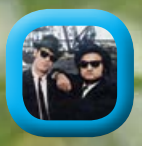
Animal crackers
Taking the *Animal Health and Welfare Act 2013* out for walkies

Without a paddle
How fares planning for your retirement pension pot of gold?



Remission impossible
Recent case law on prison remission and applying the *Prison Rules*

gazette
LAW SOCIETY

€4.00 **OCTOBER 2014**

IMA WINNER

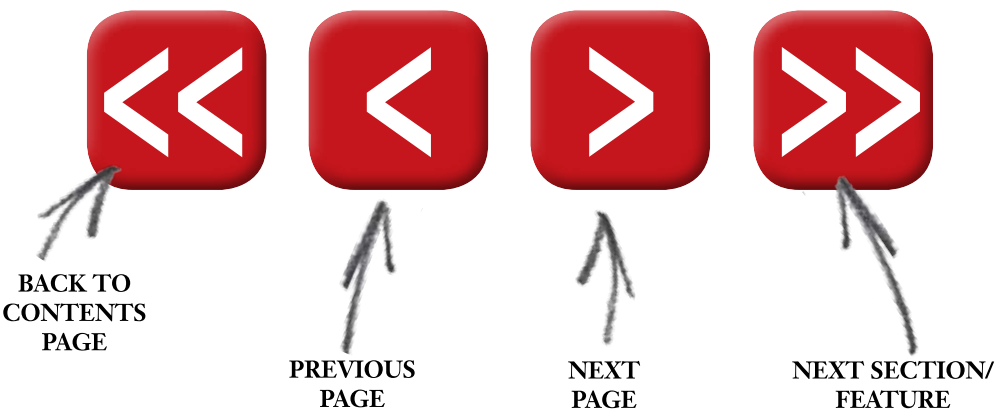
IF YOU PAY PEANUTS...

The infamous 'monkey selfie' and copyright law

10>
9 771393 695029

navigating your interactive gazette

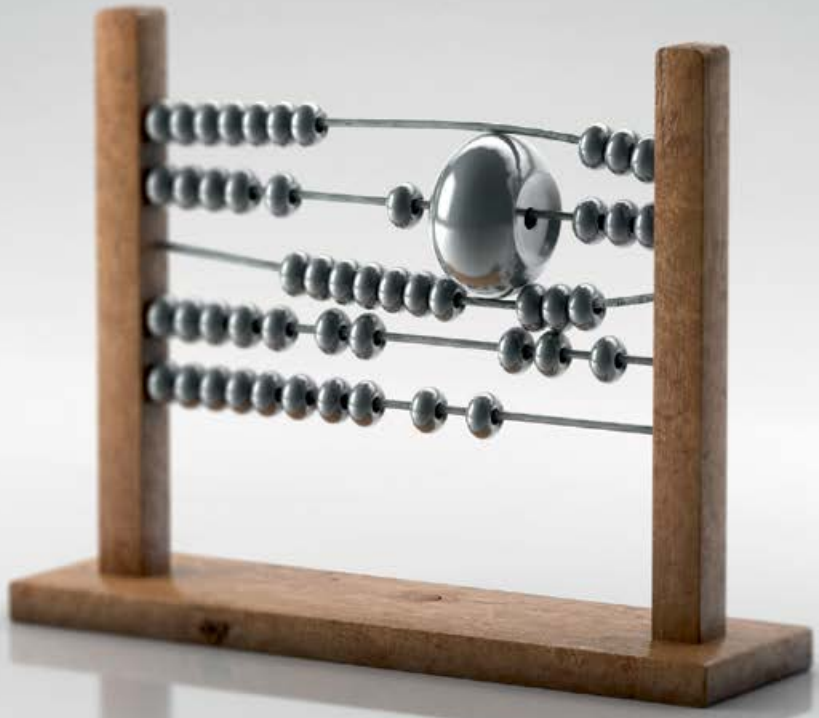
LAW SOCIETY



... enjoy

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

BIG EXPENDITURE DOESN'T HAVE TO MEAN BIG DISRUPTION.



Working Capital Finance

Large lump sum payments can stretch any small business. AIB's Insurance Premium Finance and PromptPay products lets you spread these payments over time. Find out about these and other ways We're Backing Brave.

WE'RE BACKING BRAVE

#backedbyAIB

Drop into any branch, call 1800 47 47 47 or visit www.aib.ie

WARNING: You may have to pay charges if you pay off a fixed rate loan early.

Lending criteria, terms and conditions apply. Credit facilities are subject to repayment capacity and financial status and are not available to persons under 18 years of age. Security may be required. Minimum application of €5,000 required and maximum term of 11 months. A documentation fee of €63.49 applies to all loans. This fee will be charged with the first repayment. Allied Irish Banks, p.l.c. is regulated by the Central Bank of Ireland.

A VICTORY FOR ACCESS TO JUSTICE

You will have received many bulletins and I have spoken on many occasions during the past year about the improvements we are implementing in the representational role of the Law Society.

These have included the establishment of a Department of Representation and Member Services, including communications and e-communications functions. We deliberately beefed up the research and policy side of the house in order to support better representation, with evidence-based and well-researched submissions.

The Society has been loud and clear throughout the year in its opposition to the proposed closures of the courts in Tallaght, Swords, Dun Laoghaire and Balbriggan. On 5 September this year, the Society submitted a 28-page detailed submission to the Courts Service setting out its opposition to the proposal and, in particular, pointing out the difficulty that court users would have in getting to the new proposed courts by way of public transport, the length of time it would take, and the cost in each of those cases.

The DSBA also made a significant submission to the Courts Service, as did business groups in Dun Laoghaire and elsewhere.

The Courts Service recently announced the decision not to proceed with the proposed court closures, and it is to be congratulated on having engaged in a consultation process on a report produced by its own Buildings Committee. The decision not to proceed with the plan has shown that the consultation was well-intended and genuinely had regard to the public interest.

The Society is obviously delighted with the outcome of its efforts and is particularly pleased with the strength of the report submitted to the board in a relatively short period of time. The Society fully supports the provision of proper funding for the Courts Service, so that further 'rationalisation' in other parts of the country is not provided by way of further court closures.

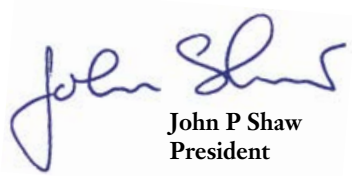
Time to call a halt

At the July Council meeting, the Society declared that it is opposed in principle to any further court closures (unless the business case, taking into account the ease of the various court users, overwhelmingly dictates that closure is necessary). The damage caused to the fabric of the courts system by further court closures would be difficult to justify in those terms.

Once again, I commend and thank the Courts Service for listening to those who made submissions to it and for its decision not to proceed with the planned closures. This undoubtedly will leave the board of the Courts Service with a difficulty in finding further savings, but further cuts should not be imposed on the courts system.

The Courts Service has already suffered a significant reduction in financial support from Government and, at this stage, it should be rewarded for its diligence and provided with the additional funding necessary to provide the system that Irish citizens need and deserve. This should include adequate funding to provide, not just the necessary courts and judges for the new Court of Appeal, but also the necessary staff, without denuding all of the other courts of their experienced, valuable staff.

The Society has always supported the establishment of the new Court of Appeal, but has always made it clear that the new court should be properly funded. This should not be at the expense of the lower courts, which provide much-needed legal services to a much broader audience than will be serviced or facilitated by the Court of Appeal. Courts services, just like any other service, should be supported from the ground up.



John P Shaw
President

LAW SOCIETY OF IRELAND

> The Law Society is opposed in principle to any further court closures wherever they may be proposed

gazette
LAW SOCIETY

cover story

features

law society gazette

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

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

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

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

Law Society Gazette
Volume 108, number 8
Subscriptions: €60/€90

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

regulars

Get more at
www.lawsociety.ie

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

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

... as well as lots of other useful information

nationwide

News from around the country

Keith Walsh is principal of Keith Walsh solicitors, where he works on civil litigation and family law cases

The Corporate and Public Lawyers' Association (CPLA) held a lunch in aid of Irish Guide Dogs for the Blind at Fire Restaurant, The Mansion House, Dublin, on 5 September 2014. Over 160 people attended the event, which is now in its eighth year. More information can be found at www.guidedogs.ie. The CPLA runs networking events and occasional lectures and seminars throughout the year

LONGFORD

Into the east and west

The recently announced engagement of Orla Coyne and Patrick Groarke was a classic case of east meeting west. Longford-based Patrick is one of the west and midland's most accomplished solicitors.

Patrick's brother Raymond is President of the Circuit Court, and his sister Lorna is a highly respected practitioner. Orla is a hugely popular Dublin solicitor.

Sources close to the couple indicated that they are planning a spring wedding in Orla's home church in Meath, with the reception venue to be decided.

We wish them a short engagement and a long and happy marriage.

DUBLIN

Saying adios to real Madrid

A total of 110 solicitors from Dublin, Cork, Donegal, Galway, Longford, Louth, Kildare, Mayo, Meath, Wexford, Waterford and Limerick converged on the capital of Spain for a series of cultural and educational events as part of the Dublin Solicitors' Bar Association annual conference, which culminated in a guided tour of Spain's Supreme Court and a conference in the offices of Uria Menendez, Spain's leading law firm.

LOUTH

Water off a duck's back

Dundalk's Conor MacGuill did not shirk the opportunity to undergo the recent ice-bucket-challenge craze and commented: "I'm down in the District Court most days, so pouring a bucket of icy water over me is, if you'll forgive the pun, 'water off a duck's back'!"

MacGuill went on to nominate, among others, Limerick man and Dublin solicitor John 'Spanner' O'Malley to take the challenge. Spanner was allegedly hiding in Kilkee, Co Clare, with half of Limerick, and could not be reached for comment when his office was contacted by 'Nationwide'. We look forward to publishing details of his ice-bucket challenge in the November *Gazette*, and maybe even a photo.

MEATH

Get CPD fit and trim

The Meath Solicitors' Bar Association held a CPD event on 10 September in Trim Castle Hotel. Stephen Fitzpatrick and Marguerite Bolger SC updated practitioners on legal costs and employment law.

On 31 October, Medico Legal Chambers will address the association on medical negligence. In November, Paul Finnegan BL will update members on residential leases. To book, contact Elaine Byrne, Regan McEntee & Partners; tel: 046 943 1202, email: ebyrne@reganmcentee.ie.

The association held its annual County Registrar's Golf and Presentation Dinner on 19 September at the Knightsbrook Hotel, Trim. Presentations were made to Judge G Malone, Judge S Noonan, Judge M O'Malley, retired Judge P McMahon, Mairead Ahern (county registrar) and James Cummins (retired court official).

MAYO

Great run for Mayo's president

Charlie Kilmartin, president of the Mayo Solicitors' Bar Association, is shortly to hand over the reins of power to his colleague from Swinford, Brendan Donnellan of FG Phelan & Co. Charlie, who practises law in Kiltimagh with his wife Sandra Murphy (a Ballinrobe native and daughter of the well-known former county registrar Patsy Murphy), was a hugely popular president and brought the house down at the annual ball in December with an unforgettable shopping list from himself and his Mayo colleagues for Santa.

The event was tinged with sadness, as Evan O'Dwyer spoke movingly about the last days of some of the Mayo District Courts, like Kiltimagh and Ballyhaunis, which had closed and are unlikely to reopen. Charlie and his wife Sandra represented Mayo with distinction and good humour wherever they travelled. We wish them, and the incoming president, well.

GALWAY

City of Tribes and CPD

The CPD committee of the Galway Solicitors' Bar Association is preparing four seminars in October and November, providing 15 hours of CPD. Separately, a medical negligence seminar will be held at 2pm on Friday 14 November at Galway Courthouse. If you have a topic that you would like the GSBA to include in future CPD seminars, please email James at jamesseymour@berwick.ie.

representation

News from the Society's committees and task forces

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

New panel of arbitrators constituted

Practitioners will know that the Law Society maintains a panel of arbitrators, who are approved to be appointed by the president of the Law Society, to act as arbitrator in disputes when the president is requested to do so, *writes David Phelan (Hayes Solicitors)*.

Earlier this year, a new panel was constituted by the Alternative Dispute Resolution Committee. The new panel includes a number of solicitor arbitrators, together with chartered surveyors, engineers, architects and barristers.

Applications were made on foot of guidelines for membership of the new panel of arbitrators published by the committee. All applicants were required, among other things, to furnish two recent awards made by them (redacted as necessary to preserve confidentiality) identifying their qualifications and areas of speciality, details of arbitrations dealt with by them as arbitrator in the previous few years, and other information. An interviewing process then ensued, resulting in the constitution of the new panel.

For any person who is not on the new panel and would be interested in making application to be admitted to it, the *Guidelines for Membership* of the new panel are available from the Law Society's website, together with the application form for admission to the panel.

For practitioners generally, consideration should be given to arbitration (along with other forms of alternative dispute resolution) when a dispute arises. Arbitration can be a lower cost, private alternative to court proceedings. Even before that though, if you are advising your client on the drafting of an agreement, consideration should be given to inserting a clause in the agreement providing for the appointment of an arbitrator in the event of a dispute and providing for arbitration as a means of resolving the dispute. A recommended arbitration clause is available from the Law Society's website for insertion in agreements. It provides that all disputes under the agreement shall be decided by an arbitrator agreed by the parties or, in default of agreement, appointed by the president of the Law Society.

Practitioners should note that the application form seeking appointment of an arbitrator by the president is also available from the members' section of the Law Society's website.

IN-HOUSE AND PUBLIC SECTOR COMMITTEE

Focus group meeting on the in-house sector

Earlier this year, the In-house and Public Sector Committee hosted a successful focus group meeting with a representative group of solicitors. The group was chosen with the aim of gathering together a mix of profiles from different public and private organisations that could offer their views and comments on opportunities and challenges facing the in-house sector as a whole.

Some of the topics that came up for discussion included the need to ensure that both employer and solicitor have a clear understanding of the in-house solicitor's role at the outset of the employment relationship, the importance of managing and prioritising time in an in-house role (and knowing how to push back against unreasonable requests), and the importance of concentrating on the value-added legal work in order to ensure payback to the employer.

Other topics included to what extent in-house solicitors should become involved in advising on strategic and business decisions, and whether it was ever appropriate that an in-house solicitor should take a seat on the company's board.

As a result of the meeting, the committee is better informed on the areas where it can provide support and guidance. It intends to tailor future seminars, events and articles to cover the topics that generated the most debate.

It continues to welcome suggestions on how it can support and assist all in-house solicitors in their work and would like to know what practical guidance and resources that members wish the committee to provide. Please email any suggestions or recommendations to Louise Campbell (committee secretary) at l.campbell@lawsociety.ie.

HUMAN RIGHTS COMMITTEE

'Criminal Justice and Human Rights in Ireland' – 2014 conference

The 2014 Human Rights Conference will take place on Saturday 11 October at the Law Society's headquarters at Blackhall Place, Dublin 7.

The conference will examine recent criminal justice developments in the light of Irish human rights law. Topics will include police accountability and possible reform, the broader social issues affecting Irish prisons and penal policy, the Irish prison system, and related human rights issues. Speakers will include Minister for Justice Frances Fitzgerald, Dr Vicky Conway (senior lecturer in law, University of Kent), Conor Brady (former member of the Garda Síochána Ombudsman Commission), Fr Peter McVerry (Peter McVerry Trust) and Michael Donnellan (director general, Irish Prison Service).

There is no registration fee for this event and four CPD hours (by group study) are available. For further details and to book a place, see www.lawsociety.ie/Courses--Events/cpd/.

- The Human Rights Committee congratulates the winners of the Human Rights Essay Prize 2014. Rosemary Heneghan was awarded first place for her essay 'Climate change and the *Immigration, Residence and Protection Bill 2010* – a protection gap for the environmentally displaced?' Gerard Sadlier was awarded second place for his essay 'In the room at last? – the right of the accused to have a solicitor present during police interrogation: after *Salduz* and *Gormley*'.

The committee extends its thanks to all those who took the time to enter.

gazette
LAW SOCIETY

www.gazette.ie

BONUS DIGITAL FEATURES WITH YOUR ONLINE GAZETTE

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

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

Papers served on respondent via LinkedIn

The High Court has approved an order to allow a liquidator to serve a person connected with a liquidated firm with papers via the social media site LinkedIn.

Ms Justice Bronagh O'Hanlon gave the go-ahead to serve papers on a person connected with the Irish Education and Research Institute, which also traded as the Irish Business School.

Accountancy firm PFK O'Connor, Leddy and Holmes, which had been appointed as liquidators of the company, could not contact the respondent in person, by email, fax or postal address. LinkedIn was the only sure form of contact left available. The accountancy firm put the circumstances on affidavit and asked for an order allowing it to serve papers through the relevant LinkedIn page.

The liquidator had to prove to Ms Justice O'Hanlon that a mechanism existed on LinkedIn to show that the person being sought had seen the notice. Technology available on social media sites indicates whether a message has been seen and read, thus proving that a document has been delivered successfully. The judge also needed to know that the account was active. Once satisfied on both counts, she made the order allowing the papers to be served via LinkedIn. This was done by sending the person a message with the details of the case, and a link to the URL where the papers were served.

This is the second case in Ireland where a judge has granted approval to serve proceedings by social media. In 2012, in *Daly v Lynch*, Mr Justice Michael Peart allowed for an order to be served using Facebook (see the May 2012 *Gazette*, p5).

New data protection commissioner appointed

The Government has appointed Helen Dixon as the new data protection commissioner. She succeeds Billy Hawkes and took up her appointment on 23 September.

Ms Dixon has worked in both the public and private sectors. She was appointed registrar of companies in December 2009, having previously held senior management positions in the Department of Jobs, Enterprise and Innovation. During an 11-year period, she served in two US IT multinationals.

She holds an honours degree in applied languages (French/German), a master's in European economic and public affairs, a postgraduate diploma in computer science and, more recently, a masters in governance from Queen's University Belfast. She was appointed an honorary fellow of the Institute of Chartered Secretaries and Administrators in 2014.

Glackin appointed Leinster Rugby president

Commercial lawyer John Glackin has been appointed as Leinster Rugby president for 2014/15. John is a partner and consultant with Arthur Cox. He is a UCD law graduate and qualified in 1972.

Prior to joining Arthur Cox, John was a partner with Gerrard, Scallan and O'Brien for 30 years, where he was head of the commercial law department and served as managing partner for many years.

The Annual Human Rights Conference

The Annual Human Rights Conference will take place on Saturday 11 October 2014 at the Law Society's headquarters at Blackhall Place, Dublin 7. The theme of this year's conference is 'Criminal Justice and Human Rights in Ireland'.

The conference, now in its 12th year, is a collaborative event organised by the Irish Human Rights Commission and the Law Society's Human Rights Committee, in partnership with Law Society Professional Training.

Further details, including the list of speakers, times and registration information, are available at www.lawsociety.ie (see 'Representation', p5).

Setanta's demise – a salutary lesson in insurer stability

The demise of Setanta Insurance is a salutary lesson for all insurance consumers, especially solicitors, *writes Stuart Gilhooly (chairman of the Law Society's Professional Indemnity Insurance Committee)*.

In Irish mythology, Setanta is the hero. He grows up to become the fantastical, mythical Cúchulainn, who can do no wrong and slays all before him. Setanta Insurance, which no doubt took its name from the boyhood warrior, has a slightly less glorious history.

Operating out of Malta, this unrated insurer went into liquidation in April this year, leaving approximately 2,000 claims uninsured. Many more found themselves without insurance and had to purchase new insurance on the open market.

