of the Law Society-commissioned Millward Brown survey, while not unexpected, were interesting. When asked what the Society's priorities should be, respondents overall said that they wanted it to better represent the views of the solicitors' profession (65%). For those over 35, this was a slightly higher priority than for younger colleagues (67% compared with 57%).

Better representation was a higher priority for those at partner level and among sole practitioners compared with other categories. Indeed, for sole practitioners with assistant solicitors, the figure was as high as 74%. Those in Connacht/Ulster regarded it as most important – almost 80% identified it as a first priority.

Services for members

A total of 42% said that they wished the Society to provide more services to members.

For unemployed solicitors, this was the key priority of the seven listed (61%). Unsurprisingly, of the remaining categories of respondents, sole practitioners identified it as a key priority (50%), indicating an understandable higher reliance on the Society. Of the regions, those outside Dublin rated it highly (44%).

Legislation and policy development

Across the board, between a fifth and a quarter of respondents in each of the categories rated public affairs and policy development as a priority. There was a higher level of support from practitioners in the public sector, at managing partner level, and in Dublin (23% in each instance).

Solicitors of the future

In all, 17% of solicitors regarded the training of future solicitors as a major priority. This was noticeably higher for those under 35 (24%). Other categories above the average included in-house (23%), those in the larger firms – with 11 assistants and more (27%), and in Dublin (22%).

Cost-effective and relevant CPD

An overall result of 12% support for this category was reflected across all constituencies. Non-practising solicitors and the under 35s rated it more highly (25%).

- The recent appointment of a web and social media coordinator to develop the Society's e-communications function.

New departments

The new Policy and Public Affairs Department and the Representation and Member Services Department came into being on 1 January 2014. Both had their origins in the original Policy, Communication and Member Services Department.

Policy and Public Affairs is headed up by deputy director general Mary Keane.

This department plays a key role in proactive lobbying and will implement a law reform agenda that will encompass matters of interest to the profession and the broader public interest. It will:

FOCAL POINT

how the society is viewed by the profession

When members were asked to describe how they saw the Society, based on a closed list of attributes, members responded as follows:

TOTAL MEMBERSHIP

	Don't know	Disagree	Agree	U35*	SP*
Professional	9	14	78	81	76
A support service to the profession	11	30	60	59	47
Highest educational standards	15	27	58	51	61
Does a difficult job reasonably well	17	26	57	54	46
'Old boys club'	15	29	56	48	74
Too inward looking	17	26	56	51	57
Represents large-firm interests	21	26	53	50	75
Old fashioned	14	35	51	49	46
Polices the profession well	14	38	48	47	55
Dublin-centric	17	35	48	45	58
Prestigious	16	38	46	51	51
Approachable	14	40	46	49	38
Complacent	19	40	41	40	46
Serves the legal profession well	21	43	37	42	31
Forward looking	19	45	36	39	34
Open to change	21	45	34	36	33
A Society I feel I belong to	13	55	32	31	33
Represents small-firm interests	21	52	26	30	13
A Society that can help enhance my career	18	59	23	28	18
Gets its message across at every opportunity	18	62	19	22	16
Always changing to meet our needs	22	62	15	20	11
Dynamic	20	66	14	18	13
Focused on small rural practices	20	69	11	12	0

**U35 = under 35; SP = sole practitioner*

In the main, the Society is seen as 'professional' (78%). However, 66% said that it was 'not dynamic'. A large majority see it as a support service, but also regard the Society as 'static' or 'inert' in terms of failing to change to meet members' needs.

If 'dynamic', 'forward-looking' and 'open to change' are regarded as one and the same description of the Society, the average result is somewhat less negative (52%). Likewise, if 'old boys' club', 'too inward looking', 'old-fashioned' and 'prestigious' are intended to convey the same sentiment, 50% of members hold those views.

There is a strong perception that the Society is city/urban-centric and not sufficiently focused on small rural practices (69%).

- Coordinate the Society's work in the policy and public affairs areas,
- Coordinate the work of the Society's specialist advisory committees and task forces, with oversight from the Coordination Committee,
- Be a policy research resource for the Council and the Coordination Committee on matters falling outside the remit of the Society's committees/task forces,
- Be a lobbying/public affairs resource for the officers and committees/task forces,
- Oversee the implementation of the recommendations of the Future of the Law Society Task Force, and
- Manage the Society's eConveyancing project.

Its future projects will focus on producing an analysis of the economic impact of the solicitors' profession on the national and local economies – as well as preparing the Society's input into the studies to be conducted by the Legal Services Regulation Authority, when established.

Creating a positive image

The Representation and Member Services department is led by new director Teri Kelly. It comprises public relations, the *Gazette* team, the web and social media team, the library, and support services.

The new department's first order of business has been to develop a new communications strategy that addresses the needs of members. The survey of members showed that they wanted better representation, active defence of the profession in the media, and regular communication with members and with the public.

To this end, an internal press office has been established and a media centre has been added to the website. These developments will increase the Society's media engagement capabilities and promote positive news stories and defend against unfair or unbalanced coverage.

The Society entered the brave new world of social media in April and is now active on Twitter, LinkedIn, Facebook and Google+. In May, the new website was launched, which has been completely rebuilt and redesigned. It is now much easier for members and the public to navigate the site and, importantly, will direct future clients seeking solicitors to find them quickly and easily.

The Society's image is getting an overhaul, too. The branding agency Red Dog has developed a new logo, brand identity and tone-of-voice guidelines that will be revealed in July. These guidelines will assist staff to communicate more clearly with the Society's members and the general public – whether by letter, email or social media.

The implementation of these recommendations will significantly improve the scope and nature of the services that the Society provides to its members. The expectation is that this will lead to a stronger and more vibrant Society, backed up by significant member involvement.

The editor wishes to thank Cormac Ó Culáin (public affairs executive) for his assistance in the preparation of this article.

There is evidence of a pick-up in the hiring of solicitors in the legal sector in 2014. Lisa Finlay gives her mid-term report

RECRUITMENT LOOKING UP

Lisa Finlay is business manager, (legal) at the Martinsen Mayer recruitment agency

The economic downturn has been challenging for all within the broad legal sector. For solicitors – whether private practice, in-house, or newly qualifieds – it has been a difficult operating environment. Cost management, increased regulation, and reduced fees are among some of the main issues in the current environment. But with modest growth experienced in 2013 and signs of more stable growth in 2014, the outlook is starting to improve. While cost management remains a priority, there are signs that business activity, overall, is beginning to look up.

Right skills combination

Finding professionals with a solid mix of both technical legal expertise and commercial acumen is critical for many law firms. Most are looking to hire candidates with a minimum of three to four years of relevant and specific sector experience.

Recruitment agencies are seeing increasing numbers of permanent positions becoming available, as firms become more confident that an economic recovery is underway, locally and internationally.

Commercial property negotiation, regulatory compliance management, capital markets, and funds investment management are spearheading the recovery. Private practice companies are looking to grow their teams in these areas, and there is a notable increase in demand for such roles. With increased regulation across all sectors, there is a greater demand for in-house positions that combine both legal and compliance qualifications.

Compliance roles

There is increasing demand for compliance professionals, particularly in financial services. In-house legal and compliance roles are picking up, since it has become mandatory for compliance regimes to be established in every company. There is a noticeable trend for combining the legal and compliance roles in-house.

Recovery of the banking sector continues, albeit at a slower pace, with hiring underway for long-term contract positions. The larger multinationals are also hiring. Technology is highly competitive right now, and the skill sets required demand that hiring takes place both locally and internationally.

The outlook for newly qualified solicitors in 2014 is very positive. While the evidence right now is anecdotal, retention of newly qualified solicitors by the larger law firms is increasing. As the recovery continues, the expectation is that recruitment will resume once again. Importantly, the expectation is that these roles will be in law firms, rather than in shorter-term security reviews or 'compliance-check' roles in industry.

The situation for securing traineeships remains challenging and highly competitive. Standards are high and candidates are many. The standard qualification level is often a master's degree, with completed and passed FE1s. The age profile of today's generation of graduates is also older, since higher qualifications are required. As with any position, candidates need to be professional, confident and show initiative. There is some increase in the requirement for legal professionals with language skills.

human rights watch

DOWN – AND OUT

With an unprecedented increase in the numbers of families experiencing homelessness in Ireland, Martina Larkin says that the State's obligations to protect the family unit are now to the fore

Martina Larkin is a research and policy analyst with Focus Ireland and is a qualified (non-practising) solicitor. She wishes to thank Maeve Regan, solicitor-in-charge, Mercy Law Resource Centre, for her input

The amount of people presenting as homeless has increased significantly within the last year, as has the amount of people who are sleeping rough in Dublin. The current situation in Ireland has been deemed to be at crisis point. Behind the figures for households becoming homeless, there is an even more pressing problem: the unprecedented increase in the number of families that are becoming homeless.

Since its establishment almost 30 years ago, Focus Ireland has developed specialised expertise in working with families. Its Homeless Action Team is currently working with Dublin families. Housing authorities refer families who are homeless to the team for support and assistance in moving on from homelessness.

The number of families that have become homeless in Dublin has increased, on average, from eight families per month a couple of years ago to an average of 32 families per month in the first quarter of 2014.

> **The political agenda is currently focusing on the issue of homelessness. There needs, however, to be a consistent and transparent response to respect the rights of those who experience homelessness and, in particular, to protect families**

Providing assistance

Housing authorities respond to people who present themselves as homeless and in need of support in line with section 10 of the *Housing Act 1988*. Once a person and/or family falls into the definition of homelessness (under section 2), the housing authority may provide assistance.

This legislation doesn't specifically impose an obligation on a housing authority to provide accommodation; however, it does provide (in section 10) that an authority 'may' give financial assistance or provide for or arrange accommodation.

In practice, much accommodation and other support services are provided by voluntary and charitable organisations that receive funding from the State under section 10. Given that the legislation does not oblige housing authorities to provide accommodation, there are no domestically justiciable rights to appropriate accommodation and, as such, the responses of local authorities have varied significantly.

No distinction

There is no distinction in the 1988 act in relation to the provision of assistance to individuals or families. However, in practice, individuals are often sent to emergency hostels, while families are treated somewhat differently. Given that many hostels consist of shared accommodation and can be based on dormitory-style accommodation, they are simply not suitable for families with children.

The lack of suitable emergency accommodation has led to housing authorities sourcing private emergency accommodation in the forms of hotels and/or B&Bs. Often families are then in a situation where they are living in small, cramped spaces and are not able to carry out normal day-to-day activities of family life.

While housing authorities have an obligation to provide for long-term social housing support for those who are eligible, other agencies have obligations in relation to children and young people at risk. If a child presents as homeless, the Child and Family Agency is responsible for arranging for the provision of accommodation, under section 5 of the *Child Care Act 1991*.

If, on the other hand, a child who is part of a family presents as homeless, the agency will not necessarily be involved, unless there are any child-protection or welfare concerns. Those issues would be dealt with under the *Children First Guidance* and will come under the 'children first' legislation when enacted.

State's obligations?

The position in relation to the provision of housing and homeless services has been set out above. However, it should not be forgotten that the State has obligations under the Constitution, and legislation must be in line with these obligations. Under article 41.1 of the Constitution, the family is recognised as the "natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights" that are superior to all positive law. The State is obliged to respect and not to interfere with the rights of the family, unless it can be established that to act in contravention of these obligations is required in the interests of the common good and/or if it is necessary for the protection of the State.

Since many of the "inalienable and imprescriptible" rights are unspecified in the Constitution, it has been left to the courts to interpret them on a case-by-case basis. The Supreme Court considered the issue of accommodation in *McDonald v Feely and Ors* (unreported, Supreme Court, 23 July 1980). The court held that the local authority could not evict the plaintiff's family, a Traveller family, from their camp unless the authority offered suitable alternative accommodation. While legislation

PIC: PHOTOCALL IRELAND

> Given that the legislation does not oblige housing authorities to provide accommodation, there are no domestically justiciable rights to appropriate accommodation

passed since the ruling has touched on these issues, the right of a family to a home is on the fringes of recognition.

Amending the Constitution

In February, the Constitutional Convention voted overwhelmingly in favour of amending the Constitution to strengthen the protection of economic, social and cultural rights. In its report to Government in light of this vote, the convention recommended that specific economic, social and cultural rights should be enumerated in the Constitution, including the right to housing. The Government response to this recommendation is expected within the coming months.

Furthermore, in November 2012, the 31st amendment to the Constitution – which strengthened the Constitutional rights of children – was adopted by referendum. Subject to the outcome of the current challenges to the referendum before the High and Supreme Courts, the rights of the child may be given equal protection to that afforded to the family institution.

The negative impact that living in emergency accommodation has on a child is significant, in relation to their educational and social welfare. If the amendment is signed into law, it may pose challenges to the level of provision currently made in relation to accommodation for a child and its family.

On an international level, the legal right to a home is well recognised and is included in various conventions that Ireland has signed, including the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child*.

Unfortunately, the ability of individuals to enforce the State's commitments under international conventions is limited. At present, families are at the mercy of local authorities for immediate shelter. For their long-term housing needs, families are often looking to private landlords, since the State does not have, or cannot access, housing stock for this purpose.

The Oireachtas is currently debating new legislation, the *Housing (Miscellaneous Provisions) Bill 2014*, which will move towards bringing private rented accommodation into the fold of social housing through the Housing Assistance Payment scheme. While there are other initiatives being proposed to deal with the long-term supply of housing, the families whose rights are supposed to be protected by our Constitution are living in unsuitable accommodation and are left in limbo.

The political agenda is currently focusing on the issue of homelessness. There needs, however, to be a consistent and transparent response to respect the rights of those who experience homelessness and, in particular, to protect families. Until the right to a home is recognised in the Constitution (as has been campaigned for by Focus Ireland) it is not clear that the State's responses are fully in line with international legal standards and existing constitutional protections for the family.

AYE, *there's the rub*

Ben Mannering is a solicitor/ claims manager at the State Claims Agency. The views expressed in this article are personal and should not be taken as the view of the National Treasury Management Agency

The *Social Welfare and Pensions Act 2013* has significant implications for certain personal injuries litigation awards. Ben Mannering suffers the slings and arrows of outrageous fortune

Deductible or non-deductible – that is the question. Not quite *Hamlet*, but a question that most personal injury litigators will ask frequently. To date, it has been easy to answer (see the very helpful guide to social welfare deductions in personal injury cases in the Law Society's *Civil Litigation* manual, p195) – until the *Social Welfare and Pensions Act 2013* was passed, that is. While the act provides for the implementation of measures in Budget 2013, it also specifically provides for the recovery of the value of certain illness-related social welfare payments from compensation awards made to persons as a consequence of personal injury claims. The relevant sections are sections 13 and 14, which are the subject of a ministerial commencement order.

Measure for measure

Section 13 introduces a new part 11B (section 343L to 343W) in the *Social Welfare Consolidation Act 2005*. Firstly (yet lastly in section 13), the distinction between deductible and non-deductible benefits is abolished. Note that this only applies to sections 96 and 286 of the 2005 act; therefore, the general non-deductible benefits, such as child benefit or widower pensions, remain non-deductible (as per section 285(2) of the 2005 act).

The act introduces a new process similar to that operated in Britain by the Compensation Recovery Unit. That country has issued guidance for companies and solicitors (see *Recovery of Benefits, Lump Sum Payments and NHS Charges: Technical Guidance*). Currently, Ireland's Department of Social Protection is carrying out a consultation process in this regard. As will be seen later, there are specific implications for practice arising out of this new regime; hence the requirement for clear guidance from the outset.

at a glance

- The value of certain illness-related social welfare payments can be recovered from personal injury compensation awards
- The new part 11B in section 13 of the *Social Welfare Consolidation Act 2005* abolishes the distinction between deductible and non-deductible benefits
- Certain general non-deductible benefits, such as child benefit or widower pensions, remain non-deductible
- Garda compensation awards, criminal injuries compensation tribunal awards and Blood Tribunal awards remain exempt from the act's provisions

PIC: REX FEATURES

> If a claimant withdraws a case or a defendant makes a tender, the minister is still owed the deductible benefits, and one party may very well find themselves owing a substantial amount to the minister

Alas, poor Yorick! The *Social Welfare and Pensions Act 2013* has eaten into his personal injuries award

FOCAL POINT

love's labours lost

Section C(II) states that no appeal may be made against a decision given by a deciding officer on a question under paragraph HH until recoverable benefits specified have been paid to the minister.

Section 343W states that, if there are two or more compensators, each are joint and separately liable.

Section 14 finally makes consequential amendments to the *Personal Injuries Assessment Board Act 2003* (section 38), stating that an order to pay shall state that the respondent to whom it is issued is liable to pay the Minister for Social Protection the amount of recoverable benefits specified, and to the claimant the amount of damages specified in the assessment, less the amount stated above.

Part D introduces 11B to the principal act and sets out the interpretation section. Of note here is that some of the usual personal injury exceptions, such as garda compensation awards, criminal injuries compensation tribunal awards and Blood Tribunal awards are exempt from the act's provisions.

Section 343O details the specified benefits covered, which are:

a) Illness benefit under chapter 8 of part 2,
b) Partial capacity benefit under chapter 8A of part 2,
c) Injury benefit under section 74,
d) An increase of disablement benefit, in accordance with section 77 or 77a, where the person is incapable of work and likely to remain permanently so incapable,
e) Invalidity pension under chapter 17 of part 2,
f) Disability allowance under chapter 10 of part 3.

The 'specified period' has been defined in section 343N as being the period in respect of which specified benefits are recoverable. It is the period beginning on the date on which the injured person first becomes entitled to a specified benefit as a result of the personal injury. It ends on the earliest of the following:

a) The expiration of the period of five years from that date,
b) The date on which a compensator makes a compensation payment in final discharge of any claim made by, or in respect of, the injured person as a result of the personal injury, or
c) The date on which an agreement is made, under which agreement an earlier payment is treated as having been made in final discharge of any such claim.

As you like it

The procedure is set out in section 343P, as follows:

1) The compensator or Injuries Board applies to the minister for a statement of recoverable benefits before making any compensation payment to or in respect of an injured person, or before an order to pay if applicable to the Injuries Board.
2) The minister, within four weeks of receipt, will issue a statement simultaneously to the claimant. (The minister is to regulate the form in which the application is to be made.) This statement should state the amount of recoverable benefit, and is valid from three months of the issue date. One can request the minister to furnish particulars of the matter on which the benefits are calculated, and the minister has a further four weeks to furnish same.
3) The compensator shall pay the minister the amount of recoverable benefits specified before making any compensation payment to the injured party. If the recoverable benefit is in excess of the amount of the compensation in that payment, and that payment is subject to a court order or Injuries Board assessment, the compensator is liable only to the extent so ordered or assessed. If the compensator failed to comply or otherwise fails to pay the amount, the compensator is liable to pay the amount due to the minister on demand.

> **'The appeals process takes a 'pay first, appeal later' approach … If the procedure is not followed correctly, a plaintiff or defendant may have to pay a substantial lump sum to the minister before embarking on the appeals process, with no guarantee as to its success'**

If the compensator pays an equal amount to the total amount of recoverable benefits, they may reduce the compensation payment payable to the injured party by that amount and notify the injured party accordingly.

The compensation payment, other than the relevant compensation payable by a compensator to an injured party, shall not be reduced by a compensator where the total amount of recoverable benefits exceed the amount of relevant compensation payment payable to an injured party.

Comedy of errors

Much like Hamlet's tragedy, there are some foreseeable pitfalls that necessitate some guidance to be published by the Department of Social Protection. An omission to comply with the legislation could see a party liable to the minister for up to five years' social welfare payments, having concluded

FOCAL POINT

the taming of the shrew

The Society has made detailed submissions to the Department of Social Protection highlighting its concerns regarding some aspects of the scheme:

- **There is a significant risk that the act will become an impediment to out-of-court settlements, which will cause a further backlog within the courts system. A different regime applies where settlement is reached outside the court/Injuries Board process, in that the amount payable by a compensator is not then reduced where there is contributory negligence. This is likely to affect 'all-in' settlements and 'nuisance value' settlements, where the compensator still has to refund the full social welfare benefit. In reality, this means that more of such cases will be fought, rather than an attempt to reach compromise.**
- **There needs to be clear guidance on how the scheme applies, so as to deal with grey areas, such as circumstances where a plaintiff has more than one claim, and the injuries do not overlap, with one or more compensators.**

The Society will continue to work for improvements to the scheme, so that it operates fairly. The commencement of the recovery scheme has been deferred from May – the Society anticipates that it may now be August or late July.

> The compensator shall pay the minister the amount of recoverable benefits specified before making any compensation payment to the injured party

their litigation through various means. Obviously, if a claimant withdraws a case or a defendant makes a tender, the minister is still owed the deductible benefits, and one party may very well find themselves owing a substantial amount to the minister.

A further problem can arise if a defendant makes a tender with liability an issue, which does not reflect the full value of the plaintiff's case, but does reflect a proportion of the defendant's liability. If the claimant accepts the tender, again due to his or her own liability issues, it is not clear whether the full amount of the social welfare benefit is owed. While Britain has provided some guidance on how tenders and lodgements into court are dealt with, one hopes that the department will provide similar guidance.

Also, it is easy to see that the appeals process takes a 'pay first, appeal later' approach. Again, one could be facing up to five years of social welfare benefits, accruing at approximately €188 per week for up to five years (totalling a princely sum of €48,880). If the procedure is not followed correctly, a plaintiff or defendant may have to pay a substantial lump sum to the minister before embarking on the appeals process, with no guarantee as to its success.

Finally, it is not entirely clear how the appeals process will work. For instance, can evidence be proffered regarding liability, or medical evidence regarding injury itself, and whether the benefit should have been payable at all by the minister? Will a claimant find that the initial decision to award the benefit becomes an issue due to some comment made to a defendant's medical practitioner? Obviously, the appeals officer's decision can be the subject of judicial review. It would be preferable, however, that the appeals process be set out as transparently as possible before the commencement order initiates, in order to avoid unnecessary judicial review applications.

All's well that ends well

The act dramatically changes the old 'deductible versus non-deductible' guide and, once implemented, should result in substantial returns to the Minister for Social Protection from State bodies and privately insured defendants, thereby reducing the social welfare bill for the taxpayer, which is clearly laudable.

That said, guidance from the department would be welcome as to how the basic tenets of litigation can be incorporated into the provisions, in order to avoid unnecessary hardship on either claimants or defendants.

look it up

Legislation:

- *Personal Injuries Assessment Board Act 2003*
- *Social Welfare and Pensions Act 2013*
- *Social Welfare Consolidation Act 2005*

Literature:

- Department for Work and Pensions (Britain), Compensation Recovery Unit, *Recovery of Benefits, Lump Sum Payments and NHS Charges: Technical Guidance*
- Law Society of Ireland (2013), *Civil Litigation* (OUP)

SENTENCE *structure*

PIC: REX FEATURES

at a glance

- A conscious departure from established sentencing principles has been adopted in recent cases
- The prosecution is now in a position where it is required, when guidance is available, to make a submission in relation to the actual sentence that should be imposed
- A sentencing judge would not be bound by the prosecution's submissions, however
- In Australia, in contrast, the High Court recently found that the practice of prosecution submissions as to appropriate range of sentences should cease

Three recent judgments of the Court of Criminal Appeal indicate a conscious move in sentencing principles. Elizabeth Davey reviews these decisions and compares them with the Australian experience

Three recent judgments of the Court of Criminal Appeal, delivered on 18 March 2014, have signalled a move towards guideline judgments and an increased function of the Director of Public Prosecutions in sentencing matters. The first of these judgments, *People (DPP) v Ryan*, addresses possible sentencing ranges for firearms offences carrying a presumptive minimum sentence of five years. The second judgment, *People (DPP) v Fitzgibbon*, deals with broad sentencing guidelines for an offence of assault causing serious harm, contrary to section 4 of the *Non-Fatal Offences Against the Person Act 1997*, and touches on the role of the DPP in a sentencing hearing. The third judgment, *People (DPP) v Z*, introduces the principle that the prosecution should make submissions in a sentence hearing and also looks at guideline sentences for rape.

These three interlinked and cross-referenced judgments indicate a conscious move in sentencing principles, the reasoning for this being the availability of better statistics, the DPP's ability to appeal undue leniency of a sentence pursuant to section 2 of the *Criminal Justice Act 1993*, and the desire for greater consistency and transparency in the sentencing process.

Our Australian counterparts introduced similar principles in respect of the prosecution being heard on the 'appropriate range' of sentencing but, in February 2014, the High Court of Australia (equivalent to the Irish Supreme Court) pulled away from this position.

> 'There is now an obligation on the prosecution to draw any guidance to the sentencing judge and that this guidance must be 'real assistance' and not 'vague generalisation'

Elizabeth Davey is a barrister, practising since 2006. She is currently on sabbatical and working in the serious crime department of Legal Aid Queensland

Fundamental necessity

In *Ryan*, the court considered the Supreme Court decision in *DPP v Tiernan* (1988). This judgment was previously understood to preclude a court from laying down guidelines for sentencing offenders convicted of criminal behaviour. Finlay CJ found that, due to the absence of sentencing statistics for the crime of rape and due to the "fundamental necessity" of a sentencing judge to impose a sentence that "in their discretion appropriately meets" the circumstances of the case, a standardisation or tariff of penalty was doubtfully appropriate.

The court in *Ryan* addressed the decision in *Tiernan* on a two-tiered basis. Firstly, the detailed analysis of previous cases provided by counsel, and the availability of better statistics and sentencing surveys, supplied the type of assistance that was lacking in *Tiernan*. Secondly, in interpreting *Tiernan*, the court did not read the judgment as restricting some broad level of guidance as to the appropriate range of sentences that might be imposed in certain cases. The court stated (at page 3) that "any such range provides broad guidance but does not seek to impose any form of standardisation of penalty".

It is to be noted that the court stated that such an exercise could only be undertaken where a comprehensive review could be carried out. The court found that, in the absence of exceptional and specific circumstances and in light of the presumptive minimum sentence of five years, the lower range rested between five and seven years, the middle range between seven and ten years, and the top range between ten to 14 years for an offence contrary to section 27A of the *Firearms Act 1964*.

Greater assistance

The decision in *People (DPP) v Fitzgibbon* is more tentative than *Ryan* due to the unavailability of the same range of statistics. However, the court did indicate (at page 6) that "greater assistance from both prosecution and defence to a sentencing judge" in future will enable "sentencing judges to specify in clear terms how the sentence in question was arrived at".

The broad guidelines set down for an offence of assault causing serious harm are, at the lower end, between two and four years, the middle range between four and seven-

LL.M in Public Law, School of Law, NUI Galway

The LL.M in Public Law is a well-established and well-regarded programme that provides unique opportunities for graduates and practitioners to develop a wide range of skills. It can be taken full-time over one year or part-time over two years. The LL.M in Public Law accommodates legal practitioners, public servants and others in full-time employment wishing to develop or update their legal research skills and to enhance their knowledge of public law. The LL.M in Public Law has attracted solicitors, barristers and judges who have undertaken the programme on either a full-time and part-time basis. The 10th anniversary of the programme will be marked in the academic year 2014-2015 with a series of seminars and public lecturers.

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- Minor Thesis

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- Disability Law: Contemporary Law Reform Challenges in the National and International Sphere
- Equality Law: Principles and Thematic Application
- Immigration Law: Between Sovereignty and Equality
- Local Government Law
- Processes of Law Reform
- Sentencing and Penal Policy
- The Criminal Jury
- Theories of Judicial Activism
- Minors, Minority Groups and the Criminal Justice System

Testimonial
"I was keen to further my academic career but thought it would be impossible due to my position as a partner in a busy solicitor's office. The two-year (part-time) LL.M programme offered by NUI Galway was the answer to my prayers. I enjoyed the course hugely and have found that my experience of life and my life as a solicitor has given me a greater understanding and appreciation for the course."
Sandra Murphy, Solicitor and Partner at Gilmartin and Murphy Solicitors (Class of 2013)

For more information on the LL.M in Public Law see http://www.nuigalway.ie/courses/taught-postgraduate-courses/law-public.html

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- Foundational Theoretical Framework for Disability Law and Policy
- Law, Regulation and Policy
- Minor Thesis

Optional Courses:
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- Contemporary Challenges in Disability Law and Policy
- Inclusive Education Law and Policy
- International Disability Human Rights Clinic
- Irish Disability Law and Policy
- Law and Policy on Independent Living
- Legal Capacity Law and Policy
- Lifecourse issues in Disability Law and Policy
- Mental Health Law and Policy
- Regional Disability Law and Policy
- Universal Design and Accessibility in Law and Practice
- US Disability Law and Policy

Testimonial
"This is an exceptionally interesting course. The modules are unique and the lecturers are extremely knowledgeable, enthusiastic and approachable. I particularly like the emphasis on applying law and policy into practice in order to positively impact on the lives of disabled people"
Aisling Glynn, Solicitor, McMahon and Williams Solicitors, Class of (2012)

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and-a-half years, with the top range of seven-and-a-half to 12.5 years and, in exceptional cases, 12.5 years to life.

Perhaps the most far reaching of the three judgments was the decision in *People (DPP) v Z*. The facts of that case were in the most grotesque category. Life sentences were imposed for the counts of rape and the maximum penalty imposed for the counts of child cruelty. The court found that it was "entirely appropriate" for the sentencing judge to seek assistance from prosecution counsel as to the "actual range of sentences which might be considered appropriate" in such a case. The court found that the practice of counsel for the prosecution not offering a view on sentencing could no longer be justified in light of the Director of Public Prosecutions' ability to appeal undue leniency. The court elaborated on this and found that "there is now an obligation on the prosecution" to draw any guidance to the sentencing judge and that this guidance must be "real assistance" and not "vague generalisation".

> The court found that the practice of counsel for the prosecution not offering a view on sentencing could no longer be justified

It would appear that the prosecution's role in sentencing has been significantly extended. The court stated: "It seems to this court that it is incongruous that the DPP should be entitled to criticise on appeal, on the basis of undue leniency, a sentence imposed by a sentencing judge without having first suggested to the sentencing judge the sentence or range of sentences which it was submitted ought to be considered appropriate."

The prosecution is now in a position where it is required, when guidance is available, to make a submission in relation to the actual sentence that should be imposed and "indicate the extent to which it is accepted that factors urged in mitigation by the defence are appropriate, and give at least a broad indication of the adjustment, if any, in the overall sentence which it is accepted ought to be considered appropriate in light of such mitigation". A sentencing judge would not be bound by the prosecution's submissions.

Similar stance

A similar stance was adopted by our Australian counterparts in the 2008 case of *R v MacNeil-Brown*. The question to be determined in this case was whether it was appropriate for the crown prosecutor to make submissions on the sentencing range when requested by a sentencing judge to do so. The traditional position in Victoria was that the crown played no part in sentencing. The Court of Appeal found by a majority that the "making of submissions on sentencing range is an aspect of the duty of the prosecutor to assist the court".

The court found that a corollary of the right of the prosecution to appeal a sentence was an obligation on the prosecution to assist the sentencing court to avoid appealable error. It also found that assistance should only be given when requested by the sentencing court – and, even if a request had not been made, if the prosecutor perceived a significant risk that the court would fall into error. This decision paved the way for plea-bargaining and the general trend that defence and prosecution would discuss the appropriate range of sentences prior to the sentence hearing.