These uninsured claims should still find recourse in the Motor Insurers' Bureau of Ireland, though this body has steadfastly refused to meet any of these claims. The silence from the Insurance Compensation Fund has been deafening. Several judgments have been obtained directly against former Setanta policyholders, and currently there are no takers to satisfy them. It's likely that one of these unsatisfied judgments will result in litigation against a number of defendants, and the Motor Insurers' Bureau is likely to have a difficult time explaining its stance to a court – but until this takes place, claimants and policyholders alike are in limbo.

If there was ever a salutary lesson about the importance of establishing the potential stability of your insurer, this is it. Many solicitors when purchasing professional indemnity insurance over the last two years have taken the understandable position that price is everything.

In a challenging operating environment, every cent counts and, for many firms, simply affording the premium at all was a relief and cause for celebration. However, it can be a false economy.

Unrated insurers – beware the consequences of insurers going bust

It would appear that, despite unprecedented levels of reporting of the issue in the run-up to last year's renewal, almost exactly the same percentage of firms (approximately 33%) chose to purchase from an unrated insurer.

This is, of course, the prerogative of the insured, and we all know that having a rating doesn't guarantee solvency. It is also apparent, though (following exhaustive examination and consultation on this very issue in England and Wales), that having no rating greatly increases the likelihood that an insurer will not remain solvent.

While the Solicitors Regulation Authority in England and Wales considered and ultimately rejected (for now) the possibility of introducing a minimum rating for PII insurers, they remain deeply concerned at the prevalence there of insurance companies without rating.

It is not the function of the PII Committee to advise solicitors as to which insurers they should use. We deliberately favour a free market at the present time, and all firms should feel that they have an independent choice. However, it is our job to provide all the information possible and advise of the consequences of an insurer going bust.

In a nutshell, if this happens during an insurance year, a new insurance policy will have to be sought and it will inevitably be extremely expensive for obvious economic reasons. If a firm insured with such a company has an outstanding claim, it will not be covered in full, but rather up to a maximum of 65% or €850,000 (whichever is the lower), if accepted by the Insurance Compensation Fund.

There will be no Motor Insurers' Bureau to pursue, and the trauma of dealing with the ensuing mess may be worse than any renewal period in the past.

They are the facts. You are free to do with them as you please. But don't say we didn't warn you!

Correspondence with gardaí in the Dublin region

The senior management of An Garda Síochána has asked that all correspondence with Dublin Metropolitan Region garda stations be forwarded to the superintendent's office in each garda station, with the letter marked for the attention of the particular garda. It will, in turn, be forwarded for the attention of that garda. In the event that the garda is on sick leave or is not scheduled to be on duty, the correspondence can be dealt with by the superintendent's office.

Society welcomes eleventh-hour courts closure U-turn

The Law Society has welcomed the announcement that the proposed closure of four court venues – Swords, Dun Laoghaire, Balbriggan and Tallaght – will not now go ahead. The Society was strongly opposed to the Courts Service's proposals to close these busy courts, *writes Mark McDermott*.

The Courts Service proposals also included concentrating all *Road Traffic Act* cases for Dublin city and county (with a population of 1.27 million people) in a court building in Blanchardstown.

The U-turn announcement was described by Fergal Keane on RTÉ Radio 1's *Drivetime* programme as "more or less complete victory here in Dublin" for the Law Society's campaign.

Interviewed by Keane for *Drivetime* on 22 September, the Law Society's director general Ken Murphy explained why the Society had been so vehemently opposed to the plans: "The populations that would have been affected by these court closures in Dun Laoghaire, Tallaght, Swords and Balbriggan were vast. They are of a completely different order from any population numbers affected by court closures previously. We thought that the public-interest case against these closures in Dublin was overwhelming. There seemed to be a focus in the Courts Service proposal on the cost of local justice rather than on the value of it."

Fergal Keane: 'More or less complete victory here in Dublin' for the Law Society's campaign

Ken Murphy: 'The public-interest case against these closures in Dublin was overwhelming'

George Hook: 'Courts closure proposals were bizarre, grotesque, unbelievable'

Other implications

There were other implications too, he added, in the proposal to concentrate all *Road Traffic Act* cases for Dublin city and county in Blanchardstown. Garda stations are close to their current court venues, meaning that gardaí don't need to take significant time off in order to attend court to give evidence.

"If they were required to go all the way to the city centre and out to Blanchardstown," Murphy argued, "this would lead to gardaí spending significantly greater time outside of their operational areas, with potential consequences on policing in those areas. Those are the kind of things that weren't taken into account."

Asked by Fergal Keane how many road traffic cases might be involved, the director general responded: "We are talking about many thousands of cases. Blanchardstown is not the easiest place to get to from many parts of the city.

"The Law Society provided calculations in our submission to the Courts Service, examining the time and cost involved of travelling from various parts of the city to Blanchardstown. Ironically, there isn't even dedicated parking for the Blanchardstown Court for court users. People would have been using the shopping-centre car park – how tolerant would the shopping centre have been towards that idea? This is the kind of thing that seemed to us, frankly, to be bonkers and made no good sense. We are delighted that the kind of arguments we made have prevailed."

Echoes of GUBU

On Newstalk's *The Right Hook* the same day, presenter George Hook wasn't holding back: "A number of weeks ago, when we talked about [this issue], I thought it was bizarre, grotesque, unbelievable." Why had the Courts Service persisted with progressing the closure of these courts till the eleventh hour, he wondered.

Murphy responded by saying that it had been "extraordinary" that the proposals had been allowed to proceed for so long.

Asked about court closures in other parts of the country, he said that there had been 77 court venue closures since 2008 – "an enormous number of courthouses".

"Now, the Law Society isn't proposing that all of those should have remained open; I think many of them, in terms of the throughput of business, were really quite small."

But too many venues had now been closed, he stated, which had caused significant damage to the fabric of the justice system. The entire process of closing court venues across the country had been reminiscent of the closure of garda stations, post offices and services in rural Ireland generally.

"The Law Society believes that the rationalisation has ceased to be rational," he said. "In principle, the Law Society is now opposed – in the interest of local access to justice – to further closures wherever they may be proposed. Don't forget that there are still proposals in relation to court closures in Tipperary and West Cork, specifically Skibbereen."

The director general used the opportunity to raise a 'bigger-picture issue' – the Government's funding of the justice system – an issue that the Society's president and director general had raised face-to-face with Justice Minister Frances Fitzgerald: "We've had major debates in Ireland in relation to cutbacks in health, in social welfare and education. We have not had discussions and debates on cutbacks in the justice system. Maybe they will begin now."

FOCUS ON MEMBER SERVICES

Elavon Merchant Services

Members of the Law Society enjoy many benefits, most of which are well known, such as the *Gazette* or the members' section of the website, *writes Sinead Travers*. However, many member benefits are less well known. This new regular *Gazette* column will try to remedy that by shining a spotlight on a single Law Society member service in each issue.

Members can also access the online *Support Services Directory* at www.lawsociety.ie/Documents/Support_services/SupportServicesDirectory.pdf

To kick things off, the focus is on Elavon Merchant Services. With 'eDay' having passed on 19 September 2014, now is an excellent time to remind our members of the preferential rates that the Law Society has worked out for credit/debit card terminals with Elavon Merchant Services.

Elavon has several options and packages available for solicitors. Some of these include a mobile card terminal that can be operated away from the office, for example when in court. Terminal rentals start from €18 per month. Free engineer installation of your terminal and training on the day is provided.

Increasingly, firms are finding that many clients are requesting to pay for services by card rather than cash. Firms have found that having a payment-by-card option has saved them time and money in chasing payment and dealing entirely with cash and cheques. Whether you already offer card facilities or are considering this option, it is important that you get the best package and price to suit your firm.

Elavon can be contacted by tel: 1800 995 085, email: sales@elavon.com, or visit, www.elavon.ie. When making an enquiry, ask for the Law Society's preferential rates.

Just a swipe away...

Lucky 13 for HLJ!

Editor Eltin Ryle and Mr Justice Michael Peart at the launch

The launch of volume 13 of the *Hibernian Law Journal* took place at the Law Society's headquarters at Blackhall Place on 2 July 2014. Mr Justice Michael Peart, who contributed the foreword, was on hand to officially launch the publication, along with Eltin Ryle, editor-in-chief of the editorial board for volume 13.

Articles for publication in the 2015 edition are welcome and should be sent to TP Kennedy, Editorial Committee, *Hibernian Law Journal*, Law School, Law Society of Ireland, Blackhall Place, Dublin 7. Alternatively, authors can send their submissions by email to editor@hibernianlawjournal.com. The deadline for submissions is 31 October 2014.

A man of the PEOPIL

Solicitor Liam Moloney has been elected as Ireland's representative to the board of PEOPIL. Mr Moloney is the managing partner of Moloney & Co Solicitors, based in Naas, Co Kildare. He specialises in personal injury and medical negligence cases.

PEOPIL is a Europe-wide organisation for personal injury lawyers, which lobbies the European Parliament and commission to improve cross-border access to justice for injury victims.

Commenting on his election at the AGM in Vienna on 12 September 2014, Liam said that the impact of EU legislation on personal injury law was growing steadily. This created a greater need for knowledge of European legislation and a basic understanding of the legislation applying to personal injury matters across the member states.

"There are currently many decisions being made by the European courts that directly affect Irish citizens, in particular in cross-border accident cases," he said. "It is often very difficult for Irish solicitors to source good personal injury lawyers abroad, but our group has an established network in over 44 countries."

Bar Council names new director

New Director of the Bar Council of Ireland, Ciara Murphy

Ciara Murphy, previously Director General of the Society of Chartered Surveyors of Ireland (SCSI), has been named as the next Director of the Bar Council of Ireland.

Ms Murphy will succeed Jerry Carroll, who is retiring from this position later in the year. The announcement was made by the Chairman of the Bar Council, David Barniville.

Mr Barniville paid tribute to Mr Carroll, who has held the position of Director of the Bar Council for 17 years: "The Bar Council, its staff and every member of the Law Library owe an enormous debt of gratitude to Jerry Carroll, who has guided and directed us as an organisation with great skill, diligence and integrity for many years.

"We wish him, his wife Mary and his family the very best in his well-earned retirement, but are delighted that he has agreed to continue to provide assistance to us in the future in a consultancy role."

Ciara Murphy has served with the SCSI for seven years, prior to which she was Chief Executive Officer of the Irish Dental Association.

Make it prompt!

APP: Teleprompt+3 **PRICE:** € 21.99

A couple of years ago, I attended the legendary Monaghan Bar Association CPD day at which the keynote speaker was Mr Justice Peter Kelly, *writes Dorothy Walsh*. He said he would speak for 45 minutes, and I timed him to see if his precision extended from his court to the outside world. It did!

I was reminded of it lately, having been involved in lecturing on employment law. Having suffered in the past from 'failing to finish on time syndrome', I began the search for an app to fix that particular problem. What I found is an incredible app called *Teleprompt+3* (at €21.99 it's a really good, paid-for app).

It is, quite literally, a teleprompt stream of the lecture you deliver, which feeds through the iPad and scrolls automatically, allowing me to move through my lecture efficiently. You write your lecture up on iPad in *Pages* and save it to *Dropbox*. I find that writing it up in *Pages* is more natural than writing it directly into *Teleprompt*.

I import the speech from *Dropbox* to the *Teleprompt* app, where you then open it to commence the work of editing the lecture. Generally, what I do is edit the speech by reading through it and adding in emphasis by way of rich text (just as you would add emphasis in italics or bold if you had a speech in front of you on paper or on screen). This allows me to see where pauses need to be added, inflection in tone, where I am specifically quoting a reference, and so on.

I then go back to the start and add in my timer. If I am asked to speak for 45 minutes, I add that time to the lecture in the app and it will, quite literally, apply that timing to the lecture. This means that when I play the lecture, it will scroll down on the screen at a speed appropriate to the time I have allocated. It allows me to make my lecture content as concise as possible, making sure that I cover all of the important information.

It's a great app, too, for when a question is thrown up during a lecture or a comment is made, or an interruption occurs – a simple tap on the screen pauses the lecture, while another tap starts it again.

The features I thought I would dislike in the app have become the elements that I love about it. For instance, the camera feature allows you to film your proposed lecture and see how it looks and sounds to an audience. The 'quick edit' feature allows a second person on another device (which is synchronised to your device) to edit the lecture as you go along, which automatically synchronises to the speech that is scrolling in front of you.

You can project your lecture onto a screen for your audience to read with you – minus the rich text, amendments and cues – so that your audience gets to see a tidy, clean version of your lecture as they listen to you deliver it. You can also use your iPhone as a remote control to manage the lecture feed's pauses, among other things.

It's an app I love using because it allows me to deliver a well-timed, precise and professional lecture. I have yet to make use of the click onscreen to 'pause for laughter', but I'm told that nothing – not even this app – will help me deliver a decent joke, so I'm unlikely to be using that particular feature any time soon...

gala dinners @ Blackhall Place

Sophisticated, elegant and glamorous, The Law Society at Blackhall place is a unique venue for your gala dinner.

Whether it's a corporate event, a product launch or an awards ceremony, our events team here at Blackhall can facilitate your every need. Our services are designed to allow you to choose how best we can help to stage your event from conception to completion.

For further details contact our Events Team on (01) 672 4918 or email: events@lawsociety.ie

Blackhall Place
Headquarters of the Law Society of Ireland

Law Society shares best-practice training with Europe

On 26 and 27 June, the European Commission held a workshop entitled 'Building upon good practices in European judicial training'. This event was a follow-up to a commission communication on building trust in EU-wide justice and the stated objective of delivering high-quality training to legal practitioners by 2020.

Attracta O'Regan (head of Law Society Professional Training) and Eva Massa (course manager and information officer to the CCBE) travelled to Brussels at the invitation of the commission to share the Law Society's best practices in training solicitors, both at pre- and post-qualification levels.

Sharing best practice in training at the EU Commission in Brussels were *(l to r)*: Marta Isern Busqets (subdirectora general, Illustre Collegi d'Advocats de Barcelona), Eva Massa and Attracta O'Regan (both of the Law Society)

The workshop was a unique opportunity for training providers to exchange ideas on the organisation, implementation and evaluation of training across Europe – and to discover potential partners for the further development of legal training, including new funding possibilities.

Reform of consumer contract law: consultation process

The Government has published a consultation paper on proposed legislation to consolidate the law on consumer contract rights. The department's view is that, although the legislation gives consumers effective protections in many areas, it is deficient and disjointed in a number of important respects. These include:

- The rights and remedies of consumers in respect of the quality and other aspects of goods they purchase are regulated by two separate, and not always consistent, sets of statutory provisions – the *Sale of Goods Acts 1893 and 1980* and the *European Union (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003* – while the rights of consumers in relation to the quality and other aspects of goods supplied under hire purchase and hire agreements are regulated by separate rules in the *Consumer Credit Act 1995*.
- The statutory rules on the supply of services are silent on key issues such as the remedies for services supplied in breach of these rules. While digital content supplied in tangible form is subject to the rights and remedies in the *Sale of Goods Acts*, digital content supplied – as is now mainly the case – in intangible form through downloads, streaming, or other means is not subject to similar statutory regulation.

Legislative deficiencies

The Sales Law Review Group has recommended the enactment of a comprehensive *Consumer Rights Act* that would bring together, in an accessible way, the main statutory provisions applicable to consumer contract rights.

The main features and specific issues on which views are sought are:

- The objectives and scope of the proposed legislation,
- Consumer rights and remedies in contracts for the sale of goods,
- Consumer rights and remedies in non-sale contracts for the supply of goods,
- Consumer rights and remedies in contracts for the supply of digital content,
- Consumer rights and remedies in contracts for the supply of services, and
- Unfair terms and exclusion clauses in consumer contracts, whether sales, digital content or service contracts.

The department states that, while it is committed to introducing a *Consumer Rights Bill* along the lines outlined in the paper, the specific aspects of the legislative proposals are subject to review in the light of the responses.

Responses should be emailed by 20 October to conspol@djei.ie, or by post to Competition and Consumer Policy Section, Department of Jobs, Enterprise and Innovation, Earlsfort Centre, Lower Hatch Street, Dublin 2.

What's in a name?

Northside Community Law Centre has a new name – Community Law and Mediation. Members decided on the name change in order to more accurately reflect the expanded range of services it offers, including free legal advice, mediation and information services, as well as advocacy and support for law reform campaigns at national level.

In existence for 39 years, the law centre will continue to provide the same services, including two community law centres in Dublin's Northside and Limerick, and a range of national services concentrating on mediation, law reform, community education, and resources, such as the *Irish Community Development Law Journal* and the social welfare decision database *Casebase*. For further information on Community Law and Mediation, visit its new website, www.communitylawandmediation.ie.

GALWAY SOLICITORS' BAR ASSOCIATION

PIC: JOE TRAVERS PHOTOGRAPHY

The City of the Tribes hosted Law Society President John Shaw and director general Ken Murphy on 20 June 2014. David Higgins and Galway Bar President James Seymour organised the business meeting on behalf of the Galway Solicitors' Bar Association and were very pleased with the turnout

SOLICITORS' BENEVOLENT ASSOCIATION

PIC: LENSMEN PHOTOGRAPHIC STUDIO

The 150th anniversary of the Solicitors' Benevolent Association was celebrated at a dinner in Blackhall Place on 18 July 2014. As an all-Ireland association, it was appropriate that the President of the Law Society of Northern Ireland, Richard Palmer, and some of his council members were present at the event hosted by Law Society of Ireland President John P Shaw. The event was to thank the Solicitors' Benevolent Association board members for their invaluable work on behalf of the least fortunate members of the solicitors' profession, north and south

Leman Solicitors completed their annual charity challenge this year in aid of Dublin Simon Community. Two teams battled it out over 200km of running, cycling, swimming and even oyster eating in the wilds of Connemara. The outcome? A whopping €26,000 for this worthy cause. Congratulations to all concerned

Legal English courses

Law Society Professional Training delivered its inaugural Legal English courses to lawyers from Italy, Poland and Switzerland for two weeks in July. The training concentrated on common law commercial contracts, negotiation and mediation skills training. The participants included senior bar association members and lawyer lecturers from European legal training schools. One happy participant stated: "The Law Society training exceeded my expectations and was of a higher calibre than any training I have previously attended in other European countries." The participants also enjoyed some of Dublin's culture, with visits to St Patrick's Cathedral, the National Gallery, the Jameson Distillery, the Guinness Hops Store and a visit to the Hill of Howth, not to mention the best of culinary Dublin, where fresh Irish fish and Irish butter proved to be the big hits!

Murdoch's twin love affair with Killaloe/Ballina

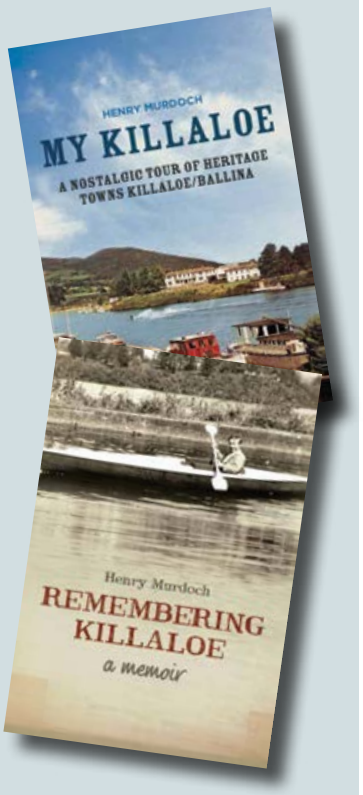
The original author of *Murdoch's Dictionary of Irish Law*, Henry Murdoch, has just published two books on his native Killaloe.