In February 2014, the High Court of Australia delivered a judgment in the case of *Barbaro v R*. The facts of that case were that the appellants were charged with trafficking a substantial drug haul. On the basis of talks between the defence lawyers and the prosecution, pleas of guilty were entered to a selection of charges. The prosecution had indicated a certain range of sentence that would be proffered to the court. At the sentencing hearing, the judge indicated that she would not hear from either party as to sentencing range and imposed sentences of life imprisonment with a non-parole period of 30 years, and 26 years imprisonment with a non-parole period of 18 years. The sentences imposed were in excess of the agreement between the parties as to the appropriate range. The matter was appealed on the basis of procedural unfairness on the part of the sentencing judge in not receiving submissions on sentencing range.

Overruled

The High Court found against the argument that the prosecution is permitted or required to submit to a sentencing judge its view of the range of sentences appropriate to an offender. The court found that the prosecution's view of the available range is a statement of opinion, and it advances "no proposition of law or fact which a sentencing judge may properly take into account in finding the relevant facts". The court overruled the previous decision in *MacNeil-Brown* and found that the practice of prosecution submissions as to appropriate range of sentences should cease. The court found the assumption that the prosecution offering a statement of bounds of the available range of sentences to a sentencing judge assists in a fair or proper result depends on the prosecution acting as "a surrogate judge", which is not the role of the prosecution.

The court was concerned that statements about available range of sentences by the prosecution could give rise to an erroneous view as to the prosecution's importance in sentencing. The court found that it may be in the prosecution's interest to seek leniency when assistance is given by an accused or when an accused pleads guilty, and undue weight may be given to factors a sentencing judge may not consider relevant. The court highlighted another difficulty at paragraph 33, stating: "if a judge sentences within the range which has been suggested by the prosecution, the statement of that range may very well be seen as suggesting that the sentencing judge was swayed by the prosecution's view of what punishment should be imposed. By contrast, if the sentencing judge fixes a sentence outside the suggested range, appeal against sentence seems well-nigh inevitable."

The court decided that "if a sentencing judge is properly informed about the parties' submissions about what facts should be found, the relevant sentencing principles and comparable sentences, the judge will have all the information which is necessary to decide what sentence should be passed without any need for the prosecution to proffer its view about available range". The court encouraged the use of sentencing statistics and comparable cases; however, it stressed that consistency should focus on legal principles rather than numerical equivalence.

The recent judgments from the Court of Criminal Appeal dealt with a wide range of sentencing issues in addition to those mentioned above. A conscious departure from established sentencing principles has been adopted. Greater consistency and transparency in the sentencing process is welcome; however, a consideration of the practical implications from other jurisdictions can be informative.

look it up

Cases:

- *DPP v Fitzgibbon* [2014] IECCA 12
- *DPP v Ryan* [2014] IECCA 11
- *DPP v Tiernan* [1988] IR 250
- *DPP v Z* [2014] IECCA 13
- *Barbaro v R* [2014] HCA 2 (Australia)
- *R v MacNeil-Brown* (2008) 20 VR 677 (Australia)

Legislation:

- *Criminal Justice Act 1993*
- *Firearms Act 1964*
- *Non-Fatal Offences Against the Person Act 1997*

the lure of the DARK SIDE

As the legal market recovers, a career in private practice may become a viable option for many in-house lawyers. James O'Rourke debunks some myths of the so-called 'easy life' of in-house lawyers

James O'Rourke is a senior associate with Leman Solicitors and a member of the Law Society's In-House and Public Sector Committee

In-house lawyers in Ireland in the private and public sectors represent approximately 16% of Law Society membership and Irish practising certificate holders. In England and Wales, according to recent Solicitors Regulation Authority research, there are now twice the numbers of solicitors working in-house than in 2000.

Traditional reasons for lawyers opting for in-house include the variety of work, lack of time sheets, and being aligned to a particular industry. Of course, there are also the mutterings of private practice lawyers that in-house counsel 'have it easy'.

Overall, my experiences as an in-house lawyer were extremely positive. However there were aspects of the job that for me debunked the myths.

Day-to-day realities

Firstly, most days were considerably busy. Often, I would find myself 'putting out fires' and by the time the 'fires' were quenched there might only be an hour or so remaining in the working day to attend to matters scheduled for that day. Meanwhile, legal and general commercial queries were consistently being received and task lists were ever growing. This was where an ability to prioritise and delegate became fundamental.

The hours were more regular, but only when the business is running smoothly. When it is crisis time, you may be expected to put in as many hours as is necessary to resolve the crisis. Late nights are a demonstration of your commitment to the cause and loyalty to the business.

Traditionally, an in-house lawyer may not have been pressured to track billable hours. However, it is becoming more common, particularly in group companies, for in-house legal departments to track working hours to assist in the allocation and division of the cost of the legal department.

An in-house lawyer has unique pressures and expectations: as an in-house lawyer, you are far more likely to have a senior manager walk into your office, tell you about a project launch in some random part of the world, and stand there eagerly awaiting your advice and definitive timescale to completion. In this scenario, you are expected to have the competence to offer some sort of direction and guidance, albeit from a high level.

Being effective

Being an in-house 'commercial lawyer' requires the ability to adapt and take on a variety of work – essentially, whatever lands on your desk. This may be the provision of advices around anything from a trademark infringement, to the sale of a subsidiary, to a commercial contract, to competition law and, sometimes, all in the same day or even at the same meeting.

To create an environment where the 'fires' will not ignite in the first place requires a proactive attitude and an eagerness to act as business facilitator, risk manager and independent adviser.

at a glance

- In-house lawyers in Ireland in the private and public sectors represent approximately 16% of Law Society membership
- The main challenge for an in-house lawyer switching to private practice is the move into a highly competitive market with no client base.
- However, as a previous consumer of legal services on behalf of a business and having managed legal budgets, the in-house lawyer that moves to private practice can expect to have learned valuable lessons from their own experiences with external lawyers, on delivering high-quality legal advice at reasonable cost

PIC: ANIMEMAY.COM

> For an in-house lawyer, it is always about prevention rather than the cure and, in the absence of deceit or misrepresentation, the majority of disputes occur over genuine misunderstandings

Personal interaction within the business is key to understanding the business, and also plays an integral part in gaining the respect of non-lawyer colleagues. This respect may be hard earned and will not be achieved by virtue of your title of in-house lawyer – which may even work against you, as you may be perceived as too academic and not clued into the day-to-day cut-and-thrust of the business world.

Once this respect is earned, you may quickly become an oracle-type figure where the purpose of your advice becomes, as the title suggests, to provide good counsel and to offer guidance and direction. Part of your effectiveness is an ability to offer perspective – where your advice will sit somewhere between legal advisor and business partner.

Here, there is a danger that your advice may become too commercial, and the in-house lawyer needs to bear in mind that legal privilege does not necessarily apply to all advices given, as it will depend on the context and, should a matter turn contentious, you may need to argue that legal privilege attaches to these advices.

Bigger picture

While you must have the confidence to stand out at meetings when you may be the only negative voice, you must also have the commercial acumen to be able to consider the bigger picture in relation to

Emperor Palpatine had little need of in-house counsel – and it showed

business operations and strategy. Of course – but hopefully not too often – there will be times where, if you feel the risk is too great, you must say no! The danger in this scenario is that, without due diplomacy, the situation can become a direct challenge of the authority of one department over another, which affects day-to-day working relationships between those departments. The key is to provide practical scenarios of how your advice is relevant and then to offer practical solutions or alternative pathways to the same result, rather than create roadblocks and confrontations.

Thereafter, the effectiveness of your advice will be scrutinised by not just your client but also your employer. This is not unfair, as it is a measurement of your value to the business.

It is also prudent to influence at the highest levels of management. There is little point in trying to bring numerous middle managers on board to your way of thinking if you can influence the head of that department. This reflects on the legal department's ability to influence and bring about reasonable change, which is something senior managers may not appreciate, or see as hassle in the short term. However, over the longer term, this is what most senior managers want and expect from their in-house lawyer.

The challenge is often not the provision of legal advice; rather, it's that you are dealing with senior managers who may be vastly more experienced than you in that industry, and it is your job to bring them on board with your way of thinking. Change is often slow and requires patience and constant encouragement throughout internal negotiation, persuasion and the introduction of processes that benefit the business as a whole. Change should not be seen to be just for the benefit of the legal department.

The best approach is often to act as a form of mentor and to spend time explaining legal issues to non-lawyers and to encourage legal training so that legal issues can be identified and matters brought to your attention, rather than you having to continuously seek them out and before these become a crisis.

Value of the in-house lawyer

Law is a service industry, and whether the client is external or just down the hall, it has a cost. In-house lawyers must provide and show real value in their business.

A substantial benefit of an in-house lawyer to a business is in ensuring that documents work, particularly template documents. Having a document 'work' is not the same as preparing a perfectly drafted legal document, and may involve hours of meetings with various levels of management to understand the practical day-to-day workings of a particular supply chain or business unit, so that the real and non-academic risks are identified.

The in-house lawyer learns that sometimes basic, but very specific documents are the most effective. Slowly, an in-house lawyer may find himself uttering the words most lawyers dread, "no need to overly complicate" and "can we have it fit on one page?" As a commercial in-house lawyer, when it gets to the stage where barristers are arguing over boilerplate provisions in court, this is often too late and the loss or damage has been incurred by the business. For an in-house lawyer, it is always about prevention rather than the cure and, in the absence of deceit or misrepresentation, the majority of disputes occur over genuine misunderstandings where the parties do not fully understand or appreciate the commercial issues involved.

A commercial lawyer who takes the time to draft ten-page memos and spends hours proofreading and marking up complicated agreements, despite being a brilliant lawyer, may be disregarded and unappreciated in-house as being too academic, and (s)he may struggle to demonstrate real value.

> **An in-house lawyer has unique pressures and expectations: as an in-house lawyer, you are far more likely to have a senior manager walk into your office, tell you about a project launch in some random part of the world, and stand there eagerly awaiting your advice and definitive timescale to completion**

In-house lawyers often learn to operate in a world of complex politics where they do not just offer advices, but implement a risk standard. Get this wrong and it may mean losing your job rather than losing a client. In time, in-house lawyers may learn to envy private practice lawyers and mutter the words "outside counsel have it easy…"

External lawyers

When seeking external legal advice, in-house lawyers are often seeking access to additional resources rather than academic legal thinking. For example, an in-house lawyer may have every confidence in their own ability to obtain legal advice; however, it would be inefficient to spend three days researching a particular topic when an external specialist may be able to provide better advice in three billable hours. However, when this advice is too convoluted to easily explain to non-lawyer colleagues, or too costly to implement, this can then be perceived as having defeated the purpose of obtaining the advice in the first place.

In terms of exposure to the business, an in-house lawyer must be aware of topics he does not have the required skill set to advise upon and, if providing advices in a specialised area or an area that he is unfamiliar with, then he must obtain specialist advice.

The key to acquiring value in these scenarios is for the in-house lawyer to obtain fixed-fee quotes and to ensure there is a panel of external lawyers competing for the same work.

Return to private practice

The main challenge for an in-house lawyer moving to private practice is moving into a highly competitive market with no client base.

However, as a previous consumer of legal services on behalf of a business and having managed legal budgets, the in-house lawyer that moves to private practice can expect to have learned valuable lessons from their own experiences with external lawyers on delivering high-quality legal advice at reasonable cost. For example, it is appreciated by an in-house lawyer that adequate compensation must be paid to private practice lawyers for their services. However, when cost estimates are subsequently perceived to have been purposely underestimated to secure instructions, this can infuriate in-house lawyers. Private practice lawyers need to understand that in-house lawyers are part of a team, and external legal advice needs to cater for in-house challenges such as budgetary constraints, internal approvals, and business protocols.

Having a good knowledge and understanding of the qualities sought in external legal service providers and, most importantly, their expectations of value and quality of service, should be an asset to any law firm.

The reality appears to be that very few, if any, within the legal profession 'have it easy'.

STIRRING *the pot*

Niall McGrath is a senior manager at PwC

Due to the effect of changed government taxation policy on retirement planning, the tax picture for traditional pension saving is now less clear-cut. Niall McGrath crunches the numbers

Pension provision in Ireland has experienced significant change in recent years, leading to a revised Government pension policy. In response, individuals – and in particular higher earning individuals who anticipate accumulating significant pension funds – need to consider how retirement plans have been affected and what action should now be taken to ensure pension arrangements remain fit for purpose.

Legislated changes to date have diluted certain benefits of pension saving and, for some, a fundamental question now needs to be asked: does pension saving continue to make sense in light of the changing taxation environment?

Traditional tax support provided to pension saving has been tapered back in recent years and, if one considers the tax position facing savers today versus just ten years ago, one can begin to see the significant change in government policy towards tax-incentivised saving for retirement (see panel).

FOCAL POINT

now and then

	CURRENT TAX ENVIRONMENT	2004 TAX ENVIRONMENT
Contributions:	Tax relieved at 41%, or €41 in every €100 saved No relief from USC	Tax relief at 47%, or €47 in every €100 saved
Growth:	Pension levy on accumulated assets	No levies
Assets:	Overall Cap of €2m	Unlimited fund values
Tax-free lump sums:	€200k lifetime limit	Unlimited

The taxation changes have had a significant impact on the pension taxation landscape. For example, according to the Irish Association of Pension Funds, the pension levy will have delivered a cumulative tax yield of circa €2.2 billion to the exchequer at the end of 2014.

Budget 2014 continued the pattern of recent years, with an increase in the pension levy for 2014 and its extension into 2015, and a further reduction to the pension lifetime limit to €2 million. This later change in particular needs careful consideration, as the tax result of exceeding the limit is significantly penal – that is, pension assets in excess of the limit are effectively double taxed, resulting in an effective tax rate of up to 70%-plus.

Due to the recent changes introduced, the tax picture for traditional pension saving is now less clear-cut. Ten years ago, one could contribute to pension arrangements happy in the knowledge that, regardless of investment conditions, the tax benefits were substantial. Now, however, the tax picture has been blurred somewhat. For example, the following questions need to be posed:

- If I am going to receive tax relief on my next pension contribution of 41%, but will be taxed in retirement on this same contribution at 50% plus (due to income tax, USC, and potential PRSI on pension payments), should I make the contribution?
- If my next pension contribution is likely to bring me closer to the lifetime limit (and, therefore, approach the 70% plus effective tax rate), should I now reconsider my options?
- At what point does continued pension funding no longer make sense?

PIC: REX FEATURES

For many, the experience of pension arrangements to date has been somewhat mixed, with disappointment often expressed in relation to both investment returns and associated costs. If one now adds a less clear-cut tax rationale, for some, continued pension funding has been brought into question. However in the pursuit of adequate saving for retirement the question then arises – if not pensions, what's the alternative?

From a tax perspective, carefully and correctly structured, pension provision continues to make sense, especially when one considers the tax treatment of alternative savings vehicles – where limited, if any, relief is available and asset growth is subject to tax at varying intervals. However, for those with larger pension benefits, the gap is closing and, for some, alternative routes to accumulating funds to provide a retirement income can potentially offer a better tax result.

> From a personal perspective, retirement needs have not changed, but the way in which one can achieve the desired objectives will require reassessment

Additional complexities

In considering how to maximise the benefits of pension provision, it is helpful to consider the specific complexities that arise within the legal profession, where entitlements to pension benefits from differing sources is a common feature.

For those who have entitlements to fund pension benefits through both company and personal sources, it is likely to be more tax effective to fund through company pension schemes, where an additional tax break of circa 22% is likely to be achieved through employer PRSI, USC and employee PRSI savings.

For those higher earners with entitlements to both public and private-sector pensions, planning for the lifetime limit will be key. Unlike 'funded' pension arrangements, the ability to cease contributions or redirect investment strategy is currently not possible within 'unfunded' public sector schemes and, as a result, the creation of a tax liability is an unwanted but inevitable consequence for some.