***Remembering Killaloe – A Memoir* is a 278-page book about living in the Co Clare heritage town in the 1950s and '60s, from childhood through to young adulthood. It includes 170 black-and-white photos and is priced at €19.95.**

***My Killaloe – A Nostalgic Tour* is a 172-page journey through the twin towns of Killaloe/Ballina. It identifies 100 places of interest, with 142 colour photos, plus a brief history of the area. Price: €18.95.**

The royalties from both books will go directly to the National Rehabilitation Hospital Foundation for the upkeep of its hospital in Dun Laoghaire, Co Dublin.

These books are available in all good bookshops or may be ordered online at a discount from www.theliffeypress.com or directly from David Givens (publisher), tel: 01 851 1458.



Henry was called to the Bar in 1966 and is the original author of *Murdoch's Dictionary of Irish Law*, which will celebrate its sixth edition in 2015.

New rooms mark contributions of two Law Society stalwarts

The significant contributions of two deceased members of the Law Society were celebrated at a special rooms-naming ceremony on 24 July. The event took place at the Education Centre, Blackhall Place.

The new teaching spaces in the lower-ground floor have been called after James O'Sullivan and Dominic Dowling – both of whom made substantial contributions to the Law Society's Law School while serving on the Education Committee.

The ceremony was attended by the immediate families of both men, by former colleagues, and those who served with them on various Society committees.

Immediately following the naming ceremonies, both rooms became the venues for a temporary exhibition of art works by established and younger Irish artists. More exhibitions are expected to follow later in the year.

The O'Sullivan family at the room-naming ceremony at the Education Centre in honour of James O'Sullivan


Members of the Dowling family at the room-naming ceremony in honour of Dominic Dowling on 24 July


PIC: LENSMEN

Law Society President John P Shaw organised a dinner on 11 June for teams that had represented the Society so competently at a variety of national and international competitions. The Telders team took two awards, the Society's team at *The Irish Times* Debate were overall winners, while the environmental law team reached the semi-finals. *(Front, l to r)*: Dearbhla O'Gorman (Arthur Cox) – *The Irish Times* Debate team, Sinead Martin (McCann FitzGerald) – Environmental Law Moot Court competition team, John P Shaw, Hannah Shaw (Eugene F Collins) – Telders International Law Moot Court competition, and Aoife O'Carroll (MacGuill & Co, solicitors) – Environmental Law Moot Court competition team. *(Back, l to r)*: Valerie Peart (Chair of the Education Committee), Caolán Doyle (Doyle & Co, solicitors and Shane O'Neill (McCann FitzGerald) – both Telders International Law Moot Court competition team, TP Kennedy (Director of Education, team coach for the Environmental Law Moot Court competition), Kieran O'Sullivan (McCann FitzGerald) – *The Irish Times* Debate team and Environmental Law Moot Court competition team and Eva Massa (course manager and team coach for the Telders International Law Moot Court competition)

on the move

Noel Devins has joined international law firm Kennedy's as a new partner in its expanding Dublin office. Noel is a professional indemnity litigator with over ten years' experience, advising insurers and a wide range of professionals, including: architects, engineers, surveyors, solicitors, financial advisors, brokers and valuers in relation to professional indemnity insurance claims.

Also joining from DWF Fishburns is professional indemnity specialist, Mary-Claire Coakley, whose skill in dealing with claims against solicitors extends Kennedy's strength and depth in the professional indemnity arena.

William Fry has appointed Eavan Saunders as a partner in its corporate department. Eavan has extensive corporate experience acting for financial investors, investment banks and large corporate groups. Prior to joining William Fry, she spent 14 years at Ashurst LLP, where she was a senior corporate partner.

A&L Goodbody has appointed six new partners across a number of practice areas in its Dublin, London and Belfast offices. They are Caoimhe Clarkin (commercial dispute resolution), Judith Corbett (commercial property), Richard Grey (M&A and corporate), Ronan Lyons (M&A and corporate) and Jack Sheehy (banking & finance). Claire Morrissey rejoined the firm in June as partner in the IP and technology group, having spent six years in London with another law firm. The firm has also announced the appointment of 21 new associates. *(From l to r)*: Claire Morrissey, Richard Grey, Caoimhe Clarkin, Julian Yarr, Jack Sheehy, Judith Corbett and Ronan Lyons

McCann FitzGerald has appointed four new partners – Tom Dane (banking and financial services), Catherine Derrig (dispute resolution and litigation), Megan Anne Hooper (dispute resolution and litigation) and Shane Sweeney (real estate) – bringing the total number of partners to 70. All four are based in the firm's Dublin offices. *(From l to r)*: Catherine Derrig, Shane Sweeney, John Cronin (chairman), Megan Anne Hooper and Tom Dane

Deirdre Malone has been appointed partner at Comyn Kelleher Tobin Solicitors, the Cork and Dublin-based law firm. A member of the firm's litigation department, she specialises in the defence of professional negligence proceedings and employment law. Deirdre is a CEDR accredited mediator and a member of the Law Society's Employment and Equality Committee. She lectures and tutors in employment law at the Society's education centre.

letters

Taking Injuries Board's mid-year review to task

From: John McCarthy, McCarthy & Co, 10 Ashe Street, Clonakilty, Co Cork

In its mid-year review for this, the tenth year of its operation, the Injuries Board has expressed concern about the 18,000 claims (amounting to 40% of the total 45,000 claims that materialise annually) that settle before they make their way into the board's assessment process.

The Injuries Board has given three main reasons for its concerns, as follows:

a) Unfair compensation,
b) Undue haste in settling cases, and
c) Disproportionate legal fees.

While there are very real concerns that claimants are being undercompensated by unscrupulous practices being adopted by insurance companies, as a practitioner working in this area, I feel that the Law Society needs to take the Injuries Board to task on its most recent statement, and associated press interviews, for the following reasons:

a) *Unfair compensation:* as every practitioner is well aware, even when a claim does come before the Injuries Board, the board has absolutely no role whatsoever in deciding on whether it is legitimate or dubious. As long as a respondent agrees to have the claim assessed, the board's role is strictly confined to determining the appropriate amount of compensation. As the overwhelming majority of respondents are represented by insurance companies, who are experts in assessing the merits and calculating the value of claims, it is certain that there are clear safeguards in place to ensure that false or exaggerated claims are not being entertained and that excessive compensation is not being paid out by way of early settlement to the detriment of respondents.

The only other possible way in which compensation could be considered unfair is if claimants are receiving less than their full entitlement due to their lack of legal experience and knowledge. The bitter irony in this is that the Injuries Board has encouraged the inherent unfairness of pitting lay claimants against big insurance companies by actively dissuading injuries victims from retaining independent legal advice. It has taken every available opportunity through press advertising and media interviews to discourage claimants from relying on independent expert representation, and it has procured a Central Bank code of practice whereby the first piece of correspondence that every claimant who contacts a respondent's insurance company receives is an 'information pamphlet', which tells claimants that they do not need a solicitor to engage in the process of securing compensation, and that they will not recover the cost of doing so if they do.

Accordingly, if (as anecdotal evidence strongly suggests) claimants are receiving unfair compensation from insurance companies because they are assuming (wrongly but understandably) that low-ball early offers of settlement put forward by insurance companies are a *bona fide* assessment of the true value of their claim, and they are consequently not taking legal advice before accepting them, it is rich indeed for the Injuries Board to be expressing concern about this injustice.

b) *Undue haste to settle cases:* again, the big winners in settling claims early are insurance companies, with payouts always being made in full and final settlement. Were injuries victims not so vociferously dissuaded from seeking legal representation by a State body that they trust as having their best interests to the fore, it is much more likely that they would be advised by a solicitor against settling until their long-term prognosis was clear.

Accordingly, as in the case of concerns relating to unfair compensation being paid, it is a bit much for the Injuries Board to shed crocodile tears on this point when it has exposed claimants to the risk by its own actions.

c) *Disproportionate legal fees:* as we all know only too well, the inherently unjust system set up by the *PIAB Acts* provides that, if claimants retain a solicitor to represent them, their legal fees will not be allowed as part of the assessment, meaning that they will fall to be paid by the claimant out of their compensation award. The Injuries Board, therefore, has absolutely no role in awarding costs to any party or, indeed, in measuring the extent of those costs. As the amount that a claimant pays to their legal representative is a private matter between solicitor and client, in which the Injuries Board has no role to play, the notion that legal fees would be more proportionate were claims assessed is nonsensical.

In a recent media interview given by Patricia Byron on

RTÉ's *Morning Ireland*, she was allowed to allege, without any challenge whatsoever from her interviewer, that there were serious concerns that excessive legal fees were being charged in cases that were being settled early.

Absolutely no evidence has been provided to justify this assertion that disproportionate fees are being charged in cases of early settlement. In fact, the experience of practitioners is that the significant majority of those opting for early settlement are not legally represented at all, which is why they end up accepting unreasonable amounts in compensation; if they were represented, they would be advised not to accept unfair early offers.

In any event, practitioners will know from their own experience that they will generally end up charging less if a claim is settled early, as the amount of work done by them will obviously be less than if the claim had proceeded to assessment by the Injuries Board.

As any solicitor who acts for injuries victims will attest, and as a themed inspection published by the Central Bank in 2011 has proven, the big winners in early settlements are the insurance companies. The culture of settling claims early on, which has been adopted by insurers since the Injuries Board was set up, has been aided and abetted by the board itself by its practice of vigorously dissuading claimants from retaining independent legal representation.

It is worth noting that every claim that is not processed by the Injuries Board amounts to a loss in revenue for the board of €645 (€45 of which is paid by the claimant and €600 of which is paid by respondent insurance companies). This equates to a total annual loss of over €11.5 million if one relies on the figure of 18,000 cited in the review statement.

One therefore has to wonder if the Injuries Board's concerns regarding claims in which it does not play a role is not more about issues much closer to home than the plight of short-changed claimants.

Garda Station Legal Aid Revised Scheme

From: Richard E McDonnell, Richard H McDonnell Solicitors, Ardee, Co Louth

What planet are the legislators occupying? It certainly isn't one that I or the vast majority of my colleagues occupy. Have you seen the fees to be paid to solicitors who are brave enough to risk a negligence suit and attend a garda station at, say, 3am, for the ridiculous hourly sum of €132 (or €97 at, say, 7pm)? That wouldn't cover the cost of running a small practice for 15 minutes. If you travel by bicycle, you might just be okay, as all that's allowed for travel is 24 cent per kilometre. How much do the politicians and legislators who came up with this scheme pay themselves for travel? Or maybe you could have a telephone consultation with your client at 4am for 45 minutes for the princely sum of €39.59.

This myth that solicitors are all rich (and, of course, there is a small minority of solicitors in the 'big' city firms who are indeed rich) is presumably what encourages politicians, and whoever else is involved in making these regulations, to think that we can run a business employing thousands of people all over the country (including in the blackest of unemployment areas) while being paid peanuts. Any solicitor participating in this scheme will find that it is costing him/her, and their practice, money – not earning any. I, for one, won't be taking part.

viewpoint

FOREIGN MASSACRES – UN PEACEKEEPING STATES LIABLE

The Dutch Court of First Instance has found Holland liable for the deaths of 300 victims of genocide outside Srebrenica – despite those acts being carried out by members of the military of another country. The judgment is a stark warning for Ireland and its UN peacekeeping forces, cautions Ben Mannering

Ben Mannering is a solicitor/ claims manager with the State Claims Agency, which manages personal injury and fatal injuries claims against, among others, the Minister for Defence. The views in this article are personal and do not reflect the views of the National Treasury Management Agency

A recent decision of the Hague District Court (the Dutch court of first instance), colloquially known as the *Stichting Mothers of Srebrenica* case, serves as a timely reminder of the potential state liability arising out of UN peacekeeping missions.

The *stichting* (foundation) is a legal person under Dutch law, with full legal capacity, whose object is to promote the interests of approximately 6,000 surviving relatives of the victims of the fall of Srebrenica.

After Bosnia Herzegovina declared itself independent in 1992, Bosnian Serbs declared the independence of the Republika Srpska and, in 1992, fighting broke out between both armies. Throughout 1992, fighting took place in the eastern part of Bosnia Herzegovina, initially between Muslim jihadis and Serbian militias, which led to the establishment of Muslim enclaves, one of which was Srebrenica.

> **'The Dutch must have been aware of the serious risk of genocide to the men residing at the compound when they were carried off by the Bosnian Serbs'**

In 1993, the then commander of UNPROFOR visited Srebrenica and, addressing a crowd, promised that they were under the protection of the UN and that he would not abandon them. Security Council Resolutions 819 and 824 essentially provide for safe areas that should be free from armed attack and/or hostile act (including Srebrenica and its enclaves). There was also an agreement between UNPROFOR and both warring parties to form demilitarised zones.

The Dutch minister for defence put a battalion of the Airmobile Brigade (known as DUTCHBAT) at the disposal of the military advisor of the secretary general of the UN to implement, in particular, resolution 836 across the safe areas. This was accepted and, on 3 March 1994, relieved the Canadian Regiment (CANBAT) of its duties.

Safe area

In June and July 1995, Bosnian Serbs began to attack the safe area, ultimately aiming to take the town of Srebrenica. On 11 July 1995, at 4.30pm, the town of Srebrenica fell and was captured by the Bosnian Serbs. Earlier that afternoon, Bosnian Muslim refugees began to stream out of the town of Srebrenica and head towards the DUTCHBAT compound known as Potocari.

About 20,000 to 25,000 refugees sought refuge in a mini safe area, and about 5,000 of them were housed in the compound. Around 10,000 to 15,000 men from the safe area did not flee to a mini safe area but to the woods in the vicinity of the town of Srebrenica – and approximately 6,000 of these men fell into Bosnian Serb hands. After the fall of Srebrenica, the Bosnian Serbs killed more than 7,000 men from the safe area, most of them in mass executions in the period from 14 to 17 July 1995. DUTCHBAT left the compound on 21 July 1995.

The Dutch District Court received claims from ten claimants seeking, among other things, damages against the Dutch state arising out of the deaths of the claimants' husbands and sons. The Dutch State denied liability.

The Dutch Supreme Court had already ruled in the *Nuhanovic and Mustafic* cases that the Dutch state was liable for the deaths of three Bosnian Muslims who were sent away from the compound and subsequently killed by the Bosnian Serbs.

UN immunity from proceedings

The Dutch District Court, up to the Supreme Court of the Netherlands, initially gave judgment that the United Nations enjoyed immunity from the proceedings. The claimants, prior to the instant proceedings, also submitted a complaint to the European Court of Human Rights (application number 65542/12) on this issue, which resulted in the finding that the granting of immunity to the United Nations serves a legitimate purpose and was not disproportionate.

The Dutch District Court, therefore, was not competent to take cognisance of the claim against the UN and, thus, it remained to assess the claim against the Dutch state.

Firstly, the Dutch court found that the agreement between the Dutch state and the UN was concluded prior to the EU convention concerning the law applicable to contractual obligations. Furthermore, as there was no choice of law in the agreement, it was held to be governed by the law of the Netherlands, since it is the Netherlands that has the distinctive characteristic of putting its troops at the disposal of the UN. Also, there is nothing to show that the agreement is more closely connected to any other country, not even Bosnia Herzegovina, to which DUTCHBAT had been sent.

Acts deemed not unlawful

The District Court did determine that the following acts of DUTCHBAT, attributable to the Dutch State, were not unlawful:

PIC: WIKIPEDIA COMMONS

PIC: iSTOCK

- Abandoning blocking positions,
- Not providing adequate medical care to the refugees,
- Handing over weapons and other equipment to the Bosnian Serbs,
- Upholding the decision throughout the transition period not to allow refugees entry to the compound,
- Separating the male refugees from the other refugees during the evacuation, insofar as this constitutes assistance by forming a lock (essentially shepherding them), guiding the refugees to the buses in turns.

The District Court held that, even if it were established that DUTCHBAT advised the male refugees to flee to the woods, this advice, as well as the failure to raise the alarm about their fleeing, should not be deemed as unlawful.

Also, the District Court held that DUTCHBAT wrongly failed to report the observed war crimes to the UN chain of command. Since the causal connection required for liability of the state between this failure and the claimants' damages is lacking, the declaration claimed – that the state acted unlawfully – cannot be granted regarding this failure.

Even if it were established that the cooperation of DUTCHBAT with the evacuation of refugees on 13 July 1995 also constituted an act of separation of the male refugees, this did not lead to allowing the declaration in this respect, due to the lack of causal connection between these acts and the claimants' damages.

Unlawful acts

The District Court, however, deemed DUTCHBAT'S cooperation with the deportation of the able-bodied male refugees who had sought refuge at the compound in the late afternoon of 13 July 1995 an unlawful act for which the state was liable. This concerned about 320 men, among whom were Mustafic and Nuhanovic's father and brother (concerning whom there was separate litigation). The majority of these men were never seen alive again. A number did end up in Batkovici Prison and were released under the *Dayton Agreement* in 1995.

The Dutch peacekeepers knew that, when the evacuation of the refugees of the compound took place, the men selected and carried off by the Bosnian Serbs faced death or inhumane treatment. The Dutch must have been aware of the serious risk of genocide to the men residing at the compound when they were carried off by the Bosnian Serbs.

Further, the actions of DUTCHBAT can be qualified as a violation of article 2 of the ECHR and article 6 of the ICCPR and, significantly, actions contrary to the standard of care under book 6, section 162 of the Dutch *Civil Code*. The standard of care in this case was, among other things, the Dutch state's obligations under international law to prevent genocide. It was the opinion of the court that the able-bodied men staying at the compound would have survived if DUTCHBAT had not cooperated with their deportation (a classic 'but for' test under reasonable care principles).

> **'It was the opinion of the court that the able-bodied men staying at the compound would have survived if DUTCHBAT had not cooperated with their deportation – a classic 'but for' test under reasonable care principles'**

The state was not liable, however, for the death of thousands more men killed as they fled to woods near the compound, nor were they liable for the failure of air support to materialise, or the force's failure to recapture the Muslim men.

Warning note

Thus, an EU state that provided troops as part of a UN peacekeeping mission to a country some 1,800 kilometres away was held liable for the deaths of approximately 300 victims of a genocide carried out by members of the military of another country.

The ethnic flux in states in which the Irish Defence Forces currently find themselves on peacekeeping missions must, surely, open the door to potential Irish State liability for similar civil actions, were there ever a repetition of such genocidal acts due to a failure by the Defence Forces to act in such circumstances.

There is no doubt that the Irish Defence Forces carry out their missions with the utmost professionalism. This commentary is simply to illustrate the potential liability to the State that can arise from such missions.

viewpoint

BY THE PEOPLE, FOR THE PEOPLE

Ireland's ongoing engagement with direct democracy is about to resume with possibly unprecedented vigour: next year will see a minimum of three referendums, and probably far more. Gavin Barrett goes to the polls

Gavin Barrett is Jean Monnet Professor in European Constitutional and Economic Law and associate professor in the Sutherland School of Law, UCD

In Ireland, the talk is turning to referendums once again. This is not simply because the controversy over the application of the *Protection of Life During Pregnancy Act 2013* has led to calls by some for a new referendum on abortion. Such a poll may well come about at some point – but it does not appear imminent, given the distinct lack of enthusiasm in Labour and Fine Gael for a referendum during this parliamentary term. Completely regardless of what happens in relation to this issue, however, next year is going to see a minimum of three referendums, and probably far more.

The Cabinet reached agreement as long ago as last November on holding three votes inspired by recommendations by the recent Constitutional Convention: one to permit same-sex marriage, another on reducing the voting age to 17, and a third on eliminating the requirement that only citizens who have reached their 35th year can stand in presidential elections.

A further referendum is needed to allow ratification of the *Unified Patent Court Agreement*. This intergovernmental treaty was signed in February 2013 by 25 EU states, including Ireland. The ratification of a treaty of this kind, however, is neither authorised nor immunised under the 'Europe' clauses in article 29.4.3 to10 of the Irish Constitution. The result of this is that another referendum is needed to enable this to happen and to prevent, among other things, any breach of the Constitution's provisions on courts.

Taoiseach Enda Kenny has indicated spring 2015 as the likely time for any referendums. There may be more votes than the four just mentioned. Other Constitutional Convention recommendations will likely also lead to popular votes. They will concern extending some voting rights to citizens abroad and in Northern Ireland, rendering references in the Constitution to the role of women in the home gender-neutral, and replacing constitutional provisions on the offence of blasphemy. Whether these occur in 2015 remains to be seen: if they do, up to seven referendums could be held in short order.

> **'Ireland ranks in the top five of countries worldwide in terms of our use of national referendums. Yet the truth is, we are far more conservative about direct democracy'**

Four green fields

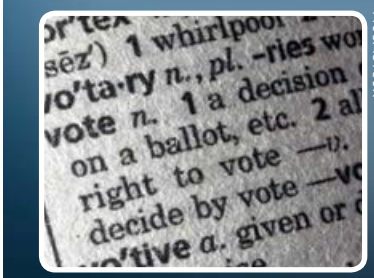
Ireland ranks in the top five of countries worldwide in terms of our use of national referendums. Within European, we are second only to Switzerland in terms of the international prominence of our popular votes. Yet the truth is, we are far more conservative about direct democracy.

First, Ireland holds referendums only at national level (not at local and regional levels, like Switzerland).

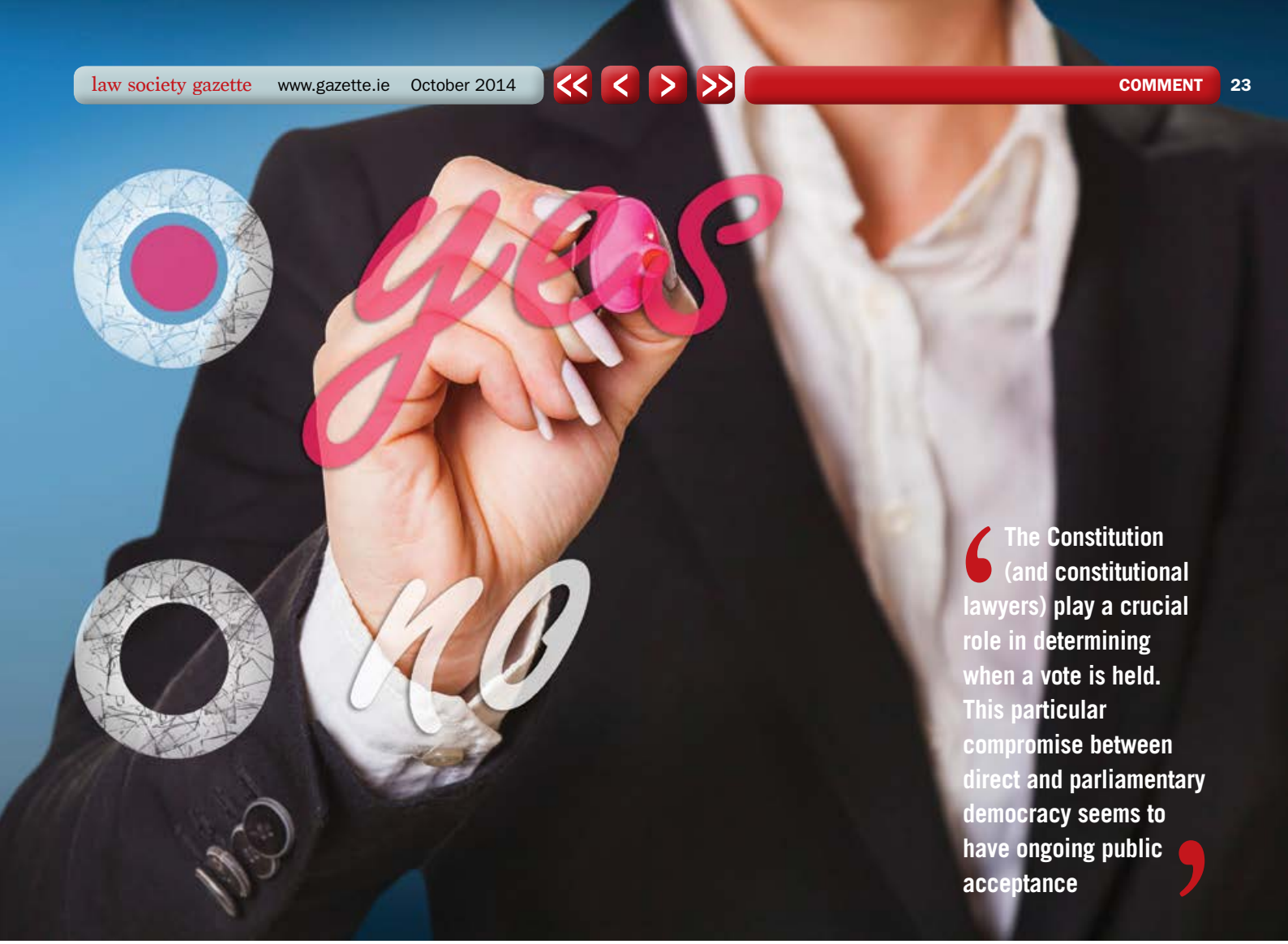
Secondly, we deploy referendums for a more limited range of reasons: they are held not because of the overwhelming importance of any given issue, but largely because that matter just happens to be regulated in the Constitution. We vote directly on an issue when a given policy bumps into the immoveable object of a Constitutional provision, not otherwise. So the Constitution (and constitutional lawyers) play a crucial role in determining when a vote is held. This particular compromise between direct and parliamentary democracy seems to have ongoing public acceptance. Hence, the Government's announced policy of having a referendum on the *Fiscal Treaty* in 2012 only if the attorney general advised that this was legally necessary created little noticeable public dissent.

Ireland came late and slowly to referendums. The prospect of Constitutional referendums (together with popular initiatives) was introduced in Ireland's first post-independence 1922 constitution. In 1928, however, WT Cosgrave's Cumann na nGaedheal administration effectively emasculated these provisions – abolishing popular initiatives and keeping the constitution safely amendable by ordinary legislation in order to deny De Valera's Fianna Fáil deriving any benefit from them.

Cosgrave's government continued to use the (initially supposedly



PICS: iSTOCK



> The Constitution (and constitutional lawyers) play a crucial role in determining when a vote is held. This particular compromise between direct and parliamentary democracy seems to have ongoing public acceptance

temporary) device of amendment by ordinary legislation to effect all manner of changes to the 1922 constitution. But this practice ultimately completely devalued that document.

To avoid a similar fate for his new 1937 Constitution, de Valera protected its article 46 provisions on referendums from any possibility of amendment by ordinary legislation. From June 1941, all provisions of the Constitution received similar protection. From that point, referendums became – and have remained – the sole way to amend the Irish Constitution.

We have now had 37 constitutional referendums, and 27 have succeeded.

World turned upside down

Remarkably, however, Ireland's first ever successful referendum amending the Constitution took place, not in 1941, but in 1972 (effectively approving entry to the European Communities). What explains this massive 31-year delay? The answer is that to kick-start the present era of referendums, a crucial ingredient was needed: political impetus for change. Thus, out of 37 votes, ten of them (relating to various issues such as divorce, abortion, the death penalty and the status of churches) awaited the onset of Ireland's transition from a socially conservative and Catholic-oriented country to a more secular and liberal society. Nine votes were responses to Europe and adjustments to the constantly evolving demands of EU membership. And eight – spread more evenly though the State's history – related to the ongoing struggle to make Irish democracy work properly. It seems almost certain that social change, participation in Europe, and democratic reform will all inspire further referendums in the future.

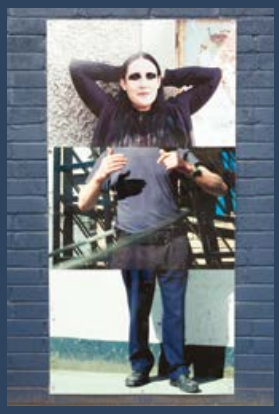
One ongoing problem relating to Irish referendums is ensuring adequate participation by the electorate to ensure votes are representative. High points were the 1937 referendum on the Constitution, which brought out 75.8% of voters, and the 1973 vote on Irish accession to the European Communities, attracting a 68% participation rate. However, referendums seen as technical, symbolic or uncontroversial frequently risk abysmal turnouts: only 29.2% of voters voted in the 1996 bail referendum. The 2012 childrens' rights referendum barely drew one in three voters to the polls.

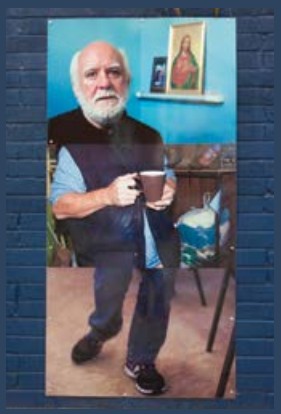
Song for Ireland

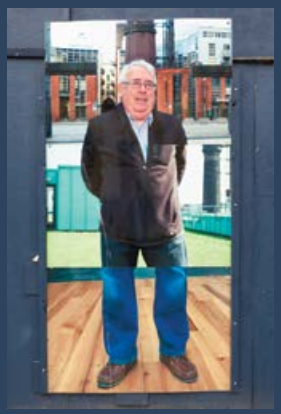
Of 37 referendums held since 1937, well over a third have failed to attract as much as half of the electorate. More than three-quarters of them – including all referendums held since 1996 – have failed to attract a 60% participation rate. Parliamentary elections, in contrast, attract far bigger votes. No general election between 1948 and 1987 had less than a 70% participation rate. Notwithstanding generally reduced voter turnouts since then, the 2011 general election still attracted over 70% of voters. The worst-ever general election turnout since 1948 was in 2002, at 62.57%. Yet this was actually a higher participation rate than that in three-quarters of all Irish referendums.

The Government may try to boost turnout in 2015 by holding all envisaged referendums on the same day. But this strategy brings no guarantees. In June 2001, votes on abolishing the death penalty, permitting ratification of the *International Criminal Court Treaty*, and ratifying the *Nice Treaty* were all held on the same day.

The result? Just over a third of the electorate voted. It remains to be seen whether 2015 produces a different story.







AN EXHIBITION OF CHARACTER

Complexions – An Exhibition of Character **is a photographic exhibition with a difference that enhances Dublin's streetscape, writes** **Mark McDermott**

Walking or cycling between Blackhall Place and Heuston Station, members of the Law Society, staff and the general public can't fail to have noticed the significant outdoor photographic display that runs alongside the Luas Red Line near the Museum stop in Benburb Street.

The exhibition was commissioned by the Law Society and features giant collages of portraits of 'ordinary' people. The idea was to create a more interesting and attractive space than the advertising hoardings that previously graced the wall of the Benburb Street property.

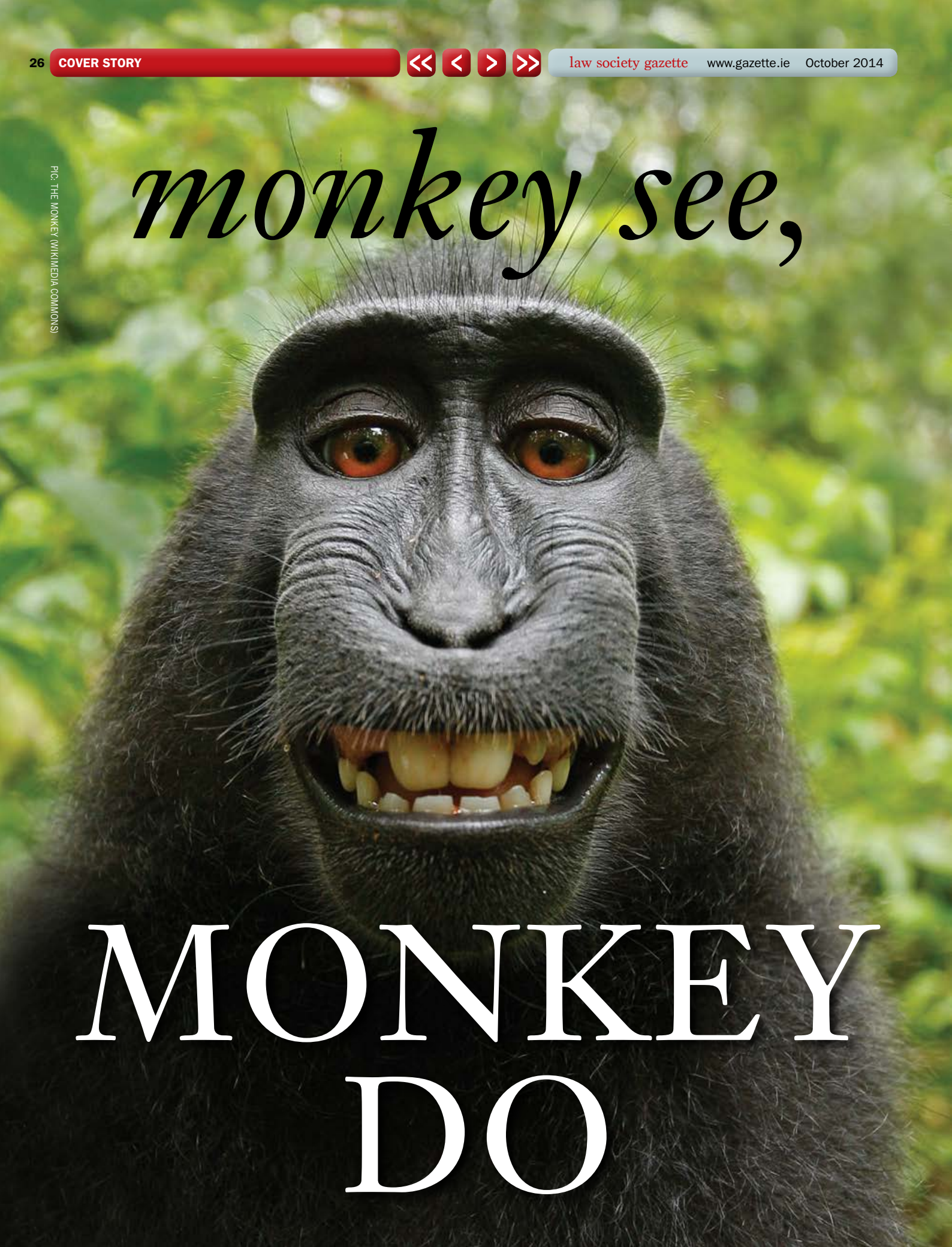
The Society contacted The Complex – Dublin's arts centre for the north-west inner city – to seek its advice. The centre works to provide innovative, inclusive and socially relevant art works. Out of that meeting came the commission for a large photographic exhibition by photographer Jarlath Rice.

Complexions – An Exhibition of Character

PICS: CIAN REDMOND PHOTOGRAPHY

features photographs that represent the heart and soul of Smithfield. The photographer's focus was to reveal the intrinsic connections between local people whose contributions to their community can be regarded as equal, no matter where they come from.

The exhibition was launched by Ray Yeates (arts officer of Dublin City Council) and has been winning the attention of Luas passengers and passers-by. It runs till December.



PIC: THE MONKEY (WIKIMEDIA COMMONS)

monkey see,

MONKEY DO

The recent copyright controversy over a 'monkey selfie' ignited an international debate over who owns the copyright to photos, whether taken by humans or non-humans. Fred Logue breaks out the disposable camera

Dr Fred Logue is managing director of New Morning Intellectual Property Limited, a firm providing strategic intellectual property and information rights advice to technology companies. He is a non-practising solicitor and a member of the Law Society's Intellectual Property Law Committee (Twitter: @fplogue)

Many authors will attest to the adage that if you pay peanuts, you get monkeys. But now it seems that even the most creative monkeys in the world cannot expect even the slightest compensation for their intellectual genius.

As cameras become ubiquitous, we have seen the rise of self-portrait photography known as the 'selfie'. It was probably only a matter of time, but a recent dispute between a British wildlife photographer and the Wikimedia Foundation (the operation that runs Wikipedia) has ignited an international debate over whether copyright subsists in a selfie taken by a cute monkey.

In 2011, while visiting a national park in Indonesia, award-winning photographer David Slater left his camera unattended, where it was picked up by a crested black macaque, a breed known for its intelligence and curiosity.

Somehow, one of the monkeys managed to trigger the camera and, when Mr Slater finally retrieved it, he found hundreds of shots, including the now-famous monkey selfie *(left and cover)*.

> **'Works created by animals, automatically by machines and, intriguingly, by divine or supernatural beings, cannot be registered in the US Copyright Office'**

No doubt because of the cuteness factor, the monkey selfie went viral, appearing in countless newspapers and websites. It ended up posted to Wikimedia Commons, a database of over 20 million freely usable media files hosted by the open source encyclopaedia.

According to Wikimedia's recent transparency report, Mr Slater asked for the monkey selfie picture to be taken down on the basis that it violated his copyright in the photograph. Wikimedia refused, maintaining that the photograph was not made by a human and so was not copyrightable. For his part, Mr Slater claims that he owns the copyright, since he set up the shot while the monkey merely pressed the button.

Welcome to the monkey house

So who is right? Is a photograph taken by an animal worthy of copyright?

Well the answer is, apparently not.

Once the controversy broke, the US Copyright Office swiftly updated its manual of practice, stating that, under its interpretation of US copyright law, there must be a human author for a work to benefit from copyright. Works created by animals, automatically by machines and – intriguingly – by divine or supernatural beings cannot be registered in the US Copyright Office.

While the US position is clear, and notwithstanding our ignorance of what Indonesian copyright law has to say on the matter, it is worth considering for a moment what would have happened if, rather than exploring the jungles of Indonesia, Mr Slater had, in fact, been in the Phoenix Park and a monkey, making its bid for freedom from the zoo, had grabbed his camera to document its great escape.

In Ireland, copyright is governed by the *Copyright and Related Rights Acts 2000-2007*, which provide protection to original photographs that are classified as a form of artistic work, irrespective of artistic quality. To qualify for copyright, a photograph must merely be original. Moreover, in the case of photographs, the author – the person who has first ownership of a work – is deemed to be the photographer.

Monkey and the engineer

Traditionally, the concept of originality under Irish and English law merely required that a work should not have been copied from another work, but rather should have originated from the author, reflecting the common law tradition of affording copyright protection to works without cultural or intellectual merit.

Fairness dictated that the investment in time and effort itself should be worthy of protection. Under this definition of originality, Mr Slater could have pointed to the effort he had made to travel to Indonesia, the time he had spent

at a glance

- The US Copyright Office requires a human author for a work to benefit from copyright
- Ireland's *Copyright and Related Rights Acts 2000-2007* state that, to qualify for copyright, a photograph must merely be original
- Under EU law, only photographs that are the author's own intellectual creation are photographic works that qualify under the *Berne Convention*
- The European Court of Justice, in *Painer*, left open the possibility that post-photograph processing, including digital processing, could be sufficient to give rise to copyright in a photograph

following the troop of monkeys, and the skills he had developed as a photojournalist to satisfy this definition of originality.