Previously, the tax liability was deducted from retirement lump sums only, but this caused a number of problems, especially where lump-sum entitlements were less than tax due. The *Finance Act 2012* (which was further amended by the *Finance (No 2) Act 2013*) considered this aspect and introduced a range of measures to enable affected public sector workers to pay the tax due in various ways, with measures introduced including:

- Restricting the initial amount of tax that can be deducted from a retirement lump sum to 20% of the value of the lump sum,
- Reducing the individual's annual pension entitlement over an agreed period to a maximum of 20 years,

at a glance

- Legislated changes to date have diluted certain benefits of pension saving
- For some, the fundamental question has become whether pension saving continues to make sense in light of the changing taxation environment
- From a tax perspective, carefully and correctly structured, pension provision continues to make sense, especially when one considers the tax treatment of alternative savings vehicles
- However, for those with larger pension benefits, alternative routes to accumulating funds to provide a retirement income can potentially offer a better tax result

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- Allowing the payment by the individual from their own resources within three months of when the tax liability occurred,
- Permitting a once-off option to encash personal pension arrangements early, that is, before retirement age, subject to tax and USC, and
- A combination of all of the above.

For those with entitlements to both private and public-sector pension benefits, the legislated changes provide an element of tax payment flexibility only – that is, the tax consequence is addressed but not the cause. As a result, the creation of an appropriate strategy to manage assets prior to retirement is key.

So what does all this mean for me?

From a personal perspective, retirement needs have not changed, but the way in which one can achieve the desired objectives will require reassessment. Pension planning is becoming less straightforward and tax benefits, which form part of the planning, are becoming less of a driving factor. This changing pension dynamic will require fresh thinking to ensure current arrangements remain fit for purpose.

The good news is that pension saving will continue to provide an opportunity for tax-efficient savings, and it is generally expected that the three key tax benefits (relief on contributions, largely tax-free growth on assets, and the ability to avail of a no/low tax lump sum at retirement) will likely continue to apply. The changes to the pension taxation regime do mean that more careful management is required to ensure that tax benefits are maximised, especially for those likely to reach the lifetime limit.

So, what are the next steps that should be considered for individuals with significant pension funds accumulated – and who are considering further pension funding?

Assess your current position: the first step is to step back and take an inventory of your current arrangements – what funds have you accumulated and what pension-funding plans are you currently considering? A key consideration at this stage is to assess how current funds (when future funding plans and investment growth through to the point of access are added) compare to the €2 million pension limit.

'Grandfather' existing arrangements: where pension benefits already exceed the €2 million lifetime limit at 1 January 2014, a 12-month window will be allowed to agree a 'personal fund threshold' with Revenue, thereby 'grandfathering' existing arrangements up to €2.3m. Pension access should also be considered to address asset growth tax implications.

Advisory relationships: the potential cessation of pension contributions and, in some instances, the unwinding of prior arrangements is a significant shift in mindset in relation to pension planning and can impact existing advisory relationships. Pension advisers in the Irish marketplace are typically remunerated based on levels of contributions or transactions generated, and such a model is unlikely to be appropriate where best advice might be to cease or pause pension funding plans and potentially switch to high security but low-yielding investments due to tax implications.

For those where company pension scheme funding is a possibility, a switch from personal pension contributions to corporate funding will likely deliver greater tax efficiency. Many personal pension plans can contain exit penalties and/or generous incentives payable at maturity, and as a result an appropriate drawdown strategy should be developed.

Optimising the tax efficiency of access: individuals will need to plan for the most optimal time to begin the drawdown of pension benefits and the impact on existing arrangements. For example, where the individual is now at the revised lifetime limit, the early drawdown of pension assets into a post-retirement vehicle will bring funds out from under the 'ceiling' of the lifetime limit, thereby allowing asset growth without an increasing tax liability. Any potential exit penalties or incentives attaching to pension arrangements would first need to be considered and addressed.

For those with entitlements to both public and private-sector pension benefits, the timing of pension drawdown – that is, which benefits are withdrawn first – needs careful consideration. In addition, advice should be sought on which of the legislated changes introduced to deal with the tax liability is most appropriate:

- Should I choose the standard options available to all to pay my tax liability?
- Should I choose the 'encashment option' for private pensions introduced in the *Finance Act 2012*?
- Should I choose the option to pay my tax liability over the longer term without interest penalty, as introduced in the *Finance Act 2012* and amended in the *Finance Act 2013*?
- Should I draw down my private pension arrangements before my public sector arrangements or vice versa?

The tax-optimal solution is likely to differ by individual, and the most appropriate course of action is likely to be driven by one's personal circumstances.

> The changes to the pension taxation regime do mean that more careful management is required to ensure that tax benefits are maximised, especially for those likely to reach the lifetime limit

Non-pension alternatives: with the introduction of a cap on pension benefits, complementary savings arrangements are likely to play a greater part in the funding of retirement income, and an appreciation of how both pension and non-pension investments should 'fit together' will be a key success factor.

So where to from here?

Traditional retirement planning has been heavily focused on an assumed experience of a 'typical individual' within a highly incentivised taxation environment. It is clear that such an approach needs to be challenged.

A simple impact assessment will help the creation of a more robust retirement strategy, sufficiently flexible to react to further government tax changes and, more importantly, designed to ensure one's ultimate retirement objectives are met:

- *Identify* – what are my current arrangements likely to deliver and when might the lifetime limit be reached?
- *Impact* – what is the potential tax impact on my arrangements?
- *Objective* – what income do I wish to deliver and how best to fund for this objective?
- *Reposition* – reposition arrangements to reflect revised planning strategy.

An impact assessment such as this should highlight areas for further consideration and provide greater peace of mind that pension arrangements remain appropriate in light of the changing tax environment.

howdy PARDNER

Sinead Travers is a solicitor and an executive with Support Services at the Law Society

A successful career is a thing of design. If making partner is your ultimate career goal, you'll need to plan how you can achieve this. Sinead Travers sets out the smart guide to making partner

"The only place where success comes before work is in the dictionary". The original source of this adage is debated, but there is no doubt about its veracity. A carefully constructed career plan is the cornerstone to any successful career. Devote time to mapping your career. Take account of your non-work related plans and allow for when your personal life will affect your career. Your goals and values will shape your career plan. You should invest time identifying and prioritising these. Apply the SMART (specific, measurable, attainable, realistic and timely) technique to your goals.

Your role as a solicitor will change as you notch up each additional year of post-qualification experience. This should inform your career plan. As a newly qualified lawyer, your focus will be on gaining experience, whereas as an associate, you will be expected to develop your business skills and bring in new clients. Ultimately, as partner, you are responsible not just for your own caseload but for the overall good of the firm and, accordingly, your goal is to win new business, not just for your section but for the firm as a unit.

Stairway to heaven

If you aim to make partner, you must demonstrate that you are not only an excellent lawyer in your field, but that you have an extensive skills base. Firstly, you must excel at winning work and attracting new clients to the firm. You should develop good relationships with your clients, manage their expectations, and deliver as promised. You must be prepared to take risks, financial and otherwise. As an equity partner, you will be self-employed and your income will depend on the annual profit made by the firm, rather than on a guaranteed salary at the end of each month. As a successful partner, you should be a competent manager with high levels of emotional intelligence. You will excel at people management, staff motivation and staff development. You will not baulk at making tough decisions when necessary. You will be an effective team player, sharing responsibility and collaborating with fellow partners for the overall good of the firm.

For those solicitors whose ultimate goal is to make partner, what category of partner do you fall into? Are you a rainmaker, a skilled manager or a legal specialist? Some partners bridge all three categories, but most find that their natural ability is found in one category and that they must work on the other skills areas.

On the road again

Have you thought about how you might achieve partnership from your current standpoint? Traditionally, partners worked their way up from trainee to solicitor to partner within the one firm. However, there are other options. You can make partner by moving to another firm, either in a similar role to your current one or in a promoted role. Some solicitors find that they pick up considerable

at a glance

- A carefully constructed career plan is the cornerstone to any successful career
- If you aim to make partner, you must demonstrate that you are not only an excellent lawyer in your field, but that you have an extensive skills base
- When eyeing up potential partners, firms look for solicitors displaying business savvy, management skills, emotional intelligence, client care skills, team-player qualities, financial management skills and commitment to the firm

> Examine carefully any partnership proposal put to you

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commercial skills in an in-house role and can subsequently use these to help gain a promotion should they return to private practice.

Finally, for some solicitors, their best option is to go it alone and leave their employer to set up their own practice. A carefully drafted business plan is a must for every solicitor setting up in practice. If you are considering setting-up, you should obtain a copy of the Law Society's booklet, *Solicitors Setting up in Private Practice*, which can be accessed on the solicitors' section of the website under 'running a practice'.

Should I stay or should I go?

When eyeing up potential partners, firms look for solicitors displaying business savvy, management skills, emotional intelligence, client care skills, team player qualities, financial management skills and commitment to the firm. How does your employer view you on these areas? A simple way to get a perspective on this is to objectively rate yourself out of ten on all of the above skills. If your firm carries out annual performance appraisals, use these to assist you evaluate your value and skill set. Identify the areas your need to work on. If the firm applies 360 degree feedback, do you receive a balanced rating or are there areas you need to improve on?

Ask yourself what is your internal and external market value? Your internal market value is ascertained by the number of new files your employer passes to you. What percentage of surplus files trickle down from partner level to you? Do the partners favour a colleague at the same level as you? External market value is the amount of new clients and referrals you win. In order to guarantee a promotion to partner level, you must score highly in both.

Internal market value is a tricky course to manoeuvre, as it depends on many variables – and one of the most important of these is office politics. Do you have a partner rooting for you within the firm? Are there any partners who are likely to give you a less than favourable report? Have you colleagues at the same level as you that also have their sights set on partnership? It is important that you are valued within your firm, otherwise there is a very real danger that your career will stall.

It takes two

Remember: partnership is a two-way process. There are a number of things to look out for in a firm that you have earmarked as somewhere you would like to make partner in. Is the firm financially healthy and its future relatively secure? What is its current partnership structure – is it top-heavy and/or dominated by one or two partners? Does the firm have a business development strategy? Are the current levels of partner drawings sustainable in the long term? Does the firm match your work culture, identity and goals? If not, find a firm that does. If the gap between your work culture and expectations are sufficiently different from your firm's, then the likelihood of sustaining a long career within that firm is slim. If you make partner, you will spend the next few decades of your working life with that firm. Therefore, it is important that it is an environment in which you are comfortable and can develop.

Examine carefully any partnership proposal put to you. Do not allow yourself to become so distracted by the offer of partnership that you overlook the detail of what is actually on the table. Ensure that it works for you.

While many solicitors fear that the move to another firm may negatively affect their career, it can have the opposite result. It your vision and goals do not correspond with your firm's, you may have no option but to move firm if you wish to develop your career. It is rarely a good idea to remain in a firm when you are certain that there will be no opportunities for professional development and promotion. Other sound reasons to change firms include the offer of a higher salary and scope to develop a new practice area. You will start off in your new firm with a clean slate, without reference to any successes you have obtained previously – nor, indeed, any mistakes you made. The onus is on you to prove yourself in your new firm and to create new achievements. Most employers look for new employees to be effective within 90 days of commencing employment. Work to meet their expectations on this.

> **'You can make partner by moving to another firm, either in a similar role to your current one or in a promoted role'**

Bridge the gap

Spend time identifying the skills you need to develop if you are to make it as a successful partner. It is important that you have a mentor ideally within your current firm, but at the very least within law, who will guide your career decisions. Consider employing a career coach, an independent professional with expertise in career development for solicitors. A career coach can assist you to focus on achieving your goals and realise career success. A good coach will encourage and motivate, so that you reach your highest career potential.

Observe your mentor and other partners you respect as they carry out their role. Replicate their more useful skills. Eliminate from your work the unfavourable traits you have observed in others.

Develop your brand, inside and outside the firm. What is it that makes you unique among solicitors? For instance, do you have specialised knowledge of a particular area of law? You may need to take on further study to bring this to the next level. Consider raising your profile by delivering lectures and/or writing articles on your areas of expertise.

Get noticed by the right people within your firm. Identify who you should impress and target them. Demonstrate a 'can do' attitude at all times. Aim to gain exposure with the partners you want to target. Go that extra mile and be enthusiastic not just about your work but also about the firm. Do your homework and identify the passions of those you are targeting. Their passions should become your passions if they are to notice you!

Finally, you will need a healthy, active and supportive personal life if you are to be a successful partner. Make time within your schedule to incorporate daily exercise. Understand your body. Stress is unavoidable, but it is important to learn how to minimise it. What is the most effective way for you to unwind? Plan for regular down time and enter it in your diary. Devote time to maintaining your personal support network of family and friends. A healthy circle of friends should incorporate colleagues and non-lawyers. Do not neglect the latter, as you will need a regular escape from the world of law to recharge the batteries.

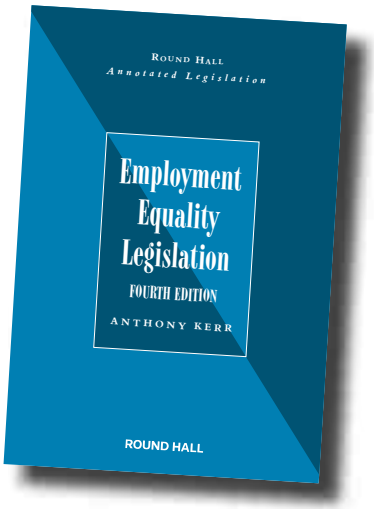
look it up

Literature:

- Heather Townsend and Jo Larbie (2013), *How to Make Partner and Still Have a Life* (London: Kogan Page Limited), http://howtomakepartner.com/
- Shelley DuBois, "Do you really want to make partner?", CNN.com, http://management.fortune.cnn.com/2012/03/26/do-you-really-want-to-make-partner/
- Matt Shinners, "How to become a law firm partner", American Bar Association, http://apps.americanbar.org/litigation/committees/youngadvocate/email/spring2012/spring2012-0612-how-become-law-firm-partner.html
- Law Society of Ireland, *Partnership?*, www.lawsociety.ie/Documents/committees/guidance/partnership.pdf
- Law Society of Ireland, *Setting up in Private Practice*, www.lawsociety.ie/Documents/committees/guidance/settingup07.pdf

Employment Equality Legislation

Anthony Kerr. Round Hall (fourth edition, 2013), www.roundhall.ie. ISBN: 978-0-41403-309-2. Price: €135.



In general, I'm a Googler: anything I want to know about, I Google it. It's a handy ready reckoner for just about any query, and while I naturally wouldn't rely on a lot of the references that pop up, it's an easy way to get a bit of direction on a particular query. The problem is, it can be quite time consuming trying to separate the wheat from the chaff.

So I'm still a believer that nothing beats having an actual book to thumb through, to highlight, to put stickies on, and to grab for dear life when a question is put to you that makes you go "Ah … let me get back to you on that…"

This book is one of those 'grab hold of and keep on the desk' types. Employment law, and in particular employment equality law, is generally accepted as being very complex, with a myriad of avenues of redress and really something best left to the experts. To be honest, I jumped at the chance to review this book, as I thought it would make me read all that material I have been intending to brush up on for ages. Of course, with the pressure of the working day, I have to confess that the idea of ploughing through pages of legislation lacked appeal somewhat. However, I was misjudging this book.

There is no doubt that the editor of this collection of legislation is an expert in the field. The layout of the book is easy to follow, the general notes very insightful and breathtakingly detailed – at times it's like sitting in a lecture. I have had the pleasure of attending lectures and seminars given by Anthony Kerr, and his enthusiasm for his area always makes his subject-matter interesting. And the same applies to this book: his enthusiasm and wealth of knowledge ensures that reading this work will be enlightening and, most of all, a pleasure – honestly!