As we have seen, the US Copyright Office takes the view that copyright does not subsist in non-human authored works, since, in its interpretation of US law, copyright law only protects "the fruits of intellectual labor" that "are founded on the creative powers of the mind".

Copyright in the European Union is based on a similar concept, and subsists only in works that are the author's own intellectual creation. This definition is to be found in directives covering copyright in software and original databases. In the case of photographs, the *Copyright Duration Directive* provides that only those photographs that are the author's own intellectual creation are photographic works that qualify under the *Berne Convention*.

The author's own intellectual creation view of originality has now been extended and harmonised for all forms of copyright in the EU. The CJEU has, in its interpretation of the *Berne Convention* and the *Copyright Directive*, consistently adopted the concept of the author's own intellectual creation as the harmonised community definition of originality for copyright (*Infopaq International A/A v Danske Dagblades Forening*).

PIC: THE MONKEY (WIKIMEDIA COMMONS)

'Get your stinking paws off my camera, you damn dirty ape'

> It is clear from *Painer* that Mr Slater could have generated an original photo in the way he presented the final image using computer software or other processing techniques

The smartest monkeys

So where does that leave Mr Slater and the famous selfie? Can he claim that the selfie nevertheless expresses his personality and is his own intellectual creation? Does the photographer have to set up the shot and press the button, or are there circumstances where Mr Slater's photograph could have benefited from copyright?

These issues were raised in the case of *Eva-Maria Painer v Standard Verlags GmbH and Others*, concerning a school photograph of Natasha Kampusch – the Austrian schoolgirl who was held captive for more than eight years. Shortly after her release, a school portrait photograph, which was used at the time of her kidnapping, was published in the Austrian and German press. The photographer, Eva-Maria Painer, objected on the grounds that she owned copyright in the portrait of the schoolgirl, whereas the newspapers claimed that copyright did not subsist in the image, since it was merely a standard school portrait photograph and therefore not original.

The European Court of Justice ruled that copyright subsists in a photograph if it is the intellectual creation of the author, reflecting his personality, and expressing his free and creative choices in the production of the photograph. According to the court, such free and creative choices may include the set-up, such as the background, pose and lighting. When taking the shot, he may choose the framing, angle and the atmosphere created. Finally, the photographer can choose from a variety of developing techniques or use computer software to digitally manipulate the image once it is taken.

Certainly the monkey selfie was not set up or composed by the photographer, since it was a random event and was one of hundreds of otherwise unusable shots taken by the monkey. However, it is clear from *Painer* that Mr Slater could have generated an original photo in the way he presented the final image using computer software or other processing techniques.

FOCAL POINT

too much monkey business

BERNE CONVENTION

The *Berne Convention* is an international agreement governing copyright, first accepted in Berne in 1886. It provides a system of equal treatment, mutual recognition and minimum standards for copyright in signatory countries.

CULTURE THEORY

Culture theory asserts a more modern view of copyright, in which human nature is complex and mysterious but can be realised by self-expression. Copyright provides an incentive for such creative expression.

FAIRNESS THEORY

This is a theory of copyright based on the writings of John Locke, which holds that each person has a natural right to the fruits of his or her (intellectual) labour, and is found in the common law concept of originality, reflecting the skill, judgment and labour of the author.

***INFOPAQ* CASE**

The *Infopaq* case concerned short extracts from newspaper articles. The CJEU held that the taking of extracts infringes copyright if the words reproduced are the expression of the intellectual creation of the author of the article.

PERSONALITY THEORY

In personality theory, intellectual products are manifestations or extensions of the personalities of their creators. This theory reflects the traditional continental view of originality that is embodied today in the EU law concept of works being original if they are the author's own intellectual creation.

The court focused on the preparation and execution of the photograph in the *Painer* case, but left open the possibility that post-photograph processing, including digital processing, could be sufficient to give rise to copyright in a photograph.

Everybody's got the monkey

It is beyond doubt that the EU copyright qualifying concepts of originality and authorship are inherently human qualities, leaving no room for animal, supernatural or divine authors. However, Irish law, at least for the moment, allows for copyright to exist in one category of works – so-called computer generated works – where the author is not an individual. In this case, the author is deemed to be the person by whom the arrangements necessary for the creation of the work are undertaken. Examples of such works might include satellite remote sensing images, computer and film animations, and automatically generated databases.

Given the size of the film and computer game industries, it is surprising that there is virtually no case law on computer-generated works. In one case (*Nova Production v Mazooma Games*), the English High Court accepted that the composite images generated during the playing of a computer game are computer-generated works. But in the absence of any other case law, we can only speculate as to whether a camera is a 'computer' and if a monkey selfie is a 'work'.

In any event, this provision seems anomalous and has already been criticised by the European Commission, so it seems unlikely that it would be applied by courts in Ireland, given recent EU jurisprudence and the conflict with the now-harmonised European Union concept of originality.

You made a monkey out of me

So how would Mr Slater fare in Ireland? It seems unlikely today that the Irish courts would apply the traditional common law 'labour, skill or effort' definition of originality, and would, instead, follow the practice of the English courts by applying the harmonised concept of the author's own intellectual creation as the only test of originality. Mr Slater would probably fail in his copyright claim, unless he could show that he processed the image and that such processing itself was original.

So the message is clear. The next time a monkey steals your camera and takes a selfie, make sure you run it through your favourite photo editing software before publication … or else you will have to wait until the movement to extend personhood to apes gets its way.

PIC: ISTOCK

> Given the size of the film and computer game industries, it is surprising that there is virtually no case law on computer-generated works

look it up

Cases:

- *Eva-Maria Painer v Standard Verlags GmbH and Others* (C-145/10, judgment of the Court (Third Chamber) of 1 December 2011)
- *Infopaq International A/A v Danske Dagblades Forening* C-5/08, judgment of the Court (Fourth Chamber) of 16 July 2009)
- *Nova Production v Mazooma Games* [2006] EWHC 24 (Ch)

Legislation:

- *Berne Convention for the Protection of Literary and Artistic Works*
- *Copyright and Related Acts 2000 to 2007*
- *Directive 96/9/EC of the European Parliament and of the Council, of 11 March 1996, on the Legal Protection of Databases*
- *Directive 2001/29/EC of the European Parliament and of the Council, of 22 May 2001, on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society*
- *Directive 2006/116/EC of the European Parliament and of the Council, of 12 December 2006, on the Term of Protection of Copyright and Certain Related Rights (Codified Version)*
- *Directive 2009/24/EC of the European Parliament and of the Council, of 23 April 2009, on the Legal Protection of Computer Programs (Codified Version)*

Literature:

- *Compendium of US Copyright Office Practices*
- *Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the Implementation and Effects of Directive 91/250/EEC on the Legal Protection of Computer Programs*
- *Wikimedia Foundation Transparency Report on Requests for Content Alteration and Takedown*

The *Animal Health and Welfare Act 2013* introduces greater clarity on the abandonment of animals and strengthens the already existing protections for animals in Irish law. Aisling Meehan and Hilary Forde get back in the saddle

HORSES *for courses*

Aisling Meehan specialises in agricultural law and tax, practising as Aisling Meehan Agricultural Solicitors

Hilary Forde is director of Racing Governance and Compliance at Bord na gCon (Irish Greyhound Board)

The core elements of the *Animal Health and Welfare Act 2013* came into operation on 6 March 2014. This important piece of legislation brings together and modernises many existing laws in the area of animal health and welfare. Following the signing of the commencement order, the Minister for Agriculture brought forward 16 statutory instruments making a series of regulations that set down detailed implementing provisions relating to several parts of the act.

These regulations form the first and biggest step in bringing all legislation in this area under the 2013 act. The act also provides for the publication of codes of practice designed to provide practical guidance relating to various parts of the act. While the act allows the Department of Agriculture to enter into service agreements that will allow other bodies to act as authorised officers for the purposes of the act, such as the

at a glance

- The *Animal Health and Welfare Act 2013* makes it an offence for a person to abandon an animal in his or her possession, or under his or her control, and introduces a significant increase in penalties under the former provision in the 1996 act
- Aside from bringing together and modernising many existing laws under one legislative framework in the area of animal and health and welfare, the 2013 act is founded on the central tenets of prevention, risk assessment and biosecurity
- The legislation will also affect governing bodies involved with the racing of animals, in particular the greyhound racing industry

PIC: THINKSTOCK

ISPCA and the Turf Club, prosecution under the 2013 act will remain a matter for State bodies, such as the Department of Agriculture, local authorities, and An Garda Síochána.

While the 2013 act creates a more coherent and uniform regime for animal health and welfare, the law as it currently relates to equines remains predominantly governed by a series of pre-existing legislation. The *Control of Horses Act 1996* came into operation on 18 March 1997 (other than part IV, which came into operation on 5 March 1997).

Horse of a different colour

Under the 1996 act, all local authorities (city and county councils) are responsible for the control of horses in their areas. Relevant bye-laws are available from each local authority setting out their functions under the 1996 act. Section 37 of the 1996 act gives the power to an authorised person or member of the Garda Síochána to seize and detain any horse that they have reason to suspect is a stray horse, or is causing a nuisance, or is not under adequate control, or is posing a danger to people or property, among other reasons.

Under the 1996 act, a 'stray horse' is defined as a horse apparently wandering at large, lost, abandoned, or unaccompanied by any person apparently in charge of it in a public place or on any premises without the owner's or occupier's consent. A horse seized under section 37 may be detained in a pound pending the conclusion of any criminal proceedings and/or forfeited to

PIC: WIKIMEDIA COMMONS

the local authority, which may deal with or dispose of any horse so forfeited as it sees fit.

The local authority may, by bye-laws, declare all or any part of its functional area to be a 'control area' where it is satisfied that horses in that area should be licenced, having regard to the need to control the keeping of horses, the need to prevent nuisance, annoyance or injury to persons, or damage to property by horses.

A person who owns a horse that is kept by them in a controlled area must hold a horse licence in respect of the horse. An occupier of a premises within a controlled area where a horse is found, who is not the owner of the horse, shall be deemed to be the person who keeps or has charge or control of the horse, unless the occupier can show that the horse was kept on the premises either without his knowledge or permission.

> With the evolution of race equipment and veterinary medicine, microchipping regulations will bring numerous advantages to sports governing bodies

Commission Regulation (EC) no 504/2008 requires that all equines born in, or imported into, the EU must, if they have not been identified prior to 1 July 2009, be identified by means of a passport and microchip. The regulation came into effect on 1 July 2009 and covers horses, ponies, donkeys and dogs (see panel below).

There are eight approved studbooks recognised by the Department of Agriculture to issue equine identification documents, and a further two will issue equine identification for non-pedigree horses. A list of the approved equine passport issuing bodies can be accessed on the Department of Agriculture website. A horse cannot be sold or exported unless it is accompanied by its passport.

Application for registration of an 'equine premises' under the *Control on Places Where Horses are Kept Regulations 2014* came into operation on 6 March 2014. The 2014 regulations provide that a person may not have an equine in his/her possession or under his/her control unless the details

FOCAL POINT

wuff justice

PIC: WIKIMEDIA COMMONS

In addition to tightening the controls on the identification and traceability of horses, the new regulations have highlighted the importance of safeguarding animal welfare in all aspects, as well as the role of various stakeholders in promoting the welfare of animals.

The Department of Agriculture has stressed the importance of equine identification, both in terms of animal health and welfare and safeguarding of the integrity in the food chain. It has also confirmed the final consultation phase in legislation surrounding canine identification.

When debates on the *Animal Health and Welfare Bill* were taking place, it was discovered that, while many owners had already chipped their dogs voluntarily, the number of chipped animals would plateau unless it was made compulsory.

Mr Chips

Prior to enactment, a public consultation was conducted on the issue of microchipping canines. Legislation is now being prepared. These new measures will ensure that all dog owners have their dogs chipped, making the animals readily identifiable if welfare issues arise.

The legislation also outlaws attending and recording dog fights and the practice of docking or cutting dogs' tails for cosmetic reasons. New powers to tackle the illegal trafficking of animals are also included, as are duties on owners of all animals to provide for their proper care.

Aside from bringing together and modernising many existing laws under one legislative framework in the area of animal and health and welfare, the 2013 act is founded on the central tenets of prevention, risk assessment and biosecurity, which will place Ireland to the fore of best international practice.

This act strengthens the already existing protections for animals in Irish law. For the first time, judges will be granted specific powers to prevent persons convicted of cruelty to, or failing to protect the welfare of animals, from owning or working with animals. In the case of dog fights, the range of evidence that courts can consider has been expanded to include attendance at a dog fight, which should make conviction easier.

Master McGrath

The legislation will also affect governing bodies involved with the racing of animals, in particular the greyhound racing industry.

The concept of obligatory identification of dogs by means of a microchip will require sport regulatory authorities to ensure effective integration and compliance with the legislation in their day-to-day operating procedures and centralised database systems.

An example of these regulations already in practice is demonstrated by the Greyhound Board of Great Britain (GBGB). On 1 March 2010, rule amendments were made to incorporate microchipping into their rules of racing. As a result, any Irish or international entry is only permitted to race or trial in Britain if the greyhound has been microchipped and registered on the GBGB registry database.

In addition to special authority being delivered by the Irish Greyhound Board for Irish greyhounds to race in Britain, the Irish Greyhound Board must also provide to the GBGB a certificate of microchipping – to include a microchip barcode or full microchip number – not less than five working days prior to the closing date of the intended race/competition, and not less than five working days prior to participation in a trial. The microchip must comply with either ISO standard.

Prior to the introduction of microchipping as a form of canine identification, most greyhound racing industries across the world used the traditional method of ear branding by means of a tattoo. Many countries still retain support for the continuation of this traditional method of identification in their rules of racing, even on a coexistence basis.

With the evolution of race equipment and veterinary medicine, however, microchipping regulations will bring numerous advantages to sports governing bodies in the areas of animal welfare, integrity and technological advancements.

PIC: REX FEATURES

'G'wan now, Cyril. We all knew it wouldn't last. Society, hey?!'

of their premises are registered. It further provides that all registered premises must have a nominated keeper and that, upon registration, an equine premises number, called a herd number, will be issued to the applicant. Holdings that are already registered to keep cattle and/or sheep/goats will have their registration amended to include horses.

Beef or salmon

The *Animal Health and Welfare Act 2013* introduced greater clarity on the abandonment of animals, including horses. The act makes it an offence for a person to abandon an animal in his or her possession, or under his or her control, and a person may be fined on summary conviction of an amount up to €5,000 and/or imprisonment for up to six months, or a fine of up €250,000 and/or imprisonment for up to five years on indictment.

This marks a significant increase in penalties under the former provision in the 1996 act, which provided for a fine not exceeding £1,500 and/or imprisonment for up to six months on summary conviction, or a fine not exceeding £10,000, and/or imprisonment for up to two years on indictment.

The act imposes a duty on persons who have in their possession or control a protected animal to safeguard the health and welfare of the animal. Consequently, landowners or tenants are also responsible for the wellbeing of any animal left on land, or at any premises registered to them.

If a case of neglect is found on the premises or land on which the animals have been abandoned, the person in occupation of the land is deemed to be the legal guardian of the animals. The act specifically provides that, in proceedings for an offence under the 2013 act, the animal is presumed to be owned by the occupier or person in charge of the land or premises on which it was found, unless the contrary is shown. Consequently, in cases where ownership of horses cannot be established, landowners and tenants are legally responsible for the wellbeing of animals found on their lands and can be liable for prosecution in circumstances of neglect. A landowner with stray horses on their land should contact their local authority or the gardaí, who may seize and detain the horses where they have reason to suspect that they are stray horses or not identifiable or capable of identification as required by the legislation set out above.

Where horses are seized and detained, and the owner or keeper of the horses is not known, notice will be displayed in the office of the Garda Síochána for the area in which the horses were seized, and in the pound or place where the horses are detained, as soon as possible.

If the owner or keeper fail to make themselves known to the local authority, or cannot be found within a period of five days from the date of seizure and detention, the local authority may dispose of the horses in accordance with the bye-laws and the 1996 act.

It should be mentioned that these changes to our animal welfare legislation have been welcomed by both the ISPCA and the Dogs Trust.

look it up

Legislation:

- *Animal Health and Welfare Act 2013*
- Commission Regulation (EC) no 504/2008
- *Control of Horses Act 1996*
- *Control on Places Where Horses are Kept Regulations 2014*

in REMISSION

Tony Collier is managing solicitor at Michael J Staines and Co, specialising in criminal defence, prison, and human rights law. The author would like to thank Sean Guerin SC for reviewing this article

A Supreme Court appeal and a number of High Court judgments in recent remission cases have highlighted the law governing the management of prisoners – in particular rule 59(2) of the *Prison Rules 2007* and the failure of the Irish Prison Service to apply it properly. Tony Collier goes in search of the keys

Recent decisions of the superior courts involving remission cases have shone a spotlight on the area of law that governs how we manage our prisoners and, in particular, how their sentences are structured once convicted prisoners are committed to the relevant institution by the sentencing court.

A feature of any sentence handed down in this jurisdiction is the automatic entitlement to remission of one-quarter of the sentence, provided the prisoner has been of good behaviour during the currency of the sentence. It has a two-fold purpose: it encourages the prisoner to behave in prison and act within the prison rules, making the management of the prison an easier task, but it also aids the rehabilitation of the prisoner by offering an incentive for good conduct. Indeed, it is a part of our imprisonment policy that the sentencing judge and the convicted person are of full knowledge and expectation that a discount in the form of remission will be applied to any sentence handed down by the courts.

Remission can be reduced only after a disciplinary hearing dealing with a specific offence, or breach of the rules in prison. A negative finding in such a hearing can see a specific loss of remission imposed on the prisoner, up to a period of 14 days.

A term of imprisonment can also be shortened by the application of temporary release and the community return scheme. A further measure open to a prisoner is to apply for enhanced remission pursuant to rule 59(2) of the *Prison Rules 2007*.

> Mr Justice Peart stated that there is 'no visible and transparent procedure or process in place' to deal with these applications

This provision, in effect, allows for an application by the prisoner for enhanced remission in excess of the traditional one-quarter limit to up to one-third of the prison sentence. A number of cases have been heard recently by the High Court in proceedings pursuant to article 40.4.2 of the Constitution, alleging that the minister has failed to properly consider an application or has unreasonably refused applications for enhanced remission.