It will also be a constant source of reference and assistance for your office, including as it does not only the *Employment Equality Act 1998* (as amended), but also the updated *Guide to Procedures in Employment Equality and Pensions Cases*, as revised in July 2012, together with the new Workplace Relations Complaint Form. Indeed, most serendipitously, the very day the book arrived on my desk, so did a query regarding discrimination on the race ground.

This book actually does live up to the blurb on the cover: it most definitely is a definitive resource in employment law and is, without doubt, one of the handiest paperbacks you will purchase this year.

Samantha Gill is senior executive solicitor at Dublin City Council.

The Offences Handbook 2013

Round Hall (2013), www.roundhall.ie. ISBN: 978-0-41403-150-0. Price: €95.

The Offences Handbook **is an excellent reference text that deals with an area fraught with complexity. It provides a quick reference guide that will be especially welcomed by criminal law practitioners. The book is compiled from extracts from the consolidated criminal legislation and consolidated road traffic legislation. It sets out in a series of tables the principal act and the section to which it refers, details and description of the offence, together with details of the penalty applicable. If the principal act has been amended by subsequent legislation, then details of the amending act and the amendment(s) are set out.**

The concise manner in which the material is presented makes the book very practical and user friendly, and ensures that the information on any topic may be quickly sourced. Naturally, as new legislation comes into force, the book will become out-of-date in certain respects. Nonetheless, it should be a tremendous resource, particularly to District Court practitioners, once they remain cognisant of current developments in criminal and road traffic legislation.

Joyce A Good Hammond is a partner at Hammond Good in Mallow, Co Cork.

The Irish House of Lords: A Court of Law in the 18th Century

Andrew Lyall. Clarus Press (2013), www.claruspress.ie. ISBN: 978-1-905536-56-6. Price: €55.

For many centuries preceding the 18-year-long period of the so-called 'Grattan's Parliament', there had existed a bicameral Irish parliament that, since *Poynings' Law 1495*, had been subservient to England in that all proposed legislation had first to be approved by the king (that is, King's Council/Privy Council).

The courts in Ireland were also subject to final appeals to English courts and bound by English court precedents. Then, likely influenced at least in part by contemporary events in colonial America, *Yelverton's Act 1782* gave the Irish Parliament a greater modicum of legislative independence, and the Irish House of Lords greater judicial independence.

Dr Lyall's primary focus is on the functioning of the Irish House of Lords as a final court of appeal during the Grattan period but, in doing so, he elaborates succinctly on the historical constitutional and legislative position, including the Irish courts' structures and their somewhat complicated procedures and practices.

Initially, in the first five years of the Grattan period, all members of the House of Lords – whether lawyers or not – could and did sit to hear judicial appeals. However, by 1787, only legally qualified members sat (with lay peers voluntarily excluding themselves), and so this final court of appeal thus became, in the true sense, 'professional'. As Dr Lyall points out, this transition to only professional judges came some 50 years before the English House of Lords followed suit in 1844.

This book will be enjoyed by all lawyers interested in our legal history, particularly those who, in 2014, are inclined to ponder on what might have been if WWI had not given rise in 1914 to the suspension of the coming into operation of the *Home Rule Act*. Equally, the historical ponderer will be inclined to wonder, 200 years on, what might have been towards achieving, earlier, a wholly independent Ireland if 1798 and the *Act of Union* in 1800 had not happened.

Michael V O'Mahony is a past-president of the Law Society of Ireland.

new books available to borrow

- Bainbridge, David I, *Information Technology and Intellectual Property* (6th ed; Bloomsbury Professional, 2014)
- Brennan, Philip, *Tax Acts 2014* (Bloomsbury Professional, 2014)
- Buckley, Michael, *Capital Tax Acts 2014* (Bloomsbury Professional, 2014)
- Fosbrook, Deborah and Adrian Laing, *The A-Z of Contract Clauses* (Bloomsbury Professional, 2014)
- Heffernan, Liz and Una Ni Raifeartaigh, *Evidence in Criminal Trials* (Bloomsbury Professional, 2014)
- Kennedy, Pat, *VAT Acts 2014* (Bloomsbury Professional, 2014)
- Kerr, Anthony, *Employment Equality Legislation* (4th ed; Round Hall, 2013)
- Mitchell, Catherine, *Contract Law and Contract Practice: Bridging the Gap Between Legal Reasoning and Commercial Expectation* (Hart, 2013)
- Morgan, Richard and Kit Burden, *IT Contracts* (9th ed; Sweet & Maxwell, 2013)
- Morrissey, John J, *Local Authority Enforcement* (Bloomsbury Professional, 2014)
- Mullis, Alastair and Richard Parkes, *Gatley on Libel and Slander* (12th ed; Sweet & Maxwell, 2013)
- Nelson, Erin, *Law, Policy and Reproductive Autonomy* (Hart, 2013)
- Reynolds, Michael and James Davies, *Partnership Disputes* (Sweet & Maxwell, 2013)
- Stokes, Simon, *Digital Copyright Law and Practice* (4th ed; Hart, 2014)
- Treitel, Guenter, *Frustration and Force Majeure* (3rd ed; Sweet & Maxwell, 2014)
- Tyldesley, Peter J, *Consumer Insurance Law: Disclosure, Representation and Basis of the Contract Clauses* (Bloomsbury Professional, 2013)

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13 June	North West General Practice Update 2014: Law Society Skillnet in collaboration with the Donegal Bar Association and the Inishowen Bar Association. *Solis Lough Eske Hotel, Co Donegal*	€85 hot lunch and networking drinks reception included		6 General (by Group Study)
20 June	CPD Conference 2014 Law Society Skillnet in collaboration with the Kerry Law Society. *Ballygarry House Hotel, Tralee*	€85 hot lunch and networking drinks reception included		4 General plus 1 Regulatory Matters plus 1 M& PD Skills (by Group Study) (6 total)
14-18 July	Legal English Course – Level 1 Common Law, Contract Law & Negotiation Skills Master Class	€650		Full CPD requirement for 2014 (provided relevant sessions attended)
14-18 July	Legal English Course – Level 2 Commercial Contracts & Negotiations Master Class	€650		Full CPD requirement for 2014 (provided relevant sessions attended)
21-25 July	Legal English/Specialist Course – Level 1 Advanced Negotiation & Mediation Advocacy Skills Master Class	€650		Full CPD requirement for 2014 (provided relevant sessions attended)
21-25 July	Legal English Course - Level 2 Intellectual Property, Technology & Advanced Negotiation Master Class	€950		Full CPD requirement for 2014 (provided relevant sessions attended)
24 Sept	STEP Annual conference 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)
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)

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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)
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TAXATION COMMITTEE

Capital gains tax clearance certificates

Practitioners will be aware of the requirement to obtain CGT clearance certificates in the case of a disposal of certain assets where the consideration exceeds €500,000.

The assets involved are:

a) Land and building in Ireland,
b) Exploration or exploitation rights located in Ireland,
c) Goodwill of a trade carried on in Ireland, and
d) Shares of a company that derives its value or the greater part of its value from assets at (i) and (ii) above (specified assets).

In normal situations, the clearance certificate should be obtained by applying to the vendor's tax office (the application form can be signed by the vendor or its agent) at least one week before the intended closing date. A copy of the contract for disposal should accompany the application.

The clearance certificate will be available where:

a) The vendor is resident in the State,
b) There is no capital gains tax due on the disposal, or
c) The capital gains tax due has been paid.

Certain situations can arise that do not fall readily within the above procedures. The Law Society has agreed certain procedures with the Revenue Commissioners, through the TALC meetings, which are set out below.

1. Vendor is a builder/developer and is disposing of a newly constructed house

Production of any of the following by the vendor's solicitor will suffice instead of a CG 50A:

a) A copy current notification of determination issued to the vendor under section 531I TCA 1997 indicating a 0% rate,
b) A copy current tax clearance certificate issued to the vendor under section 1094 or 1095 of the TCA 1997, or
c) A copy current tax clearance certificate issued to the vendor specifically for the purposes of section 980 TCA 1997.

2. Purchase in trust

Circumstances can arise where a purchaser does not want to reveal its identity to a vendor, or where this may not have been finally decided, say in the context of a group of companies. Revenue has agreed that, notwithstanding note 7 of the existing Form CG50, the inclusion of 'in trust' details for the purchase on the application form will not prevent the issue of a clearance certificate.

The purchaser's solicitor must, however, furnish the name and address of the purchaser to the Revenue Office that issued the certificate immediately on the closing of the sale.

3. Simultaneous signing and closing of contracts

This can occur in certain situations and, in particular, can involve the contract being amended right up to its execution. Difficulties can arise, therefore, where a contract is amended after the CGT clearance cert has issued.

The Revenue has agreed that applications should be processed on the basis of the unsigned contract that accompanies the Form CG50. Where a clearance certificate issues in these circumstances, the purchaser can rely on the certificate; however, the applicant (or solicitor for the applicant) should submit a copy of the actual signed contract immediately on the closing of the sale. A purchaser can satisfy this requirement themselves by sending a copy of the signed contract to the Revenue, if they are in any doubt that this will be done post closing.

4. Disposals where there is no contract

This can occur in certain situations, for example, on the redemption of shares. If not already provided, the applicant should be asked for a note confirming the reasons the application is not accompanied by a contract, and this should be provided to Revenue with the application. The absence of a contract should not, in itself, prevent the issue of a clearance certificate in such situations.

5. Consideration payable by instalments

While it is recognised that it is difficult to provide definitive guidance on this area, the general position is that clearance certificates should issue at the outset, for the maximum amount of the consideration that is provided for in the contract, notwithstanding that the initial payment might not exceed the threshold.

If there are doubts as to the quantum of the final amount of the consideration – for example, where there is contingent consideration – the applicant should be asked to quantify the final amount to the best of their ability, and the application should be considered on that basis. Any quantification for this purpose will not affect the ultimate liability of the parties to tax, including in particular to CGT.

6. Disposals where reliefs apply (for example, sections 615/617 TCA apply or where PPR relief applies)

Notwithstanding the fact that there may be no capital gains tax payable due to reliefs available under the legislation, CGT certificates will still be required as normal where the value of consideration paid (or deemed to have been paid in accordance with Revenue tax briefing no 13 of December 2010) is in excess of the threshold (currently €500,000), except where legislation specifically deems no disposal to have occurred.

7. Disposals by partners in a partnership

Where the total consideration on disposal of a partnership asset exceeds €500,000, one application is made on behalf of the partnership. This is usually to the tax office of the first-named partner. The application should list the names of the partners and their PPS numbers. This one certificate suffices for presentation to the purchaser to enable him to pay gross, even if the payment is divided, with amounts going to individual partners.

8. Disposals by co-ownerships

On the disposal of an asset by a co-ownership, each co-owner only needs a certificate to the extent that his share of the consideration is greater than €500,000 (however, please see paragraph 14 below in relation to a receiver appointed over a co-owned asset). A note should accompany a CG50 application, explaining that a certificate is being sought in respect of the applicant's share (greater in consideration value than €500,000) of a larger asset and that a co-ownership rather than a partnership is involved.

9. Cross-border mergers

The need to obtain a certificate will depend on the form of the merger agreement – for example, with a merger by absorption, it may be that a certificate would not be required, whereas with a merger by acquisition and issue of shares, one would look to the value of the shares.

practice notes

10. Consideration in kind

Where a specified asset is acquired and the consideration given for the disposal is in such a form that tax cannot be withheld, special provisions apply. Unless the vendor provides a CGT clearance certificate, the purchaser is required to:

a) Make a return of information to the Revenue regarding the transaction within seven days of the acquisition,
b) Pay an amount of CGT equal to 15% of the market value of the consideration.

11. Non-resident vendors

Solicitors are advised that the above clearances are separate to the procedures that apply when acting for non-resident vendors. A procedure has been agreed between the Law Society and the Revenue where, after a disposal has been notified to Revenue by a solicitor and he/she obtains a letter of 'no audit', then the Revenue will not subsequently pursue the solicitor for any unpaid taxes of the vendor. This procedure should still be followed, whether or not a CGT clearance certificate is required.

12. Charities

On the disposal of a specified asset by a charity, the charity should be able to apply for a certificate on the basis that it is exempt from capital gains tax. On a disposal of a specified asset to a charity, there should be no capital gains tax (as the disposal will be deemed to have taken place at no gain/no loss) and the disponer should be able to apply for a certificate on this basis.

13. Liquidators

Where a company is in liquidation, the liquidator should apply for a certificate on the disposal of specified assets to third parties where the consideration exceeds €500,000. The application should be made to the tax district dealing with the company, quoting the tax reference number of the company. Where the assets (being specified assets) of the company in liquidation are being distributed in specie to the shareholders of the company:

a) The liquidator should apply for a certificate if the value of the shareholder rights being given up in return for the specified assets exceeds €500,000, and
b) Each shareholder should separately apply for a certificate in respect of the disposal of his/her shares where the value of the specified assets being distributed to him/her exceeds €500,000.

14. Receivers/Official Assignees in bankruptcy/mortgagees in possession

The Revenue Commissioners are to issue guidance on receiverships/official assignees in bankruptcy/mortgagees in possession that will, among other things, address CG50 requirements in these circumstances.

BUSINESS LAW COMMITTEE

Transfer of membership in a company limited by guarantee

On foot of a recent query to the committee, consideration was given to the issues that arise when a company limited by guarantee is used for the purposes of holding legal title to property held in a multi-unit property development and, in particular, the question of how membership in the company should be transferred.

In the particular query raised, all of the units were commercial units, and so the development was neither a 'multi-unit development' nor a 'mixed-use multi-unit development' for the purposes of the *Multi-Unit Developments Act 2011*. However, in any circumstances where a solicitor is acting for the vendor or purchaser of a residential unit in a multi-unit development to which the act applies, they should be aware of section 8(1) of the act, which provides for transmission of membership to the purchaser (that is, transfer of membership in the relevant company by operation of law).

In the company in question, Table C of the First Schedule of the *Companies Act 1963* applied, without amendment. That being the case, the articles of association provided little by way of instruction as to how to deal with the transfer of ownership of one or all of the units to a new member or members, as Table C simply refers to the members of the company being the subscribers and "such other persons as the directors shall admit to membership".

Ideally, the articles of association would have set out that each member (that is, property owner) would be issued with a certificate of membership of the company on acquiring the relevant unit of property. The articles would specify that on the transfer of the property owned by a member, the member would tender their certificate of membership to the directors in order to terminate their membership of the company. Furthermore the articles would specify that a new member would notify the directors when the purchase of a property in the development had completed and the directors would arrange for the issue of a new certificate of membership to the purchaser and for the register of members to be written up following receipt of the appropriate notifications.

In circumstances where there is a lack of clarity in the articles of association, such as in the facts presented to the committee, one way to proceed would be for the members of the company limited by guarantee to approve (by written resolution or at a general meeting) an amended set of articles of association in advance of completion of the proposed transfer or property. The amended set of articles of association should set out clearly the process to be followed as regards membership when property in the development is being transferred. By following the procedure as set out in the new articles of association, the purchaser of property in the development will then be able to establish with certainty that they have become a member in the company limited by guarantee, and likewise the vendor will have taken the necessary steps to terminate his membership.

BUSINESS LAW COMMITTEE

Competition Authority revises merger guidelines

The Competition Authority of Ireland has a statutory function to review all proposed mergers or acquisitions that are notified to it pursuant to domestic Irish legislation. Recently updated *Guidelines for Merger Analysis*, issued on 20 December 2013 to replace previous guidelines from 2002, provide guidance to practitioners and business on the authority's methodology in analysing mergers.

The guidelines are stated to be based on the authority's own experiences in reviewing 600 transactions since the introduction of the current Irish merger control regime in 2003, as well as the views of practitioners and interested parties following a consultation process and international best practice. While the guidelines are significantly more detailed than the authority's 2002 guidelines, they do not represent a radical departure in terms of the underlying core principles of merger analysis that the authority will apply when reviewing a transaction. Rather, they reflect evolution of the authority's effects-based approach since 2002.

Points of note in the new guidelines include the following.

Herfindahl-Hirschman Index

There has been a simplification of the authority's approach to the Herfindahl-Hirschman Index (HHI) thresholds in the revised guidelines. The authority confirms that it uses HHI thresholds only as a screening device for deciding whether the authority should intensify its analysis. It states that a post-merger HHI below 1,000 is unlikely to cause concern. Other than in exceptional circumstances, a post-merger HHI above 1,000 may be considered concentrated and above 2,000 (up from 1,800 under the 2002 guidelines) may be considered highly concentrated. However, a concentrated market (1,000 HHI) with a delta below 250 and a highly concentrated market (2,000 HHI) with a delta below 150 are unlikely to cause concern. The foregoing compares favourably with the restrictive deltas of 50 and 100 for concentrated and highly concentrated markets under the 2002 guidelines. In this respect, the authority appears to have more closely aligned its approach with that of the European Commission. However, it is worth noting that, while the European Commission uses such HHI thresholds for horizontal mergers only, and uses higher thresholds for non-horizontal mergers, the authority does not make any distinction between its HHI thresholds for horizontal and non-horizontal mergers.

Market definition

There has been some dilution of the importance attributed to market share in the assessment of mergers under the new guidelines. Whereas in the 2002 guidelines, market definition was seen as an essential element of merger analysis, the authority makes clear in its new guidelines that, while market definition is a useful tool in the assessment of the competitive impact of a merger, it is not an end in itself and will not restrict the range of competitive effects to be assessed by the authority in its merger review.

Market shares

Greater consideration of the role of market shares in the authority's analysis is included in the guidelines (although there is no reference to there being a market share threshold below which a transaction will be considered as not giving rise to competition concerns). The new text also puts significant emphasis on the use of data analyses to indicate market shares. This may be problematic in the context of Ireland, given the lack of available data due to the limited size of most of its national markets. However, the guidelines also show a willingness on behalf of the authority to accept estimates where these are supported by detailed explanations showing how they have been compiled.

Barriers to entry

The authority's views on entry and barriers to entry are significantly expanded. While the 2002 guidelines stated that new entry would be considered timely only if it would occur within two years, the new guidelines take a less restrictive approach. Entry that is effective in two years is normally considered timely, but the authority accepts that the appropriate timeframe for effective new entry will depend on the characteristics and dynamics of the market under consideration.

Effects-based analysis/non-horizontal mergers

Consideration of both unilateral and coordinated effects is considerably more detailed in the updated guidelines. Indeed, the authority's views on such effects in the context of non-horizontal mergers are of particular interest, given the lack of such discussion in the 2002 guidelines. The authority goes to some lengths to discuss its views on, for example, the manner in which input foreclosure and/or customer foreclosure may arise.

Countervailing buyer power

The guidelines include a new detailed section dealing with the importance of countervailing buyer power. This issue has come to the fore in a number of Irish retail merger transactions in recent years, particularly the *Kerry/Breeo* case. The *Kerry/Breeo* merger decision of the authority (M/08/009, 28 August 2008) was overturned by the High Court on appeal by the notifying parties (*Rye Investments Ltd v Competition Authority*, 19 March 2009, IEHC 140). Indeed, the trial judge gave significant weight to the authority's lack of consideration of countervailing buyer power. That case is currently awaiting hearing before the Supreme Court following an appeal by the authority.

GUIDANCE AND ETHICS COMMITTEE

Ten steps to good time management

1) Write out a to-do list first thing in the morning or at the end of the previous day – make sure it's realistic, and allow time for interruptions.
2) First thing, return any calls that have not been returned from the previous day.
3) Allow time after meetings to prepare notes/follow-up letters.
4) Delegate as much as possible to support staff and/or other willing and enthusiastic colleagues.
5) Leave time aside for concentrated work.
6) Do the difficult tasks first thing in the day.
7) iPhones/iPads are useful for returning emails if waiting down in court – be careful they do not become items of obsession.
8) Standardise every letter/document you do.
9) Invest in IT – but make sure it saves you time.
10) Learn to say no, firmly but politely. For instance, you should do so if you are requested to do something that may not be remunerative for the firm or that is not within your area of competence.

practice notes

Restrictions on cartoons and pictures in solicitors' advertisements – general guidance to practitioners

This notice is intended as general guidance in relation to the subject matter and does not constitute a definitive statement of law. Reference to a solicitor includes a reference to a firm of solicitors in this context.

Specific restrictions are in place with regard to the use of cartoons and dramatic or emotive pictures in advertisements published by a solicitor. Regulation 9(a) of the *Solicitors (Advertising) Regulations 2002* states that an advertisement published or caused to be published by a solicitor shall not:

- Include any cartoons (regulation 9(a)ii),
- Include any dramatic or emotive words or pictures (regulation 9(a)iii).

The Society is taking a strict approach against those solicitors using images in their advertisements that would be considered in breach of the regulations.

The following are examples of images that may be considered in breach of the *Solicitors (Advertising) Regulations 2002*.

This is by no means an exhaustive indication of the types of images currently being used by solicitors in their advertisements and should be viewed as general guidance in relation to the subject matter and does not constitute a definitive statement of the law.

Jack Kennedy is the Law Society's advertising regulations executive and is contactable at 01 672 4800 or j.kennedy@lawsociety.ie.

John Elliot,
Registrar of Solicitors
and Director of Regulation

FOCAL POINT

examples that may be in breach of the act

The following are examples of images that may be considered in breach of the *Solicitors (Advertising) Regulations 2002.*


Medical negligence


Medical negligence

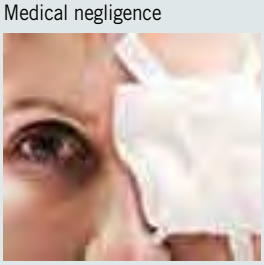

Medical negligence


Medical negligence


Medical negligence


Accident at work


Cerebral palsy


Eye injury


Dental negligence


Medical negligence


Medical negligence


Road traffic accident


Accident at work


Accident at work


Slips, trips and falls


Animated GIF figure


Road traffic accident


Personal injury


Personal injury

Personal injury

PICS: THINKSTOCK

CONVEYANCING COMMITTEE

Certificates of compliance with *Building Regulations*

Following the introduction of the new *Buildings Regulations* (SI no 9 and SI no 105 of 2014), the Conveyancing Committee advises practitioners that they should seek a certificate of compliance in the following situations for individual houses, residential units in multi-unit developments, and extensions.

Houses and apartments where a commencement notice for works is lodged on or after 1 March 2014: The only certificate of compliance with the *Building Regulations* that will be required is a copy or a certified copy of the certificate of compliance on completion in the form prescribed in the sixth schedule to SI no 9, as registered with the Building Control Authority. If the register and the copy certificate are accessible to the public, a copy only is required. Otherwise a certified copy should be furnished.

Houses and apartments where a commencement notice for any works was served prior to 1 March 2014: A certificate of compliance with the *Building Regulations* will be required in one of the acceptable existing forms.

Extensions: (a) An extension of under 40 square metres to a dwelling is exempt from the new provisions in SI no.9, but must be built in accordance with the *Building Regulations* – in such cases, a certificate that the extension is exempt from SI no 9 will be required, together with a certificate of compliance in one of the acceptable existing forms; (b) certification for an extension of over 40 square metres to a dwelling should be similar to the requirements set out for houses and apartments (as detailed above), depending on whether the commencement notice is served before or after 1 March 2014.

The new *Building Regulations* have no impact on planning permissions, and certificates/opinions on compliance with planning will continue to be required in one of the acceptable existing forms.

CONVEYANCING COMMITTEE

Conditions of sales by receivers/mortgagees

The Conveyancing Committee has received many complaints from members about the restrictive conditions that are being included in conditions of sale of properties being sold by receivers or mortgagees.

While the committee recognises the difficulties that solicitors acting for such vendors have in showing ideal title in such cases, largely because of the absence of appropriate documentation, which necessarily leaves them obliged to offer restrictive title, it does appear that in some cases the conditions being included are excessively harsh.

It appears that some solicitors, apparently under instructions from receivers or mortgagees, are including unnecessarily restrictive conditions in contracts for sale, some of which may be unlawful, others unenforceable, while others are not in accordance with good conveyancing practice and long-standing recommendations of the committee.

The committee is of the view that solicitors in such cases should offer the best title that is available and are reminded that, in preparing auction conditions, they should be aware of the rule in *Holohan v Friends Provident* ([1966] IR 1) that requires mortgagees and receivers to obtain the best price for properties, which would in most cases involve offering the best title that is reasonably available.

An example of a condition that is unlawful is one restricting enquiries as to whether title documents bear the correct stamp duty.

Those that may be unenforceable because courts are unlikely to grant decrees of specific performance of the contract include ones:

- Restricting the purchaser's right to raise requisitions,
- Relieving the vendor or his solicitor from the obligation to explain acts on searches, and
- Refusing to disclose known latent defects in title.

Conditions that are not in accordance with good conveyancing practice or in conflict with Conveyancing Committee recommendations include ones:

- Refusing to provide the necessary tax numbers to enable the purchaser stamp the purchase deed, and
- Requiring the payment of a deposit to the receiver instead of the receiver's solicitor.

Practitioners are reminded of the legal requirement for a vendor to produce a Building Energy Rating Certificate when a property is offered for sale (see the practice note published in August/September 2008 *Gazette*, p61) and that it is a legal requirement that, on the completion of the sale of a residential property, a discharge in respect of any NPPR or household charge and confirmation from Revenue's Online System that there is no outstanding local property tax be furnished, unless an exemption or waiver applies where appropriate (see the practice notes published in the June 2013 and the January/February 2014 issues of the *Gazette*).

The parties should consider the issue of service charge arrears. A purchaser will want to ensure that these are discharged. A receiver may argue they are unsecured debts. This is a commercial issue to be negotiated between the parties, and ought to be agreed pre-contract.

Except in the case of units in multi-unit developments, or where very particular circumstances apply, it is inappropriate for the vendor to insist on a particular form of assurance being used or to prescribe that the vendor will settle the form of the deed of assurance unilaterally following exchange of contracts.

In individual unit sales, it is not appropriate for the vendor to require the purchaser to insure the property in sale prior to completion – such insurance may be extremely difficult to obtain.

The committee recognises that there are particular problems associated with General Condition 36, since neither the receiver nor the mortgagee may have any knowledge about the recent planning history of the property, and the knowledge may be vested in an uncooperative borrower. The committee recommends that a receiver or mortgagee should furnish to the purchaser all evidence and documentation relating to the planning status of the property that is in their possession. Likewise, the receiver

should disclose and produce copies of all notices furnished by any competent authority, as well as details of any disputes relating to the property of which the receiver is aware, and details of any easements, rights or privileges that are known by the receiver to affect the property.

The committee recognises that, while it is appropriate for receivers to enter into contracts for sale, the conditions of sale will often provide that the mortgagee who appointed the receiver may sell as mortgagee in order that the purchaser take the property free from any encumbrances that rank after the mortgage under which the power of sale has arisen. A purchaser should not have a difficulty in this regard and should check to see if there are any such subsequent encumbrances.

The committee reiterates its previous general recommendation that, where a vendor's solicitor is varying or excluding a particular general condition, the reason for its exclusion or variation should be disclosed.

CONVEYANCING COMMITTEE

Application of *Multi-Unit Developments Act 2011* to conventional housing (both existing and new start-ups)

The Conveyancing Committee has been asked to provide guidance on the application of the *MUD Act* to conventional housing estates, whether existing or ones just being commenced.

With developments just commencing, solicitors for purchasers were concerned that section 3 of the *MUD Act*, which prohibits a person from transferring his or her interest in a residential unit in a multi-unit development unless the common areas have been transferred to an owners' management company (OMC), would apply and would render void the transfers of a house to a house purchaser.

Conventional housing, as far as this practice note is concerned, is a housing development that:

- Does not include any apartments or duplex units or, if it does, these modules of the development are self-contained and have their own OMC or co-ownership arrangement that will own and manage, maintain and repair the common areas within the relevant cartilage,
- Only contains common areas, such as roads, footpaths, grass verges and open spaces, the maintenance of which is intended be taken over in due course by the local authority, and there are no conditions in the planning permission for the development to the contrary, and
- In relation to which the builder/developer, is providing an undertaking and indemnity under seal to complete all the common areas and to maintain same until they are taken over by the local authority and to indemnify the house purchaser in relation to all costs and expenses in relation to the same until this has been done.

The view of the Conveyancing Committee in this regard is based on the definition of OMC in the *MUD Act*, which is "a company established for the purposes of becoming the owner of the common areas of a multi-unit development and the management, maintenance and repair of such areas and which is a company registered under the *Companies Acts*".

It is the opinion of the committee that, in the case of conventional housing as defined above, section 3 cannot apply because there cannot be an OMC within the definition in the act. This is because there are no common areas that an OMC would manage, maintain and repair. In such cases, there is no OMC, there was no intention to have an OMC, and there is no need for one.

Insofar as existing estates of conventional housing are concerned, solicitors for purchasers are concerned that the common areas should be transferred to an OMC in all cases.

If the development was one where an OMC was intended to take over the common areas, then the provisions of the *MUD Act* apply and the common areas should have been transferred to the OMC by 30 September 2011. However, the attention of solicitors is directed to the practice note published in the June 2013 *Gazette* (p51) pointing out that non-compliance with the provisions did not necessarily make a property unsaleable. While that PN referred to apartment developments, it clearly could apply equally to such a housing development. The facts in any case need to be considered. In some cases, the developer company and the OMC may have been dissolved and many years may have passed, and it is clear that the transfer may never happen without the members of the OMC taking legal action. In others, there may just be administrative delays and it may be clear that the transfer will take place, but not just yet. The important factor for a purchaser's solicitor is that the client has been fully advised and can make an informed decision.

If the development was one that meets the criteria applied above to new conventional housing, the view of the committee is that (subject to one exception dealt with next) there can be no obligation to transfer the common areas because there cannot be an OMC that would manage, maintain and repair any common areas.

The exception relates to cases where, some years ago, some local authorities started putting conditions in grants of planning permission for apparently normal conventional housing developments requiring the forming of OMCs to maintain the common areas, even though the common areas were ones that traditionally would have been taken in charge. The Department of the Environment, Heritage and Local Government issued a directive to all local authorities on 28 February 2008 referring them to section 180 of the *Planning and Development Act 2000* and requiring them to develop a policy on taking in charge. The imposition of such conditions seems to have petered out after that.