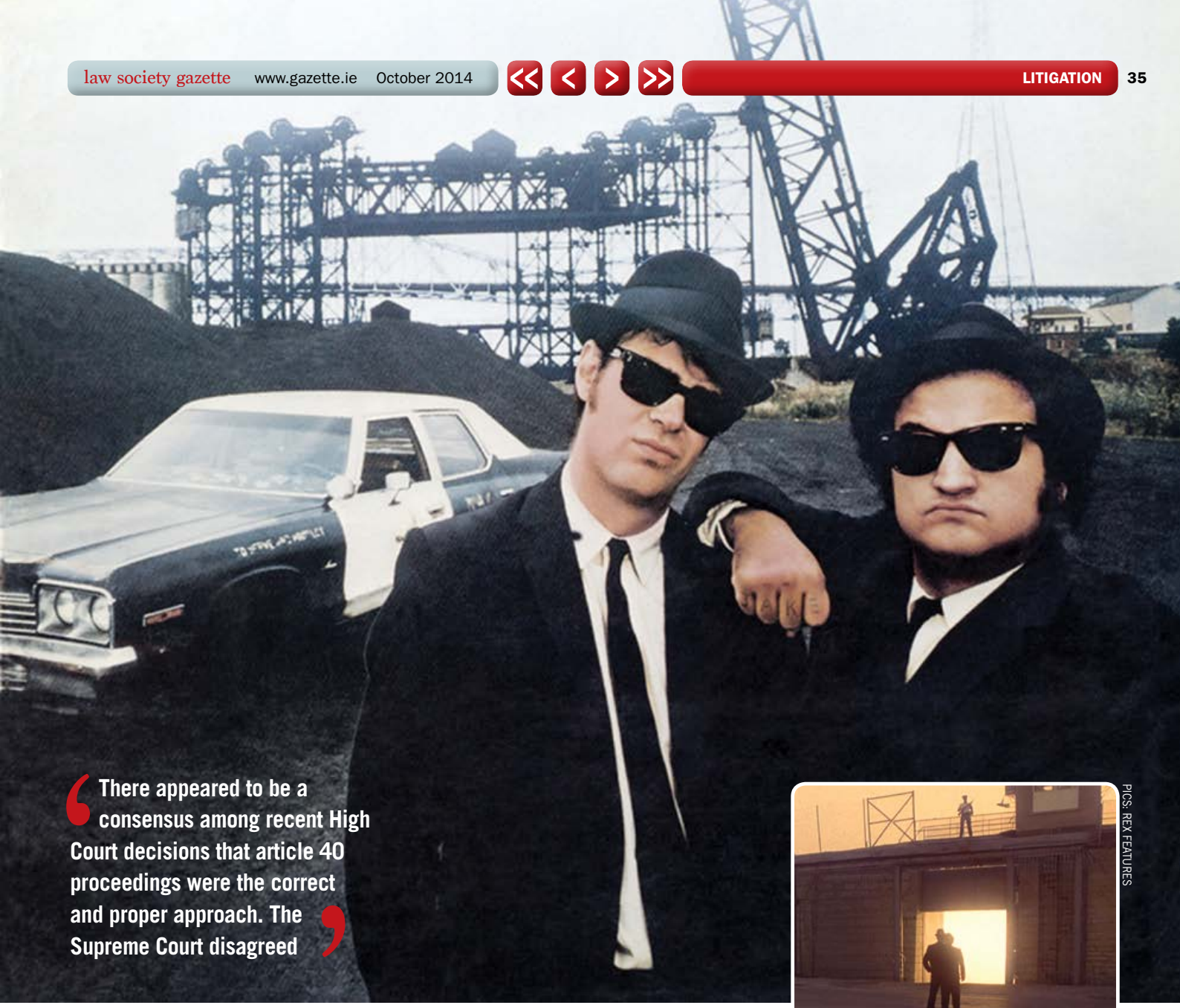
Rule 59(2) of the *Prison Rules* states: "The minister may grant such greater remission of sentence in excess of one-quarter, but not exceeding one-third thereof, where a prisoner has shown further good conduct by engaging in authorised structured activity and the minister is satisfied that, as a result, the prisoner is less likely to re-offend and will be better able to reintegrate into the community."

at a glance

- The traditional position in relation to remission involves a discount of 25% of a sentence for good behaviour
- Prison rules allow this to be extended to up to one-third of the sentence when the prisoner engages in 'authorised structured activity' and, as a result, is less likely to reoffend
- It appeared that the Irish Prison Service had not acted in accordance with rule 59(2) of the *Prison Rules 2007*. As a result, a large number of cases came before the courts
- The bases of these cases were three recent High Court judgments that criticised the State for failing to consider these applications, and failing to inform prisoners of their right to apply for enhanced remission

Correct approach

The first issue that must be considered when looking at litigation in this field is whether the correct approach is one of judicial review, or to proceed under the constitutional protection of *habeas corpus*. There seemed to be a consensus among the recent decisions that article 40 proceedings were the correct and proper approach, given that the lawfulness or otherwise of an applicant's detention was at stake. This was despite the fact that the application was essentially directed at coercing the State



> There appeared to be a consensus among recent High Court decisions that article 40 proceedings were the correct and proper approach. The Supreme Court disagreed

PICS: REX FEATURES

to make a decision, or to challenge the refusal of an application for enhanced remission. This appeared logical, as a successful applicant for judicial review might have completed a sentence before an application had been determined.

One of the advantages for a litigant in article 40 proceedings is a speedy resolution of the issue. Other advantages over judicial review for this type of application, as outlined by Barrett J in *Ryan v The Governor of Midlands Prison*, include shifting the onus of proof on to the State to demonstrate that a detention is lawful. The opposite occurs in judicial review proceedings, wherein the onus of proof is on the applicant.

Furthermore, Barrett J pointed out "that judicial review proceedings are discretionary, whereas an inquiry under article 40 of the Constitution requires the court to determine the lawfulness of [the applicant's] detention *simpliciter*". This confers a significant procedural advantage on the applicant and would seem to be in line with the intentions of those who drafted the Constitution.

In the approved judgment in *Ryan*, the applicant was refused enhanced remission by the minister. He had previously instructed his solicitor to write to the minister and to apply for enhanced remission on his behalf. Having been refused, he instructed his solicitor to move an application to have an inquiry heard into the lawfulness of his detention, pursuant to article 40 of the Constitution.

Having heard the case, Barrett J directed his immediate release from custody. Mr Ryan was successful in his application, despite not engaging in certain authorised structured activity, although it was found that he had engaged in some forms of authorised structured activity. It was held that neither Mr Ryan nor the general prison population had been advised that certain structured activity was preferred by the minister over other activity.

It was further held that the minister was provided with deficient information and that, given the information before the minister, no other conclusion, other than a refusal, could have been achieved. It was held that, had the minister received the correct information, there could only be one logical conclusion – namely, that the applicant would be entitled to enhanced remission. It was also noted in the judgment that, given the matter in hand,

FOCAL POINT

remission impossible

Remission is the pardoning of an offence or the cancelling in whole or in part of an obligation. The term 'remission from the sentence' means the remission that the person may earn from the sentence under the rule of practice, whereby prisoners generally may earn remission of sentence by industry and good conduct: section 87, *Criminal Justice Act 2006*, and also section 24, *Criminal Justice Act 2007*.

The Minister for Justice has the power to commute or remit, in whole or in part, any punishment imposed by a court exercising criminal jurisdiction. This power is not unconstitutional, but it must be exercised sparingly and for special reason with the proper maintenance of records.

The sentencing of a person by a court to a term of imprisonment, with a direction that he be brought back to the court subsequently, in order for the court to consider suspending the balance of his sentence, did not involve an encroachment by the judicial arm of Government upon the executive's power to commute a sentence: *People (DPP) v Aylmer* (1995 SC) 2 ILRM 642.

(Extract from* Murdoch's Dictionary of Irish Law.*)

it was not a requirement that an applicant's solicitor should be expected to engage in protracted correspondence with the minister.

Guilt by association

On 4 August 2014, a judgment was handed down in the case of *Niall Farrell v The Governor of Portlaoise Prison* by Hogan J in another inquiry pursuant to article 40 of the Constitution. Mr Farrell was also refused an application for enhanced remission, despite having an excellent record of conduct, work and education while serving a five-year term of imprisonment in Portlaoise Prison. This was accepted by both sides in this case; however, the minister argued that Mr Farrell had not engaged with the Probation Services, nor had he completed an eight-week course run by the Probation Services to deal with re-offending. Furthermore, it was stated that he continued to associate with certain members of an illegal organisation while serving his sentence and that a report from the gardaí stated that they had fears he would re-engage with subversive activity. It was held by Hogan J that the gardaí's view could not be taken into account by the minister as order 59(2) of the *Prison Rules 2007* does not provide for such a consideration.

> The remedy of article 40.4.2 arises only if there has been an absence of jurisdiction, a fundamental denial of justice, or a fundamental flaw

The judge held that the only factors that could be taken into account by the minister was the prisoner's engagement with authorised structured activity and whether, as a result of engaging with such activity, the prisoner was less likely to offend. He went on to say that "where a prisoner participates in such activities for the requisite periods of time in the manner ordained by [the *Prison Rules*], the minister would be obliged to conclude that [the prisoner] is less likely to offend, so that the enhanced remission provisions of rule 59(2) would accordingly be triggered".

This is, obviously, a very narrow interpretation of the provision and places an onus on the minister to come to a particular conclusion and to disregard all other factors outside of the wording of the particular rule.

It was also stated in the judgment that Mr Farrell was never informed that his failure to engage with the Probation Services or his association with certain prisoners would adversely affect an application for enhanced remission. Hogan J referred explicitly to the decision in *Ryan* and implicitly criticised the prison authorities for not explaining to the prison population what is required in an application for enhanced remission.

Factual conflicts

In another judgment, delivered by Mr Justice Peart on 5 August 2014, where the applicant had not been released after an inquiry, the case of *Eric Keogh v The Governor of Mountjoy Prison* was heard pursuant to article 40 of the Constitution. Unlike the other cases, the facts of this case were in considerable dispute. In addition to the factual conflicts in this case, the judge referred to the applicant's "lack of candour and non-disclosure of relevant facts". These difficulties ultimately proved fatal to the applicant's case.

Despite it being an unsuccessful case for the applicant, there are some matters worth noting in this judgment. It did not go as far as the previous two judgments in vindicating the rights of prisoners to achieve enhanced remission. Interestingly, it did state that judicial review may be the correct vehicle for such applications in some, but not all, cases. However, the judgment did raise concerns about the implementation and operation of rule 59(2). While referring to Judge Barrett's analysis that once structured activity has been completed, it follows that a prisoner is less likely to re-offend as an "over-simplification", Mr Justice Peart went on to state that there is "no visible and transparent procedure or process in place" to deal with these applications.

There are, and have been, a large number of these applications before the High Court, and the one pertinent issue that arises is the *ad hoc* nature of the implementation of this legislation.

Ryan appeal

The State appealed the *Ryan* decision over the summer vacation and the Supreme Court delivered judgment on 22 August 2014. The Supreme Court allowed the appeal and ordered Ryan's return to prison. In coming to this conclusion, the Supreme Court stated that article 40 proceedings were not the correct vehicle to vindicate rights to remission.

It relied on a number of decisions, including *McDonagh v Frawley*, which states "the stipulation that article 40.4.1 of the Constitution that a citizen may not be deprived of his liberty save 'in accordance with law' does not mean that a convicted person must be released on *habeas corpus* merely because some defect or illegality attaches to his detention". It also relied on *The State (Royle) v Kelly*, which states that a detention must be wanting in the fundamental legal attributes that, under the Constitution, should attach to the detention.

The Supreme Court went on to say in *Ryan*: "Thus the general principle of law is that, if an order of a court does not show an invalidity on its face, in particular if it is an order in relation to post-conviction detention, then the route of the constitutional and immediate remedy of *habeas corpus* is not appropriate. An appropriate remedy may be an appeal, or an application for leave to seek judicial review. In such circumstances, the remedy of article 40.4.2 arises only if there has been an absence of jurisdiction, a fundamental denial of justice, or a fundamental flaw."

In respect of the facts of the case, the court stated, among other things, that the actual validity of the committal warrant holding Mr Ryan had not been challenged. It was the failure of the minister to grant remission that was the subject of the challenge that led to the article 40 proceedings. The Supreme Court held that the decision of the minister was *prima facie* valid in the face of an unchallenged committal warrant. The court explicitly stated that "the special and extraordinary features of the article 40 procedure are not required for the examination of this complaint".

Ambiguity removed

This decision has cleared up the ambiguity between the various judgments regarding which application should be made. The Supreme Court did not go beyond this issue when dealing with this appeal.

The narrow terms of rule 59(2) have been expanded by the minister with an amendment of the rule by the *Prison (Amendment) (No 2) Rules 2014* (SI 385/2014), which came into operation on 15 August 2014. This new rule 59(2) allows the minister to take into account an entire range of factors when considering to enhance a prisoner's application for remission.

In addition to this development, a standard application form has been drawn up to allow prisoners make an application for enhanced remission. This seems to have addressed the *ad hoc* nature of the implementation of this legislation; however it is yet to be seen whether the amended rule 59(2) will withstand future judicial review challenges.

The management of the prison system has been previously acknowledged by the courts as a difficult task for the executive. The courts are generally reluctant to interfere with the management of the State's prisons; however, there seems to be an increasing willingness by the courts to do so. These recent decisions are not only evidence of this, but also evidence that jurisprudence in respect of prison law is an expanding area of law.

look it up

Cases:

- *Eric Keogh v The Governor of Mountjoy Prison* [2014] IEHC 402
- *McDonagh v Frawley* [1978] IR131
- *Niall Farrell v The Governor of Portlaoise Prison* [2014] IEHC 392
- *People (DPP) v Aylmer* [1995 SC] 2 ILRM 642
- *Ryan v The Governor of Midlands Prison* [2014] IESC 54
- *The State (Royle) v Kelly [1974] IR259*

Legislation:

- *Criminal Justice Act 2006*
- *Criminal Justice Act 2007*
- *Prison Rules 2007*
- *Prison (Amendment) (No 2) Rules 2014* (SI 385/2014)

A ROCKY road

Dr Petra Bárd is head of the Division of Criminal Law Sciences at the National Institute of Criminology, Hungary

The *Tobin* case shows that European criminal law needs to adjust to the reality of multi-level governance to be efficient in a free movement area. Petra Bárd argues that substantial parts of national sovereignty need to be transferred to actors other than the nation state

In April 2000, an Irish citizen – Francis Ciarán Tobin – was driving above the speed limit through a Hungarian village. Following an overtaking manoeuvre, his car hit two children, four-and-half-year old Márton Zoltai and his one-and-a-half-year old sister Petra, both of whom died at the scene. The prosecutor's office brought charges against Mr Tobin for reckless driving causing death. At the time of the offence, Mr Tobin had been resident in Hungary as a senior manager of an Irish financial services company. Although he had initially been required to surrender his passport, it was subsequently returned to enable him to travel to Ireland for the wedding of his wife's sister. In possession of his lawfully regained passport, Mr Tobin travelled to Ireland with his family and, after the wedding, returned to Hungary. Towards the end of the year 2000, Mr Tobin's fixed-term employment contract expired and he travelled back to Ireland with his family in the lawful possession of his passport.

> **'Despite the outcome of the decision, Mr Tobin voluntarily agreed to go to prison, as long as he could do so in Ireland'**

In May 2002, Mr Tobin was convicted *in absentia* of dangerous driving causing death and sentenced by a first instance court to a period of three years' imprisonment. Some months later, the judgment was confirmed by the court of second instance, with the condition that Mr Tobin be released on probation after serving at least half of his prison sentence. Mr Tobin did not, however, return to Hungary to serve his sentence.

At that time, no international agreement existed between Hungary and Ireland on the basis of which an extradition of the requested country's own citizen was compulsory but, in January 2004, an EU framework decision introduced a new instrument – the European arrest warrant (EAW) – which provided for a simplified means for the transfer of accused and convicted persons, including own citizens, to other EU member states. EAWs can be issued for the sake of conducting criminal proceedings or in order to impose punishments on individuals who have been convicted of criminal offences. In May 2004, Hungary acceded to the European Union and, later that year, it made use of the opportunity that the framework decision provided to seek the return of Mr Tobin to Hungary.

No surrender

The Hungarian authorities issued an EAW a few months after Hungary's EU accession. As the EAW was considered not to be sufficiently precise, it was supplemented by two further warrants, clarifying the facts of the case, the criminal provision invoked, and the sanction, including the possibility of probation.

According to the framework decision, it is the judiciary of the requested state that is required to take a decision on surrender. Accordingly, in January 2007, the High Court

> Following the unsuccessful attempt to surrender Mr Tobin, the Irish legislature modified the act implementing the framework decision in order to avoid the refusal of surrender in similar cases arising in the future

PIC: iSTOCK

of Ireland, having heard the case, refused the request on the following grounds: the Irish act implementing the framework decision provided for the surrender of convicted persons for the purposes of serving a sentence only in circumstances where he or she fled the requesting state before commencing the sentence or before completing the term of punishment. The court found that Mr Tobin could not be surrendered to Hungary since he did not 'flee', but rather left the country in the lawful possession of his passport. The Minister for Justice appealed the decision to the Supreme Court, which upheld the ruling of the High Court.

New provisions

Following the unsuccessful attempt to surrender Mr Tobin, the Irish legislature modified the act implementing the framework

at a glance

- In May 2002, an Irish citizen was convicted *in absentia* in Hungary of dangerous driving causing death, and sentenced by a first instance court to a period of three years' imprisonment
- His extradition to Hungary under a European arrest warrant was refused
- The case may have implications for the nature and development of European criminal cooperation

DIPLOMA CENTRE

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

LAW SOCIETY OF IRELAND

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

CONTACT DETAILS

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

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

decision in order to avoid the refusal of surrender in similar cases arising in the future. Accordingly, section 6 of the *Criminal Justice (Miscellaneous Provisions) Act 2009* removed the requirement for convicts to have 'fled' from the issuing state in order to have them surrendered for the sake of enforcing their prison sentences.

Following the entry into force of the new provisions, Hungary issued a fourth EAW in September 2009. In February 2011, the High Court, taking the amendment into account, approved the surrender request. That decision was, however, reversed by the Supreme Court by a 3:2 majority in July 2012, resulting in the final refusal of the request for Mr Tobin's surrender. Denham CJ and Murray J (dissenting) would have upheld the first instance decision approving Tobin's surrender, but three members of the court argued against it.

The arguments

The first argument against surrender was formulated by O'Donnell J and was shared by Hardiman J. Surrender could be refused by referring to section 27(1)(C) of the *Interpretation Act 2005* if one argued that refusal of surrender in the first round was a right acquired by or accrued to Mr Tobin, which as a general rule cannot be taken away by the legislator. Nevertheless, section 4 of the *Interpretation Act* clarified that section 27 was merely a presumption, which could be rebutted if, on the basis of the amendment, one could conclude the contrary intention of the legislator. The question for O'Donnell J was therefore whether the Oireachtas intended to overwrite the judgment adopted at first instance. When answering the question, he assessed the text of the amending act, and came to the conclusion that the respective Irish law served compliance with the framework decision and it did not aim at the alteration of the *Tobin* decision of 2007.

The second reason for denying surrender – as argued by Mr Justice Fennelly and Mr Justice Hardiman – was that the second-round proceedings constituted abuse of process. According to Fennelly J, in the *Tobin* case, it was a legislative mistake and its correction that triggered two surrender proceedings. Mr Tobin won the case in the first round on the basis of a national law implementing the framework decision. It was never suggested that the law was erroneous; therefore, once he successfully relied on its provisions, Mr Tobin had no reason to expect that the law would be changed. Neither the original mistaken implementation nor its subsequent correction can be attributed to Mr Tobin; therefore, in his view, the repeated proceedings amounted to an abuse of process. In Hardiman J's view, abuse of process is also underpinned by the length of procedure.

> The second reason for denying surrender was that the second-round proceedings constituted abuse of process

As a third argument, Hardiman J also drew attention to the 'equality of arms' principle and explained that there was an inequality between the means available to the State and the defence. In his view, following the final judgment in the first round, the legislator was entitled to amend the law in a way that it also applied to Mr Tobin, whereas if Mr Tobin had lost proceedings in the first round, he could not have amended the law so as to enable reopening of proceedings for his benefit.

Reference to the quality of the Hungarian legal system and Irish justices' lack of knowledge of it were the fourth and fifth arguments for declining surrender by Hardiman J. Finally, the sixth argument of the court (also discussed in Hardiman J's concurring opinion) was that, in a reverse situation, surrender of a Hungarian citizen to Ireland would be denied.

Lessons learned

Despite the outcome of the decision, Mr Tobin voluntarily agreed to go to prison, as long as he could do so in Ireland. He currently serves the remaining part of his custodial sentence in an Irish prison.

The case confirms that the evolution of European criminal justice cooperation, which has developed along the lines of intergovernmentalism, is inefficient. A field of law that slowly develops on a case-by-case basis is not suitable for remedying the negative side-effects of an expanded freedom of movement.

Out of fear for loss of national criminal sovereignty, member states opted for mutual-recognition-based instruments rather than harmonisation. However, mutual confidence is still not fully realised among member states.

European criminal law needs to adjust to the reality of multi-level governance to be efficient in a free movement area, and substantial parts of national sovereignty need to be transferred to actors other than the nation state.

look it up

Cases:

- *Minister for Justice, Equality and Law Reform v Tobin* (2012) IESC 37

Legislation:

- *Criminal Justice (Miscellaneous Provisions) Act 2009*
- *Interpretation Act 2005*

golden YEARS?

Danny Mansergh is an experienced financial adviser and runs Mercer's member communications area

It is a truth universally accepted in pension circles: the golden age of retirement is coming to an end across the western world. Danny Mansergh asks how Law Society members are set up for retirement

Rising life expectancies and a fall in birth rates provide the key underlying reasons for a stark reality. The message for Irish people who want to ensure a comfortable income in retirement is "take care of yourself, because the State is not going to do it for you". The full State pension (contributory) currently pays just under €12,000 per annum – or around €22,700 per annum for someone with an adult dependant past State pension age who has no state pension entitlement of their own. This is not ungenerous relative to our past or even to many of our European peers.

It should be observed that obtaining the full State pension is not completely straightforward. You only qualify for the full payment with an almost complete PRSI record between the date employment first commenced and State pension age. Many people receive a lower rate of payment due to periods out of work.

> Besides the need to provide for retirement, pensions provide one of the last great Irish tax breaks

at a glance

- The standard of living of a couple on the State pension in the future is likely to be considerably worse than it is now
- Even discounting the likelihood that State provision will decline, the reasons for contributing to a pension arrangement are compelling
- The Law Society Retirement Trust Scheme provides a means of saving for retirement that incorporates tax relief, tax free investment returns, strong governance, best in class investment principles and clarity of charging

What does it actually buy?

Mercer has run some hypothetical numbers to try to establish what standard of living the State pension can actually provide. The figures incorporate a number of assumptions. Key among them are that this refers to a couple, both of State pension age, of whom one has a full PRSI contribution record. The dependant spouse has no means of their own. Neither person has any private pension. The table opposite shows what they can afford.

Beyond the bare necessities, this couple can afford a mobile phone each and a car (old). It can be speculated that they are eating out once a month at a respectable, but not lavish, restaurant. They are paying for two basic health insurance plans. They are probably entertaining themselves at home quite a lot, hence some spending on CDs and books. They can afford to attend the odd expensive social occasion, such as a family wedding.

It is also instructive to see what they cannot afford. They are not smokers (they can't afford to be) and alcohol intake is severely restricted. They cannot afford to be terribly generous at Christmas or birthdays. Their TV package is free: no Sky Sports or film packages. They do not go on

> In 1975, the Society set up the Law Society Retirement Trust Scheme as a means for members to make provision for their retirement

holidays – at least not to anywhere that costs them more than living at home. Nevertheless, it's fair to say that this is not life on the breadline.

Where is the State pension going?

Unfortunately, the standard of living of a couple on the State pension in the future is likely to be considerably worse than it is now. Ireland currently has five people of working age for every one pensioner. By 2050, we will have only two people of working age for every one taxpayer. Another way of putting this is that the burden of the State pension on the State will become heavier even as the number of taxpayers falls. The government will face the stark choice of:

- Raising taxes, and/or
- Cutting the State pension, and/or
- Restricting State pension eligibility, and/or
- Raising State pension age further, and/or
- Relying on inflation steadily to erode the real value of a frozen State pension, and/or
- Implementing massive cuts on other areas of State spending.

A combination of a few of these (not terribly pleasant or politically palatable) solutions is likely. It would be a rash person who was banking on the State pension continuing to pay out €22,700 in today's terms for each couple.

FOCAL POINT

the bare necessities

NECESSITIES	COST	LUXURIES	COST
Electricity/heating	€170 per month	Mobile phones	€110 per month
Food and essentials	€100 per week	Motor insurance	€40 per month
House maintenance	€1,500 per year	NCT and repairs/service	€700 per year
TV licence	€160 per year	Petrol	€100 per month
Waste charges	€300 per year	Car tax	€400 per year
Home insurance	€40 per month	Car replacement	€4,000 every 4 years
Health insurance	€120 per month	Alcohol	€19 per month
Clothes/shoes	€2,000 per year	CDs/books	€15 per week
Hairdressers	€60 per month	Eating out	€50 per month
Household goods	€500 per year	Entertainment	€40 per month
Property tax	€360 per year	Birthdays	€100 per year
Medical bills	€0 – medical card	Christmas	€100 per year
		Weddings	€500 per year

The early cuts are already happening, usually by stealth: the State pension has not increased to match inflation since the crash, qualifying for the full State pension has become harder, and the age of eligibility increased from 65 to 66 in 2014 (and is set to increase to 68 by 2028).

How are Law Society members doing?

The Law Society surveyed its members in June to establish the state of the membership's retirement planning:

- 67% of respondents do not believe they have adequate assets, income and pension provision to support a comfortable standard of living in retirement,
- 60% of respondents do not have an employer who currently contributes to a pension plan on their behalf,
- 41% of respondents are not contributing to a pension arrangement currently.

LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for
Professional Education and Training

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

LAW SOCIETY OF IRELAND

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

DATE	EVENT	DISCOUNTED	FULL FEE	CPD HOURS
8 Oct	Annual Litigation Conference - in collaboration with the Litigation Committee	€180	€225	3.5 General (by Group Study)
9 Oct	Garda Station Questioning – introductory workshop	€248	€296	3 General plus 2 M & PD Skills (by Group Study)
11 Oct	Human Rights Annual Conference - Criminal Justice and Human Rights in Ireland Today	Complimentary		3.5 General (by Group Study)
16 Oct	Annual Property Law Conference – in collaboration with the Conveyancing Committee	€180	€225	3.5 General (by Group Study)
16 Oct	The President of Ireland's Ethics Initiative: Conscience, Professionalism and the Lawyer - Kimberley Brownlee	Complimentary		1.5 Regulatory (by Group Study)
21 Oct	Solicitors for the Elderly Event: How to best serve vulnerable and/or elderly clients and mind ourselves too!	€180	€225	3.5 General (by Group Study)
	Training Solicitors Workshop Dublin			
6 Nov 27 Nov 15 Jan	Workshop 1 - Defining Roles & Realising Expectations Workshop 2 - Delegating Effecting & Performance Feedback Workshop 3 - Coaching as a Management Style, giving developmental feedback & managing underperformance	€100 €100 €100 €260 (if booking all three workshops)	€125 €125 €125 €325 (if booking all three workshops)	3 M&PD Skills (by Group Study) for each workshop Or 9 hours M&PD Skills (by Group Study) for entire series of 3 workshops
	Training Solicitors Workshop Tipperary			
29 Oct 19 Nov 21 Jan	Workshop 1 - Defining Roles & Realising Expectations Workshop 2 - Delegating Effecting & Performance Feedback Workshop 3 - Coaching as a Management Style, giving developmental feedback & managing underperformance	€100 €100 €100 €260 (if booking all three workshops)	€125 €125 €125 €325 (if booking all three workshops)	3 M&PD Skills (by Group Study) for each workshop Or 9 hours M&PD Skills (by Group Study) for entire series of 3 workshops
	New - Property Transactions Master Class – iPad, interactive eBook and OUP manuals included	€484 per workshop (fee includes iPad mini)	€550 per workshop (fee includes iPad mini)	
14 & 15 Nov	Workshop 1 – Fundamentals of Property Transactions	€286 per workshop (iPad not included)	€325 per workshop (iPad not included)	8 General plus 2 M&PD (by Group Study)
23 & 24 Jan	Workshop 2 – Complex Property Transactions	Book all three workshops	Book all three workshops	10 General (by Group Study)
6 & 7 Feb	Commercial Property Transactions	€968 (Fee includes iPad mini) €792 (iPad not included)	€1,100 (Fee includes iPad mini) €900 (iPad not included)	10 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)
7 Nov, 11 Dec, 16/17 Jan & 13/14 Feb	Acting for Clients in Construction Adjudication – Practice and Procedure - a 6-day, practical course for practitioners representing parties under the new Construction Act	€880	€1100	12 General for 2014 (by Group Study) plus full CPD requirement for 2015 (provided relevant sessions attended)
13 Nov	EU Committee – International Affairs Talk	Complimentary		TBC
14 Nov	Law Society Skillnet CPD Update Conference 2014, Clarion Hotel – Cork - In collaboration with Southern Law Society and West Cork Bar Association	€85 Hot lunch and networking drinks reception included		4 General,1 M & PD Skills,1 Regulatory Matters (6 total) (by Group Study)
21 Nov	Law Society Skillnet CPD Conference for General Practice – Hotel Kilkenny – Kilkenny - In collaboration with Kilkenny Bar Association, Tipperary Solicitors' Bar Association and Waterford Law Society	€85 Hot lunch and networking drinks reception included		5 General plus 1 Regulatory Matters (by Group Study) (6 total)
28 Nov	Annual Family and Child Law Conference – in collaboration with the Family and Child Law Law Committee	€180/€225 Hot Buffet Lunch included		4.5 General (by Group Study)

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

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

The Society is concerned that many members are making no provision for retirement beyond reliance on the State pension.

What is the Society doing?

While Ireland's current financial travails and its looming demographic problem are new, the problem of solicitors worried about their retirement prospects is not. We did not have an ageing population in the 1970s, but we did have a far less generous State pension (£15 a week in 1975). In 1975, the Society set up the Law Society Retirement Trust Scheme as a means for members to make provision for their retirement.

That scheme is still in existence, and still provides members with a way of making their standard of living more comfortable in retirement than would be the case if they were reliant on the State pension alone. There is, however, a problem: going by the survey, only 45% of Law Society members actually realise that the Law Society Retirement Trust Scheme exists.

> Going by the survey, only 45% of Law Society members actually realise that the Law Society Retirement Trust Scheme exists

Excluding those members with an employer that provides a company pension, any practising member of the Law Society who wants to make provision for their retirement has two basic options:

- Contribute to the scheme,
- Contribute to an individual pension arrangement, such as a PRSA or a personal pension, set up with a pension provider.

There may be individual circumstances where it makes sense to set up an individual pension arrangement. However, the scheme exists and is supported by the Society to try and obtain for members better governance, lower charges, and more robust investment options than they may be able to get on their own. A member can join the scheme regardless of whether they once contributed to another pension arrangement, and joining the scheme does not prevent a member from making alternative pension arrangements in the future.

FOCAL POINT

why bother with a pension?

Even discounting the likelihood that State provision will decline, the reasons for contributing to a pension arrangement are compelling. They are also poorly understood. Besides the need to provide for retirement, pensions provide one of the last great Irish tax breaks. Contributions qualify for relief from income tax, up to limits determined by age and salary. For a higher rate taxpayer, due to tax relief, paying €1,000 into a pension has a net cost of only €590 – the other €410 would be going to the government in tax if the pension contribution was not made. In addition, as the pension (hopefully) grows, returns are tax free – as opposed to DIRT of 41% on deposit interest, capital gains tax of 33% and income tax at the appropriate personal rate on rent and dividends. The pension levy (0.15% in 2015) attracts much negative comment, but its impact is very small relative to the tax advantages of pensions.

At retirement, 25% of the pension can be drawn down as a retirement lump sum – and retirement lump sums up to the lifetime level of €200,000 are tax free. The balance can be used either to buy an income for life or it can be placed in an approved retirement fund with the objective of growing it further and drawing out income when needed.

The main advantages of the scheme over a private pension arrangement are:

- *Governance* – the scheme has two levels of governance. First, a professional trustee is employed. Their job is to ensure that all decisions taken reflect the best interests of the membership. Second, a committee of the Law Society monitors the running of the scheme. All decisions are taken with the overriding objective of benefitting the membership. The contrast with a private pension arrangement, where the contract is between the individual and a pension provider driven primarily by the profit motive, is stark.
- *Investment principles* – the scheme avoids dependence on any one fund manager. Rather, the funds on offer within the scheme have flexibility: the fund managers are selected, monitored and, when necessary, replaced by the scheme's investment consultants. The aim here is continual 'best-in-class' investment management. Again, in general, this feature is either unobtainable or prohibitively expensive in private pension arrangements.
- *Charges* – in 2012, the Government's *Report on Pension Charges in Ireland* found that, when all the different charges incorporated in individual Irish pension plans were put together, the cumulative annual negative effect returns (the 'reduction in yield') could be anything from 0.89% to a massive 3.08%. The scheme's annual charges are transparent and low on this scale, varying between 0.20% and 1% depending on the fund chosen (the annual charge is 1% for the main managed fund). Few private contracts outside the scheme are likely to have lower charges.

Performance

Like any pension fund, the funds offered by the scheme can fall as well as rise in value. Recent returns (gross of annual management charge) for some of the scheme's main funds are shown in the table below.

Should I join?

The scheme provides a means of saving for retirement that incorporates tax relief, tax-free investment returns, strong governance, best-in-class investment principles and clarity of charging. It is available regardless of whether you are a sole trader, a partner, or an employee whose employer does not provide a company pension.The main category of person for whom the scheme is, in all likelihood, unsuitable is an individual whose employer sponsors and contributes to a pension arrangement on their behalf: it is not possible to be a member both of the scheme and a separate employer's pension.

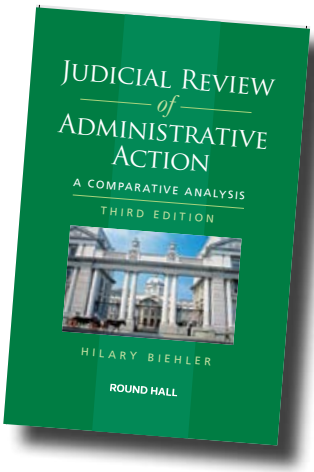
Mercer acts as scheme administrator. To get started on joining the scheme and making either a once-off or a regular contribution, call 1890 275275 or email JustASK@mercer.com.

FOCAL POINT

performance to 30 june 2014

FUND NAME	THREE MONTHS (%)	ONE YEAR (%)	THREE YEARS (% pa)
All equity fund	3.4	22.0	12.3
Managed fund	4.0	11.8	9.9
Long bond fund	5.6	16.0	12.3
Cash fund	0.0	0.0	0.3

Judicial Review of Administrative Action



Hilary Biehler. Round Hall (3rd edition; 2013), www.roundhall.ie. ISBN: 978-0-4140-314-63. Price: €95 (incl VAT).

As Hilary Biehler acknowledges in the introduction, the circumstances in which the courts will review the exercise of administrative functions have increased significantly over the past few decades.

Whether you are an in-house solicitor in a public sector organisation or other body susceptible to judicial review, or a solicitor acting for an applicant, this text is a useful summary of the law related to judicial review in this jurisdiction. It is accompanied by instructive comparisons from other common law countries.

Throughout the text, the author considers the ongoing tension in judicial review between the need to maintain public confidence in the standard of administrative decision-making and the need not to interfere unnecessarily in such decision-making.

In the opening chapters, the author analyses the development of the law related to jurisdictional error, the control of discretionary powers and legitimate expectation.

Of particular interest to many practitioners, however, will be Chapter 5, which tackles the concept of fair procedures in administrative actions. Whether you are advising a decision-maker or seeking to challenge a decision, it can be difficult to navigate what is required by natural justice, given that what is required may change, depending on the circumstances of the particular case. In this chapter, the author draws together the case law on key areas of consideration from a fair procedures perspective, including, for example, the case law concerning bias and prejudgment, prior notice, disclosure, the entitlement or otherwise to an oral hearing and the duty to give reasons.

Equally useful from a practitioner's perspective is Chapter 6, which addresses the remedies available in judicial review, and Chapter 7, which deals with judicial review procedure (including the procedural changes introduced in 2012 by SI 691/2011).

In Chapter 7, in particular, the author examines each of the key aspects of order 84 of the *Rules of the Superior Courts* and the procedural requirements for both the leave and substantive judicial review applications. This analysis should prove particularly helpful to any new practitioners to this area.

Tracy Lyne is a senior lawyer in the enforcement division of the Central Bank of Ireland.

READING ROOM

digital database of unreported judgments

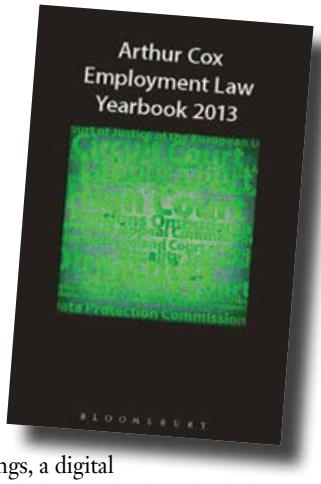
Over 10,000 unreported judgments spanning the period 1952-2014 are now available in PDF format on the library's online catalogue (members' area and student *Moodle*).

Each unreported judgment was scanned and quality-checked before being uploaded to the online catalogue. Since 2012, the Courts Service has been supplying High Court judgments in digital format to the library, and this has eliminated the need for scanning, simplifying the process somewhat.

Members and trainees can now search for, read, and print judgments from their own desktop. The library staff are happy to assist with advice on how to find materials online. Contact the library by email: libraryenquire@lawsociety.ie, or tel: 01 672 4843/4.

Arthur Cox Employment Law Yearbook 2013

Bloomsbury Professional (2014), www.bloomsburyprofessional.com.
ISBN: 978-1-7804-345-68. Price: €90 (paperback plus e-book).



This book ticks all the boxes for lawyers specialising in employment law or for HR professionals or trade-union officials who need to reference the area. It includes:

- Decisions of the Irish courts, including the Labour Court, the Equality Tribunal and the Employment Appeals Tribunal,
- Irish legislative developments,
- British common law and legislative developments,
- Decisions of the European Court of Justice, decisions of the European Court of Human Rights, European legislative reform and relevant directives/regulations,
- Data protection and freedom of information developments, and
- Decisions listed in other areas of law that complement the employment law arena, such as pensions, taxation, privacy and data protection law selected by experienced lawyers in those fields.

Available as an e-book, this allows readers instant access to selected and additional material online, and this is to be welcomed. According to its publishers, it's the only Irish title of its kind to include such a function, through which users will be able to access, among other things, a digital version of the book that can be downloaded and used as necessary.

The yearbook is aimed directly at relevant employment case law and decisions arising that took place throughout 2013 in Ireland. It is not (nor does it purport to be) a publication that will set out in detail the core principles of employment law as they currently are in Ireland. There are other publications in the market that are more suited in that regard. The yearbook should be considered a resource on case law in the employment arena that could be read and referred to in conjunction with other publications that set out the core principles.