However, the committee is not in a position to give any clear guidelines in such cases, which will probably only be solved by the residents of such estates availing of the provisions of section 180 to have the common areas taken in charge despite the conditions in the planning permissions. Solicitors acting for purchasers of housing in such estates should make sure that purchasing clients are aware of the potential problems. It may also be necessary to qualify a certificate of title in such cases.

legislation update

8 April – 6 May 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

Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014
Number: 6/2014
Amends and extends part III of the *Ministerial and Parliamentary Offices Act 1938*, as amended, in relation to allowances paid to parliamentary leaders of qualifying political parties and to qualifying independent members of Dáil Éireann and Seanad Éireann, in respect of expenses arising from parliamentary activities, including research.
Commencement: Ministerial order required as per s6(2) of the act

Fines (Payments and Recovery) Act 2014
Number: 7/2014
Provides for the introduction of attachment of earnings as a means of recovering unpaid fines; provides that the court imposing any such fine shall take into account the person's financial circumstances; provides for the making of community service orders or the commitment to imprisonment in certain circumstances where fines are not paid; repeals s43(2) of the *Criminal Justice Administration Act 1924*, s195 of the *Criminal Justice Act 2006* and part 3 of the *Fines Act 2010*, and provides for related matters.
Commencement: Order(s) to be made as per s1(2) of the act

Electoral (Amendment) Act 2014
Number: 8/2014
Repeals the provisions in the *Electoral Act 1992* and the *European Parliament Elections Act 1997* that disqualify an undischarged bankrupt from eligibility for election to or membership of the Dáil and the European Parliament.
Commencement: 16/4/2014

SELECTED STATUTORY INSTRUMENTS

Health Insurance Act 1994 (Section 11E(2)) Regulations 2014
Number: 148/2014
Made by the Health Insurance Authority pursuant to section 11E(2) of the *Health Insurance Act 1994*, as inserted by section 15 of the *Health Insurance (Amendment) Act 2012*, and specify that the Health Insurance Authority is satisfied that certain relevant contracts do not provide for advanced cover.
Commencement: 18/3/2014

Central Bank Act 1942 (Financial Services Ombudsman Council) (Amendment) Regulations 2014
Number: 164/2014
Amend and clarify the definition of 'consumer' to include (a) a natural person when acting in the course of or in connection with the carrying on of a business and (b) sole traders; apply the limit of €3 million annual turnover to all persons, groups of persons and incorporated bodies; and provide for a definition of 'turnover' in respect of a person/group of persons and in respect of a financial service provider.
Commencement: 7/4/2014

Road Traffic (Construction and Use of Vehicles) (Amendment) Regulations 2014
Number: 166/2014
Provide that the maximum national vehicle height shall not apply to an unenclosed agricultural or goods vehicle combination that is being used exclusively for the transport of hay, silage, straw and other animal fodder, or combinations thereof, that is baled.
Commencement: 2/4/2014

Road Traffic Act 2006 (Restriction on use of Mobile Phones) (Regulations) 2014
Number: 178/201
Make it an offence to send or read a text from a mobile phone while driving a mechanically propelled vehicle in a public place.
Commencement: 1/5/2014

Private Security (Licensing and Standards) (Security Guard Monitoring) Regulations 2014
Number: 190/2014
Prescribe the categories of licenses that may be issued to private security employers and independent contractors in respect of security guards operating in the alarm monitoring and CCTV monitoring sectors of the private security industry; prescribe the standard to be observed in the CCTV monitoring sector for the licensing of CCTV monitoring centres and intruder alarm monitoring centres; prescribe a change to the standard to be observed in the door supervisor (licensed premises) and security guard (static) sectors.
Commencement: 1/5/201

Private Security Services Act 2004 (Commencement) Order 2014
Number: 191/2014
Appoints 1 November 2014 as the day on which section 37 (as amended by section 13 of the *Civil Law (Miscellaneous Provisions) Act 2011*) of the *Private Security Services Act 2004* comes into operation with respect to a private security employer or an independent contractor who provides a security service.
Commencement: 1/11/2014

Prepared by the Law Society Library

REGULATION

NOTICES: THE HIGH COURT

In the matter of Daniel Downes, solicitor, of O'Dea & Company, Solicitors, First Floor, Hardiman House, Eyre Square, Galway, and in the matter of the *Solicitors Acts 1954-2011* [2014 no 52SA]
Take notice that, by order of the High Court made on Monday 28 April 2014, it was ordered that the name of Daniel Downes, of O'Dea & Company, Solicitors, First Floor, Hardiman House, Eyre Square, Galway, be struck off the Roll of Solicitors.

In the matter of Cindy McCarthy Yates, a solicitor formerly practising as McCarthy Solicitors at 5 The Old Market Square, Bandon, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [2014 no 51SA]
Take notice that, by order of the High Court made on Monday 28 April 2014, it was ordered that the name of Cindy McCarthy Yates, formerly practising as McCarthy Solicitors at 5 The Old Market Square, Bandon, Co Cork, be struck off the Roll of Solicitors.

In the matter of Elizabeth McGrath, a solicitor practising as O'Connell McGrath Solicitors, 5 Athlunkard Street, Limerick, and in the matter of the *Solicitors Acts 1954-2011* [2014 no 23SA]
Take notice that, by order of the High Court made on Monday 28 April 2014, it was ordered that the name of Elizabeth McGrath, of O'Connell McGrath Solicitors, 5 Athlunkard Street, Limerick, be struck off the Roll of Solicitors.

John Elliot,
Registrar of Solicitors,
16 May 2014

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one to watch

Animal Health and Welfare Act 2013

The core elements of the *Animal Health and Welfare Act 2013* came into operation on 6 March 2014 (SI 106/2014, *Animal Health and Welfare Act 2013 (Commencement) Order 2014*).

The commencement order excluded parts 5, 11 and 12 of the act, which relate respectively to 'animal health levies', 'animal tracing systems' and 'animal marts'.

Some of the aims of the act are to provide for the protection and identification of animals, prevent cruelty to animals, provide for the licensing of marts, and for levies for the purposes of animal health, to repeal certain enactments, and to amend other legislation (for example, the *Dog Breeding Establishments Act 2010*).

The act runs to 14 parts (encompassing 78 sections) and three schedules. In legislative terms, the act brings together, for the first time, the concepts of animal health and animal welfare.

In addition, 16 statutory instruments were also commenced on the same day, encompassing various regulations outlining the detailed implementing provisions for several parts of the act.

ANIMAL WELFARE AND ANIMAL CRUELTY

For the purposes of the act, 'protected animal' is broadly defined in section 2(1) as an animal "(a) kept for farming, recreational, domestic or sporting purposes in the State, (b) when it is in the possession or under the control of a human … permanently or on a temporary basis, or (c) that is not living in a wild state".

Section 11(1) outlines the basic requirements for safeguarding animal welfare. The 'protected animal' must be kept in a way that safeguards its health and welfare and doesn't threaten the health or welfare of the animal or another animal. In addition, any "buildings, gates, fences, hedges, boundary walls and other structures used to contain the animal" must be "constructed and maintained in a manner so that they do not cause injury or unnecessary suffering to the animal".

Failure to comply with section 11(1) is an offence. If the animal is in the control or possession of another individual who is not the owner, both this individual and the owner shall have committed an offence, unless the owner can show that s/he "took all reasonable steps to ensure that all necessary measures in the circumstances were taken to comply" with section 11(1).

Section 12(1) prohibits animal cruelty. A person shall not "(a) do, or fail to do, anything or cause or permit anything to be done to an animal that causes unnecessary suffering to, or endanger the health or welfare of, an animal, or (b) neglect, or be reckless, regarding the health or welfare of an animal".

INCREASED PENALTIES

A person who commits an offence under sections 11(1) or 12(1), along with various other defined offences in the act, is now liable on summary conviction "to a class A fine" (between €4,000 and €5,000) "or imprisonment for a term not exceeding six months, or to both", and on conviction on indictment (section 52(2), "to a fine not exceeding €250,000 or imprisonment for a term not exceeding five years, or to both".

Section 12(3) states that, where convicted of an offence under section 12, a court may, in addition to any penalty it imposes, order that the person contribute financially "towards veterinary or other expenses incurred in respect of the animal or its upkeep".

A new and far-reaching sanction has been afforded to the courts under section 58. Upon being convicted of an offence under the act, section 58(1) allows a judge to order that the person convicted be disqualified from "owning, having any interest in, keeping, dealing in or having charge or control, directly or indirectly, of an animal, animal product or animal feed or a class or classes of animal, animal product or animal feed", and be disqualified from "working with animals or having charge or control of the slaughter, manufacture, importation, preparation, handling, storage, transport, exportation, distribution, sale or supply of an animal, animal product or animal feed or of any class or classes of animal, animal product or animal feed".

The period of disqualification may be for any period deemed appropriate by the court, including for life. This section applies to most, but not all, offences under the act.

eurlegal

Edited by TP Kennedy, Director of Education, Law Society of ireland

TRADING PLACES: EU LAWYER EXCHANGE PROGRAMME

Since 2011, the Law Society has been receiving funding from the European Commission under the Leonardo Da Vinci Programme for an exchange of young lawyers between Ireland, Belgium, Spain and Germany. A number of recently qualified Irish solicitors travelled to these countries and worked in legal practices there. In turn, the Law Society hosted young lawyers from these jurisdictions. Two recent Spanish participants share their impressions of Ireland and the programme.

Carmen Martinez and Rafael Marti

Carmen Martinez

Two countries united by the economic crisis: I decided to pick the one with the best weather!

I arrived in Ireland a year ago as part of the Leonardo da Vinci European Mobility Programme. Like many other Spanish lawyers, I was attracted to the idea of gaining experience working in a common law system and eager to embark on the adventure of living and working abroad.

In order to be accepted to the programme, I had to go through a lengthy and competitive selection process. I was lucky enough to obtain a position in Ireland, a country that I find fascinating not only from a legal perspective, but also from a cultural one.

I was placed in the Competition and Regulation Department of William Fry, which for me, having a keen interest in the EU law, was absolutely invaluable, as I had the opportunity to work for one of the largest Irish law firms while learning from very experienced practitioners.

My first steps in Ireland were made quite easy, thanks to the assistance of the EU and International Affairs Committee of the Law Society, in particular Eva Massa, who provided me with very practical information before starting my placement.

From the very beginning at William Fry, I experienced the day-to-day work of a large law firm, the challenge of working in a foreign language, in a new city, and learning to adapt to a new life. What could have been an intimidating experience was made straightforward, welcoming and interesting by the time and dedication of my mentor, Cormac Little, and the rest of the team, whom I wish to thank sincerely.

> **The initiatives that the Law Society promotes play a fundamental role in opening up the country to new lawyers and facilitating the creation of an invaluable network of European legal professionals**

I was very quickly involved in various different matters in the department, allowing me to gain a real insight into Irish competition law. Additionally, I contributed to several articles that required in-depth research into Irish competition legislation, and I also benefited from attendance at seminars and conferences in this area, such as the EU Competition Day.

It was very interesting for me to compare both legal systems: for example, the complexity of certain issues that would be more straightforward in Spain, or the fact that Spanish law is codified. For instance, the Spanish Civil Code, with 1,976 articles covers all civil matters, from family to property. I spent quite a few hours on my first days contemplating these contrasts and differences of application.

Being exposed to the Irish legal system with my background was fascinating. From the litigation perspective, the difference is massive. Concepts like discovery, barristers or the Master's Court were completely new to me. Additionally, the Spanish court system is inquisitorial, as opposed to the adversarial system in Ireland. It mainly consists of written submissions to the court. I was surprised to see so many barristers present in the Four Courts preparing to plead before judges.

Even in relation to substantive competition law, the differences are remarkable. Although, this area of law could be one of the most influenced by EU rules, and therefore most similar to my home jurisdiction, it was very interesting to see how and why each member state has chosen to implement EU law in a certain way. For instance, in Spain, the National Competition Authority is part of a multi-market regulator (National Competition and Markets Commission) that includes other independent sector regulators.

On a personal level, it has been a very enjoyable learning experience for me, and I would also like to thank the trainees in William Fry, who did their best to help me settle in, getting me involved in different activities and showing me what I needed to know about the daily work of the firm. Many of them have now become good friends.

The experience of the programme in Ireland was very interesting and fulfilling. I developed a true passion for EU law, which led me to start a part-time master's degree in the field at King's College London, and everything went so well that William Fry generously extended my stay for a few more months – this time, working for the competition and also the litiga-

> If I was to highlight the main pros and cons of the programme, the former would be the enhancement of one's professional horizons and the latter would be its brevity

tion department, both outstanding teams that allowed me to progress professionally and personally. I believe that programmes like this offer a fantastic opportunity for young lawyers. Professions such as law, which have traditionally been considered to be confined to nationally trained professionals, are becoming more flexible. Mobility is now more possible and even desirable. Coming from a civil law jurisdiction, the approach to problem solving can sometimes be different. Being exposed to different legal systems allows young lawyers to develop new skills through the exchange of ideas.

After working at William Fry for nearly a year, I secured a role at Twitter in Dublin, where I also apply my knowledge of EU law to areas such as privacy in the fast moving technology environment. And I hope to stay in Ireland for a good while.

The economic crisis in Spain has led to a high level of young unemployment, which has particularly affected the legal sector. The prevalence in Ireland of international companies, and the openness of Irish law firms in selecting internationally qualified professionals, make this country a very good launching pad for European lawyers willing to relocate.

The initiatives that the Law Society promotes play a fundamental role in this, opening up the country to new lawyers and facilitating the creation of an invaluable network of European legal professionals.

Rafael Marti

As a graduate of business and law from the Complutense University of Madrid, I qualified as a lawyer in my native Spain. Upon joining the Bar, I began my legal career in a private firm specialising in banking, when I became aware of the Leonardo Da Vinci Programme. In short, the Madrid Bar Association, along with a number of other law societies across Europe, promote this scholarship, which consists of providing a three-month placement in one of a number of leading law firm across the EU. The main goal of the programme is to help people gain new skills, knowledge and qualifications, while boosting the overall competitiveness of the European labour market.

I viewed the scheme as an opportunity to familiarise myself with how commercial law firms conduct their business in different jurisdictions, referring more to the legal particularities of the common law system and less to the 'siesta lunch breaks' that some Spanish lawyers enjoy!

I was delighted to learn that I was awarded a place on this programme. Upon completion of a one-month course on common law at the Madrid Bar, I was lucky to get a placement with Arthur Cox.

The process of adapting to a new country always takes time but, climate factors aside (where I come from, we enjoy each of the four seasons in turn; in Ireland, one can enjoy them all in one day!), Eva Massa from the Law Society and Martin Cooney from Arthur Cox, above all, were key in making things run smoothly.

Also, I must say that as soon as one sets foot in Ireland, one quickly gets to appreciate first hand how well accustomed the country is to receiving foreigners and at no point did I feel out of place.

In addition to the warm welcome I received from everyone I met, the variety of social activities promoted by both the Law Society and the firm allowed me to broaden my social and work network.

As mentioned above, the programme started with an induction course on common law jurisdictions, complemented by explanatory lectures about Irish culture. However, I have found that the best education can often be received in the local pub, and not in the lecture hall. During the placement in Arthur Cox, the tasks I was given were both engaging and challenging. They ranged from researching various topics and analysing documentation, to attending court, client meetings and alternative dispute resolution proceedings. Throughout these tasks, each participant acquired a unique insight into the inner workings of a leading Irish law firm and a good grasp of how issues are dealt with by them, thus expanding our knowledge of this jurisdiction.

From the very beginning, the team I was working with – the Construction and Engineering Department – showed great patience in training me in. They were always keen to explain the intricacies of the work they were involved in and to answer any

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:

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- Service Charge

Minimum numbers of 20 people apply
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Blackhall Place

questions I had, which, as one can imagine, were quite a few.

Overall, if I was to highlight the main pros and cons of the programme, the former would be the enhancement of one's professional horizons, as was proven later on, and the latter would be its brevity. However, in the run up to the completion of the programme, when concerns arose as to what to do next, I was given the opportunity to remain on in the firm. I was tasked with assisting on a major commercial case the team was working on. I regard this chance as a turning point in my professional career, which left me a strong sense of achievement in having been able to make a meaningful contribution to the firm. During the interview stages of the scholarship selection process, candidates were advised that none of the former participants had remained in their firms beyond the length of the scholarship. This was somehow discouraging at that time, but gave me a strong sense of fulfilment when the door was opened for me.

Fortunately, when my contract ended with Arthur Cox, I secured a position in William Fry, where I worked under the supervision of Cormac Little, partner and head of the Competition and Regulation Department.

These positions provided me with a unique insight into the inner workings of two of the major law firms in the country. Also, I consider them important stepping stones that have led me to the position I currently hold. A few months ago, I started working as an in-house attorney for the IBM's European Legal Resource Centre in Dublin. The centre provides comprehensive contract and commercial legal advice and support to IBM business professionals and attorneys across the region, working closely and effectively with other members of the IBM Legal Department around the world.

On a personal note, after over a year living and working in Ireland, I have realised that as time goes by, the feeling of living in a foreign country lessens, whereas the ties I have made with certain people I have met along the way grow stronger. Regardless of what my future on this island holds, it is the friendships and relationships that I have made here that have been the most rewarding gifts from this experience.

Recent developments in European law

CIVIL LIABILITY

Case C-438/12, *Irmengard Weber v Mechthilde Weber*, 2 April 2014

The case concerned a dispute between two co-owners of a property in Munich. One of the co-owners exercised her right of pre-emption over the other co-owner's share. She sought an order requiring the other co-owner to authorise the registration of the transfer of ownership in the Land Register. A dispute concerning the right of pre-emption was already pending before a court in Milan. The buyer to whom the other co-owner wished to sell her share sued both co-owners before the Italian courts, seeking a declaration that the exercise of the right of pre-emption is invalid and that the contract concluded for the share of the property at issue is valid. The German court asked whether it should decline jurisdiction on the basis of these Italian proceedings.

Article 22 of the *Brussels I Regulation* provides for exclusive jurisdiction in proceedings that have as their object rights *in rem* in immoveable property for the courts of the member state in which the property is situated. The courts of the place where the property is located are best placed to ascertain the facts satisfactorily and to apply the rules and practices that are generally those of the state in which the property is situated. Article 22 covers actions seeking a declaration that the exercise of a right of pre-emption attaching to property, which produces effects with respect to all the parties, is invalid. Article 27 provides that, where proceedings involving the same cause of action and between the same parties are brought in the courts of different member states, any court other than the court first seised must stay its proceedings until such time as the jurisdiction of the court first seised is established. The referring court wished to know whether that rule also applies where the *Brussels I Regulation* itself attributes exclusive jurisdiction to the court second seised.

The court held that the court having exclusive jurisdiction is not required either to stay its proceedings or decline jurisdiction in favour of the court first seised, but must give a ruling on the substance of the action before it. A judgment given by the court first seised that fails to take account of the exclusive jurisdiction of the court second seised cannot be recognised in the member state of the court second seised. To apply article 27 to such a situation would not correspond to the requirement for the sound administration of justice.

professional notices

WILLS

Brennan, Elizabeth (deceased), late of Rathnure House, Rathnure, Co Wexford. Would any person having knowledge of any will made by the above-named deceased, who died on 16 April 2013, please contact AB Jordan, Solicitors, College Street, Carlow; tel: 059 914 2157, email: solicitors@abjordan.ie

Canavan, Maura (deceased), late of 134 Bloomfield Park, Bloomfield Avenue, Donnybrook, Dublin 4. Would any person having knowledge of a will executed by the above-named deceased, who died on 17 April 2014, please contact Chambers & Company, Solicitors, Parliament Street, Ennistymon, Co Clare; tel: 065 707 1150, fax: 065 707 1384, email: chambers@securemail.ie

Crowley, Mary (née Jennings) (deceased), late of 'The Sun House', Myrtleville, Co Cork, and formerly of 'Pine Lodge', Myrtleville, Co Cork, who passed away on 4 March 2014. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Jeremy Crowley, St Patrick's, Myrtleville, Co Cork; tel 087 819 7820, email: jeremycrowley1@eircom.net

Curtin, Carmel (otherwise Carmel Curtin-Baddiley) (deceased), late of Glenhelen, 53 Beaumont Drive, Ballintemple, Co Cork, who died on 9 February 2013. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact John O Lee & Co, Solicitors, 30/31 South Mall, Cork; tel: 021 427 0588, fax: 021 427 2975, email: info@johnolee.com

Leahy, Philip (deceased), late of Castleblagh, Ballyhooley, Co Cork, who died 6 April 2014. Would any person having any knowledge of the whereabouts of any will executed by the said deceased please contact Jeremiah Healy, solicitor, Healy Crowley & Company, Solicitors, 9 O'Rahilly Row, Fermoy, Co Cork; tel: 025 32066, email: info@healycrowleysolrs.com

Mullins, Eleanor (deceased), late of 136 High Meadows, Gouldavoher, Limerick, and 88 Sean Tracey Park, Carrick-on-Suir, Co Tipperary. Would any person having knowledge of any will made by the above-named deceased, who died on 4 April 2013, please contact Lynch Solicitors, Jervis House, Parnell Street, Clonmel, Co Tipperary; tel: 052 612 4344, email: orlagh@lynchsolicitors.ie

Murphy, Peter (deceased), late of Closelands, Ballybrittas, Portlaoise, Co Laois. Would any person having knowledge of any will made by the above-named deceased, who died on 18 March 2014, please contact Dunlea Mulpeter & Co Solicitors, 6 Strand Street, Passage West, Co Cork; DX 2076 Cork; tel: 021 486 3626, email: maggiemulpeter@gmail.com

Taaffe Noreen (deceased), late of 5 Newberry, Castlemartin Lodge, Kilcullen, Co Kildare. Would any person having knowledge of any will made by the above-named deceased, who died on 17 March 2014, please contact Morris & Co, Solicitors, Fairgreen, Naas, Co Kildare; tel: 045 866 797, fax: 045 894 655, email: info@morrissolicitors.com

Vaughan, Thomas (deceased), late of Moymore, Tulla, Co Clare, and Cappahard Lodge Nursing Home, Tulla Road, Ennis, Co Clare. Would any person having knowledge of a will made by the above-named deceased, who died on 1 May 2014, please contact Gwen Bowen of Bowen & Co, Solicitors, Pound Street, Sixmilebridge, Co Clare; tel: 061 713 767, email: gwen@legalsupportservices.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 July 2014 *Gazette*: 18 June 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*.

MISCELLANEOUS

Interested in retiring, working part time or selling your practice? Ambitious solicitor seeks established Dublin-based practice. All exit strategies, short and medium term, will be considered. Contact in the strictest confidence. **Box no 01/06/14**; email: solicitorpractice2014@gmail.com

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 lands situated on Main Street, Newbliss, Co Monaghan, now forming the substantial part of the premises and lands known as 'The Acorn Centre', Main Street, Newbliss, Co Monaghan, and in the matter of an intended application by John McQuillan and Thomas McGarvey as trustees for those entitled to the beneficial interest in the said lands

Take notice that any person having any interest in the freehold estate of the following property: all that and those the lands, formerly a plot of building ground, containing in front to the main

street in the town of Newbliss 29 feet in breadth, in the rear 22 feet or thereabouts, and in depth from front to rear 214 feet or thereabouts, be said several admeasurements more or less, situate, lying and being in the town of Newbliss, townland of Lisdarragh, in the parish of Killeevan and in the barony of Dartry and county of Monaghan, and having been prior to November 1932 in the possession of Mr SM Irwin Doherty, and having been granted by way of a building lease, dated 29 November 1932, made between Mary J Murray Kerr of Newbliss House, Newbliss; Fitzjohn Murray Irwin of Beech Hill, Monaghan, retired major in his majesty's army, both in the county of Monaghan; Mary T Holmes (married woman); Maud Wybrants Olpherts, spinster; Beatrice Wybrants Olpherts, spinster, all of Lisdarragh House, Newbliss, in the said county of Monaghan; Jane C Wybrants Olpherts of Killough in Co Down, spinster; Isabella Marron Johnson of Grasmere, Llandudno, Wales (married woman); Marie Young, Bawn, Farnbrough Park, Hampshire, England (married woman); Frances G White, Lissinisky, Nenagh, in the county of Tipperary (married woman); Franc S Brereton, Skibogue, Nenagh, in the said county of Tipperary, esquire; Thomas H Brereton of Raththurles, Nenagh, in the said county of Tipperary, esquire; and Hardman John K Brereton of Victoria, Southside Rhodesia, major, lessors of the one part, and the Reverend Thomas J Quigley, John T Finnegan, victualler, and Edward Quigley, farmer, lessees of the other part, for a term of 99 years from 1 May 1932 at a yearly rent of two pounds, eight shillings sterling, together with one shilling in the pound receivers' fees, clear of all deductions and now forming a substantial part of the premises and lands known as the 'Acorn Centre', Main Street, Newbliss, Co Monaghan.

Take notice that John McQuillan and Thomas McGarvey, as trustees for those persons entitled to the beneficial interest in the said lands, intend to submit an application to the acting county registrar for the county of Monaghan for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, John McQuillan and Thomas McGarvey intend to proceed with the application before the acting county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Monaghan for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 6 June 2014

Signed: Barry, Hickey and Henderson (solicitors for the applicants), The Diamond, Clones, Co Monaghan

ab absurdo

Simply bats over Batman

Superhero movie *The Dark Knight* became a worldwide smash in 2008, much to the annoyance of Huseyin Kalkan, the pro-Kurdish Democratic Society Party mayor of a Turkish city called Batman. Mr Kalkan attempted to sue Warner Bros for using the city's name without permission.

"There is only one Batman in the world," the mayor said (wrongly). "The American producers used the name of our city without informing us."

No one from Batman city explained at the time why it had taken so long to bring legal action. The comic book character 'Batman' first appeared in 1939, while the *Batman* TV series started in 1966. Tim Burton's Warner Bros film was released in 1989. It may have something to do with the fact that former natives of Batman (the city) are said to have encountered obstacles when attempting to register their businesses abroad.

The mayor is working on gathering evidence that he claims will show that the city of Batman predates the 1939 debut of Bob Kane's superhero in DC Comics.

As *Variety* magazine quipped: "Batman has a new adversary – Batman!"

Attack of the killer squirrel

In 2004, Marcy Meckler left a shopping centre in Skokie, Illinois, and was attacked by a squirrel. Yes, really. She later tried to sue the centre for $50,000 for both encouraging the squirrel – and for not warning customers that squirrels sometimes live outside.

Undecillion Dollar Man

A man is currently suing the City of New York for more money than actually exists on Earth, *CBS News* reports.

Anton Purisima is suing the City of New York and other defendants for $2,000,000,000,000,000,000,000,000,000,000,000 – or two undecillion dollars. The suit involves a series of events, including allegedly being bitten by a rabid dog on a city bus and a couple taking unauthorised photos of him while being treated at a local hospital. In addition to suing the city and the Metropolitan Transportation Authority, Purisima is also suing two New York hospitals, Kmart, LaGuardia Airport, a bakery and even the dog's owner, according to published reports.

The federal lawsuit claims that the pain and damages he suffered can't be measured in money and are therefore "priceless".

Get me out of here...

In 2006, Allen Heckard attempted to sue Michael Jordan and Nike for $416 million each (total $832 million) – all because he claimed that Michael Jordan looked like him.

So much so, in fact, that Heckard claimed he couldn't travel on public transport or eat in restaurants without being mistaken for Jordan – who just so happens to be 6" taller than Heckard and looks nothing like him.

When good phonebooks go bad

In 2005, Michelle Knepper had a liposuction procedure performed by a dermatologist that she picked at random from a phonebook. There were complications, so she sued the phone company for making the phonebook in the first place. She won $1.2 million from them, and her husband won an additional $375,000.

McCann + Associates

Legal Costs Accountants

McCann + Associates provides an all-inclusive, expert and confidential Legal Costs Accounting service to the Legal Profession, the Insurance Sector and State Agencies. We are a result-driven team of Legal Costs Accountants with 95 years collective experience and supported by specialised staff.

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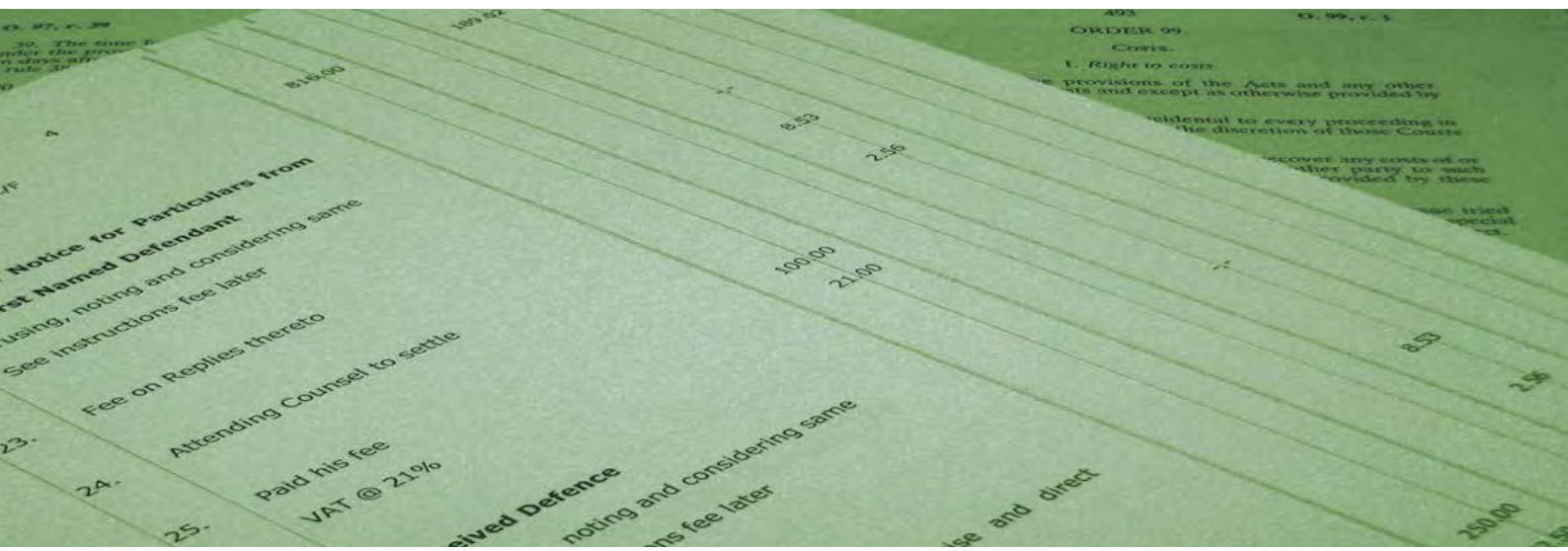

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One of Ireland's leading legal practices is searching for a Commercial Property solicitor with first rate experience. An excellent remuneration package is on offer.

Asset/Aircraft Finance – Assistant to Associate level – J00447
Rapidly expanding and progressive Dublin law firm seeking to recruit an Asset Finance/Aviation lawyer. You will have prior experience within the asset finance arena to include drafting, reviewing and negotiating leasing documentation and experience in advising on the purchase, maintenance, sale and leasing of aircrafts.

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This top flight law practice seeks a solicitor to join the Corporate team. Transactions span the corporate and commercial spectrum – from M&A, flotations and venture capital to e-commerce. You will be acting for many listed plcs, multinationals and private companies on a broad range of matters.

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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.

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Top tier firm building on its continued growth and success is seeking a high calibre insurance/reinsurance associate solicitor to work with global insurance and reinsurance companies dealing with M&A, corporate governance and regulation.

Planning/Environmental – Assistant to Associate level – J00375
This top-flight Dublin firm seeks a Planning/Environmental Lawyer to join a growing team. Duties will include provision of environmental due diligence advice on: Property; corporate and banking transactions; environmental infrastructure projects; stand-alone environmental compliance advice as well as a small amount of contentious environmental work.

Project Finance – Assistant to Associate level – J00288
This front ranking firm Dublin law firm seeks to recruit an experienced Project Finance solicitor to join the Projects Group. You will be dealing with: Transactions financed through syndicated debt; debt capital markets; securitisations; joint ventures and secondary market sales of equity interests.

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A Top 5 Dublin law firm is looking to recruit a Senior Tax Assistant with solid general tax experience to slot into a fast growing partner-led team. You will advise Irish and European clients on structuring transactions, such as complex cross-border acquisitions, real-estate investment, private equity, public offerings of debt and equity securities and joint ventures.

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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.
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