Conall Bergin is a solicitor and employment and policies specialist at the Irish Hospitals Consultants' Association.

new books available to borrow

- Bar of Brussels, *Professional Secrecy of Lawyers in Europe* (Cambridge University Press, 2013)
- Casserley, Dermot *et al*, *Thomson Round Hall Employment Law Conference 2014* (Round Hall, 2014)
- Chada, Raj *et al*, *Bribery: A Compliance Handbook* (Bloomsbury Professional, 2014)
- CT Walton (editor), *Charlesworth & Percy on Negligence* (13th ed; Sweet & Maxwell, 2014)
- Hughes, Anne, *Human Dignity and Fundamental Rights in South Africa and Ireland* (Pretoria University Law Press, 2014)
- Jacob, Marc, *Precedents and Case-based Reasoning in the European Court of Justice* (Cambridge University Press, 2014)
- Parker, Christine and Adrian Evans, *Inside Lawyer's Ethics* (2nd ed; Cambridge University Press, 2014)
- Peel, Edwin and James Goudkamp (eds), *Winfield & Jolowicz on Tort* (19th ed; Sweet & Maxwell, 2014)
- Richardson, Nigel and Peter Clark, *Sexual Offences: A Practitioner's Guide* (Bloomsbury Professional, 2014)
- Ryder, Nicholas, *The Financial Crisis and White-Collar Crime: The Perfect Storm* (Edward Elgar, 2014)
- Samuel, Geoffrey, *A Short Introduction to the Common Law* (Edward Elgar, 2013)
- Smith, Nathan, *Social Media in the Legal Sector* (Law Society of England and Wales, 2014)
- Statamatoudi, Irini and Paul Torremans, *EU Copyright Law: A Commentary* (Edward Elgar, 2014)
- Stephen, Frank H, *Lawyers, Markets and Regulation* (Edward Elgar, 2013)
- Thirlway, Hugh, *The Sources of International Law* (OUP, 2014)
- Wallington, Peter, *Butterworth's Employment Law Handbook* (22nd ed; LexisNexis, 2014)
- Ward, Paul, *The Child Care Acts: Annotated and Consolidated* (3rd ed; Round Hall, 2014)

practice notes

Professional indemnity insurance Run-Off Fund: notification of closure of firms

Firms intending to cease practice are required to provide the special purpose fund manager with a written notice of the firm's intention to cease practice by whichever is the earliest of the following:

- At least 60 days prior to the firm ceasing practice, or
- At least 60 days prior to the expiry of the firm's coverage period.

The Run-Off Fund provides run-off cover for firms that have ceased practice, in circumstances where such firms:

- Have renewed their professional indemnity insurance for the current indemnity period, and
- Satisfy certain eligibility criteria, including the requirement that there is no succeeding practice in respect of the firm.

All firms entering the Run-Off Fund shall have a self-insured excess equal to the self-insured excess applicable to the firm in its last coverage period in practice. This standard self-insured excess is separate from any additional self-insured excess that may be applied to a firm's run-off cover in certain circumstances.

Firms obtaining run-off cover through the Run-Off Fund will not be required to bear any additional self-insured excess for run-off cover, provided they meet certain cessation obligations within the required timeframes, as set out in the run-off cover rules. Providing timely notification of closure by a firm to the special purpose fund manager is one these cessation obligations.

The written notice of intention to cease practice can be provided by the firm in the form of the notice of closure form available on the Society's website or in any written form provided that it includes the information contained in the notice of closure form.

Any notification of closure must be accompanied by the following:

- A copy of the firm's most recent completed proposal form, and
- A copy of the firm's most recent policy of qualifying insurance.

An additional self-insured excess will be applied to a firm's run-off cover commensurate with any failure to meet the cessation obligations. An additional self-insured excess in the maximum amount of €15,000 will be applied for failure by a firm to notify the special purpose fund manager of its intention to cease practice within the stated timeframes. Such additional self-insured excesses are applied on an aggregate basis in respect of each indemnity period rather than on a per claim basis.

More information on run-off cover and other cessation obligations, together with the relevant forms, regulations and documentation can be found on the Society's website at www.lawsociety.ie/Solicitors/Practising/PII/Run-off-Cover.

(Firms seeking further information on the Run-Off Fund should contact the special purpose fund manager, Capita Commercial Insurance Services, 65 Gresham Street, London, EC2V 7NQ; tel: 0044 207 397 4539, email: spf@capita.co.uk.)

John Elliot, Registrar of Solicitors and Director of Regulation

Professional indemnity insurance common proposal form

The professional indemnity insurance (PII) common proposal form for the 2014/2015 indemnity period will be available to download in early September from www.lawsociety.ie/Solicitors/Practising/PII, under the 2014/2015 renewal resources section.

The form will also be circulated by insurers, directly or through brokers. The form has been slightly amended for the 2014/2015 indemnity period to make the form clearer and easier to use.

This common proposal form ensures that each firm will have to complete only one proposal form at the next renewal, thereby simplifying the renewal process for the profession and making it easier for firms to obtain multiple quotes.

The Law Society's PII helpline is available Monday to Friday, 10am to 4pm, to assist firms with PII queries: 01 879 8707 or piihelpline@lawsociety.ie.

Points to note

1) Ultimately, the principals/partners of each firm are responsible for obtaining PII for the firm before the renewal date.
2) The proposal form should be submitted early, be completed fully and correctly, have all required documentation attached, and be clear, accurate, well-presented and comprehensive. Try to avoid submitting handwritten proposal forms.
3) Firms are not required to provide certificates of good standing with the common proposal form, and insurers did not seek to have a requirement to provide this certificate included in the common proposal form. Please note that the fee for obtaining a certificate of good standing from the Society within ten working days is €100, to be paid in advance of the certificate issuing. Certificates of good standing issued later than ten working days are free of charge.
4) Answer all questions – if you are unsure of any question, answer what you think the insurer is looking for and provide additional information to clarify. Check and recheck the form to ensure that all questions have been answered correctly.
5) Check that all additional documentation has been attached to the form and is correctly cross-referenced.
6) Make sure that the figures add up. For example, ensure that gross fee income figures add up to 100%.
7) The insurer must accept a fully completed proposal form as a duly completed application for a policy and must not require the firm to complete or submit any other proposal form or application for a policy.
8) An insurer cannot require a firm seeking a policy to provide it with supplemental information until such time as the insurer has received and reviewed a proposal form fully completed by that firm.
9) The insurer can only request a firm to provide it with supplemental information where the insurer reasonably requires such information in order to decide whether to insure the firm. In this case, the insurer must make a statement to that effect and request that the firm provide such supplemental information within a reasonable timescale.
10) It is proper practice for firms to notify insurers of claims or circumstances arising during the year as they arise, not at the end of the indemnity period. Notifying all claims and circumstances at the end of the indemnity period is referred to as 'laundry listing' by insurers

and is not looked on favourably.

11) Firms must notify their current insurer of all claims and circumstances before the end of the indemnity period.
12) The common proposal form is an application for normal PII, not for run-off cover. Firms should contact the special purpose fund manager, Capita Commercial Insurance Services, with regard to obtaining run-off cover through the Run-Off Fund. The special purpose fund manager can be contacted at tel: 0044 207 397 4539, email: spf@capita.co.uk. More information on the Run-Off Fund can be found on the Society's website at www.lawsociety.ie/Solicitors/Practising/PII/Run-off-Cover.
13) Claims information must be provided by your current insurer and be attached to the common proposal form. If you have a poor claims history, provide the insurer with further information on how the claim arose and what procedures are now in place to ensure that, henceforth, as far as possible, such claims will not arise. Failure to provide a claims history or provision of an incomplete claims history may indicate to insurers that something is being hidden. Claims information is used by insurers to compare your previous loss experience against improvements to risk management you may have implemented or changes you may have made to your work type activities.
14) Firms should ensure to redact any information in any documentation provided to insurers that may breach legal privilege or client confidentiality.
15) Insurers focus on risk management, and it would be to the benefit of firms to demonstrate to insurers that they have robust risk-management procedures in place.
16) Ensure that the form is signed and dated, otherwise the proposal form is invalid.
17) With regard to yes/no questions in the form, where the answer is some variation of yes or no, expanded answers should be provided on such questions in the covering letter submitted with the form.

John Elliot, Registrar of Solicitors and Director of Regulation

PII: notification of claims – the 'double trigger'

The purpose of this practice note is to provide guidance to the profession on the 'double trigger' notification of claims rules for the 2013/2014 indemnity period. This information is intended as general guidance and does not constitute a definitive statement of law.

Solicitors' professional indemnity insurance is on a 'claims made and notified' basis. This means that, in accordance with the minimum terms and conditions, insurers must indemnify the firm against civil liability incurred by the firm arising from any provision of legal services provided that:

- **A claim in respect of such civil liability is first made against the firm during the coverage period and notified to the insurer during the coverage period, or within three working days immediately following the end of the coverage period, or**
- **A claim in respect of such civil liability is first made during or after the coverage period, and arises from circumstances first notified to the insurer during the cover period or within three working days immediately following the end of the coverage period, provided that the firm was aware of the circumstances during the coverage period.**

Coverage period

The 'coverage period' for a firm is the period for which the insurance (or Assigned Risks Pool coverage as the case may be) held by the firm affords cover.

Claims

The requirement for a claim to be both made against the firm and notified to the insurer during the same coverage period is referred to as the 'double trigger', in that both requirements must be met for the claim to be covered under the policy.

For example, if a claim is made against a firm in one coverage period but the firm fails to notify its insurer of this claim until the next coverage period, the claim will not be covered under the insurance policy for either coverage period. The firm will be without cover for that claim.

Circumstances

With regard to circumstances that may give rise to a claim, the firm must notify the insurer of any such circumstances arising in the coverage period in which the firm first becomes aware of those circumstances. The insurer will then be required to cover a claim arising out of those circumstances in the future. For example, if the firm becomes aware of circumstances that may give rise to a claim in one coverage period, it must notify its insurer of those circumstances in the same coverage period. If those circumstances give rise to a claim in future, that claim will be covered by the firm's insurer for the coverage period in which the circumstances were notified.

Should the firm fail to notify the insurer in the coverage period in which it first becomes aware of circumstances that could give rise to a claim, the insurer is not required to cover any future claim arising out of those circumstances. For example, if the firm becomes aware of circumstances that may give rise to a claim in one coverage period, but fails to notify their insurer of the circumstance during the that coverage period, a claim arising from those circumstances will not be covered by the insurer for that coverage period, or any insurer for a future coverage period. The firm will be without cover for that claim.

Continuous cover exception

There is an exception to the double trigger rule, where the double trigger (the requirement to notify the claim or circumstance in the same coverage period in which it was made) does not apply if the firm maintains continuous cover with that insurer without interruption over two or more consecutive coverage periods; that is, the firm has maintained insurance between the relevant coverage periods with the same insurer. This exception was introduced in the 2013 amending regulations and applies to claims and circumstances arising after 1 December 2013.

The self-insured excess for a claim where the continuous cover exception applies shall be the higher of the applicable self-insured excesses between the two coverage periods, and the limit of liability shall be the lower of the two coverage periods.

Notice period

The minimum terms and conditions contain a provision that allows firms to report claims or circumstances, which they are aware of during the coverage period, to their insurer within three working days immediately following the end of the coverage period. A firm availing of this provision will be required to provide evidence to its insurer that the claim was notified to the firm, or that the firm was aware of the circumstances, prior to the end of the coverage period.

Notification of claims and circumstances before the renewal

Firms should notify their insurers immediately when they become aware of a claim or circumstance during the coverage period. Firms should ensure that all claims and circumstances that have arisen during the 2013/2014 indemnity period (1 December 2013 to 30 November 2014) are notified to their insurer on or before 30 November 2014. Failure to notify your insurer of claims or circumstances within the same coverage period as the claim or circumstance arises will result in the failure of coverage by your insurer for that claim, thereby leaving your firm uninsured for that claim.

practice notes

Succeeding practice rule

The purpose of this practice note is to provide guidance to the profession on the succeeding practice rule for the 2014/2015 indemnity period. This information is intended as general guidance and does not constitute a definitive statement of law.

Ceasing firms

Where a firm ceases practice, valid professional indemnity insurance (PII) claims made against the firm are covered in one of two ways:

1) If the ceased firm has a succeeding practice or succeeding practices, the insurance of any succeeding practice(s) covers such claims,
2) If the ceased firm does not have a succeeding practice or succeeding practices, the firm enters the Run-Off Fund. The coverage provided under the Run-Off Fund covers such claims.

Whether or not a firm is a preceding practice or a succeeding practice in relation to any other firm will depend on a detailed analysis, taking account of the facts of the particular case. No generalised practice guidance can be given, and each case must be individually examined with reference to the definitions of preceding and succeeding practice as set out in the regulations.

Definitions

'Preceding practice' means a practice that has ceased practice and to which the firm's practice is a succeeding practice.

'Succeeding practice' means a practice that satisfies any one or more of the following conditions in relation to another practice (with such other practice being a preceding practice for these purposes):

1) The practice is held out as being a successor to the preceding practice, or part thereof, or
2) The practice is conducted by a partnership where half or more of the principals are identical to the principals of any partnership that conducted the preceding practice, or
3) The practice is conducted by a sole practitioner who was the sole practitioner conducting the preceding practice, or
4) The practice is conducted by a sole practitioner who was one of the principals conducting the preceding practice, or
5) The practice is conducted by a partnership in which the sole practitioner conducting the preceding practice is a partner and where no other person has been held out as a successor to the preceding practice, or
6) The partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the preceding practice.

Notwithstanding the foregoing, a practice shall not be treated as a succeeding practice pursuant to conditions 2 to 6 above if another practice is or was held out by the owner of that other practice as the succeeding practice.

Regulation amendments

In the *Solicitors Acts 1954-2011 (Professional Indemnity Insurance) (Amendment) Regulations 2013*, the definitions of succeeding practice and preceding practice have been changed from the definitions set out in the *Solicitors Acts 1954-2008 (Professional Indemnity Insurance) Regulations 2011* as follows:

1) The definition of preceding practice was amended to clarify that a preceding practice must be a ceased firm.
2) The succeeding practice definition was amended to state that a practice held out as being a successor to the preceding practice, or part thereof, by whatever means such holding out occurs, would be considered to be a succeeding practice. Under the previous definition, the practice had to "expressly" hold itself out as a successor to the preceding practice, or part thereof.
3) The succeeding practice definition was amended to state that any practice conducted by a partnership where half or more of the principals are identical to the principals of any partnership that conducted the preceding practice would be considered a succeeding practice. Under the previous definition, a majority, rather than half or more, of the principals were required to be identical.
4) The succeeding practice definition was amended to include any practice being conducted by a sole practitioner who was one of the principals conducting the preceding practice as constituting a succeeding practice. This type of practice did not fall under the previous definition of succeeding practice.

Any firm that ceased practice on or after 1 December 2013 is subject to the 2013 regulations, including the new definition of succeeding practice.

Any firm which ceased practice on or before 30 November 2013 falls under the previous definition of succeeding practice as set out in the 2011 regulations.

Multiple succeeding practices

Depending on the precise circumstances, more than one firm can be a succeeding practice to a preceding practice, and a number of factors may need to be taken into account to identify the succeeding practices that meet the definition in the regulations.

For example, the definition of a succeeding practice includes a practice that is held out as being a successor to the preceding practice or any part thereof. In this context, the 'part' of the practice that the succeeding practice is being held out as a successor to may mean a recognisable part of the practice, such as all the conveyancing or litigation or probate files, or all of the residential conveyancing or personal injury or debt collection or family law files, or all the files of a branch office, depending on the context and structure of the practice. However, this is not an exhaustive list. Therefore, the preceding practice could be broken into a number of succeeding practices holding themselves out as a successor to specific parts of the preceding practice.

It should be noted that a firm may take on the files of a preceding practice without being deemed to be a succeeding practice so long as they do not meet any of the conditions in the definition of a succeeding practice, including holding themselves out as a successor to all or part of the preceding practice.

Determination of whether a firm is a succeeding practice

It is clear from the definition of a succeeding practice that determination of whether a firm is or will be deemed to be a succeeding practice depends on the particular circumstances in question.

While the Society will seek to assist firms in relation to the general definition of preceding and succeeding practices, the Society will not, and cannot, provide any advice, declaration or ruling as to whether a firm would be considered to be a succeeding practice. The Society considers that it is best practice for the relevant firm to liaise with its broker and/or insurer with a view to ascertaining its views on whether the firm would be considered to be a succeeding practice and to discuss generally the impact on its PII.

INFORMATION NOTICE

transfer of the business of ICS to bank of ireland

Bank of Ireland wishes to advise practitioners of the transfer of the business of ICS (the transferor) to Bank of Ireland (the transferee), pursuant to SI no 257 of 2014 made by the Minister for Finance (*Central Bank Act 1971 (Approval of Scheme of Transfer between ICS Building Society and the Governor and Company of the Bank of Ireland) Order 2014*), which took effect on 1 September 2014.

Arising from the above statutory transfer scheme, the Bank of Ireland is requesting practitioners to comply with the following instructions:

a) *Cheques:* as and from 1 September 2014, any cheque received in respect of an ICS redemption or in respect of an ICS accountable trust receipt fee must be made payable to Bank of Ireland. Failure to do so may result in delays.

b) *Execution of solicitor pack documents:* ICS documentation executed on or after 1 September 2014 will not be accepted. On or after 1 September 2014, the Bank of Ireland documentation pack must be executed by the borrower(s) and the solicitor, as required. Failure to do so may cause a delay in the drawdown of the loan. The documentation packs for Bank of Ireland can be ordered by calling 01 611 3333.

From the transfer date, any correspondence with practitioners will come from Bank of Ireland. Practitioners wishing to make contact with Bank of Ireland may use the same correspondence address, and normal contact numbers will continue to apply for Bank of Ireland.

Please note also: Bank of Ireland Mortgage Bank, a subsidiary of Bank of Ireland, issues its own separate execution documentation pack to solicitors for mortgage loans that it provides. Please ensure that the correct execution documentation pack is used for Bank of Ireland Mortgage Bank, and Bank of Ireland, after the transfer date.

legislation update

12 August – 8 September 2014

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

SELECTED STATUTORY INSTRUMENTS

Taxes (Electronic Transmission of Partnership Tax Returns) (Specified Provision and Appointed Day) Order 2014
Number: SI 365/2014
Specifies section 959M of the *Taxes Consolidation Act 1997*, applies the legislation governing the electronic filing of tax-related information in chapter 6 of part 38 of the *Taxes Consolidation Act 1997* to tax information to be included in partnership returns, and ensures that the electronic filing legislation applies to tax information to be included in partnership returns filed under the provisions of part 41A on or after 7 August 2014.
Commencement: 7/8/2014

Competition and Consumer Protection Act 2014 (Commencement) Order 2014
Number: SI 366/2014
Brings parts 1, 2, 3, 5, 6 and 7 of the *Competition and Consumer Protection Act 2014* into operation on 31 October 2014, apart from section 8 (which gives the minister power to make an order appointing an establishment day for the new Competition and Consumer Protection Commission), which will come into effect on 1 August 2014.

Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No 3) (Discrimination on Grounds of Age) Regulations 2014
Number: SI 369/2014
Section 18 of the *Social Welfare and Pensions Act 2014* enables the Minister for Social Protection to discriminate on the grounds of age in respect of a prescribed class of persons in the provision of employment services and supports. Section 18 also provides that there must be objectively justifiable reasons for such age-based discrimination. These regulations prescribe persons between the ages of 18 and 25 years for these purposes. The provisions contained in section 18 of the *Social Welfare and Pensions Act 2014* and in these regulations will facilitate the implementation of the Youth Guarantee, which was agreed by the European Council on 22 April 2013 to tackle the challenge of youth joblessness.
Commencement: 5/8/2014

Health (General Practitioner Service) Act 2014 (Commencement) Order 2014
Number: SI 370/2014
Brings into operation certain provisions of the *Health (General Practitioner Service) Act 2014* in relation to amending a definition in the *Nursing Homes Support Scheme Act 2009*; repeals and replaces section 8 of the *Opticians Act 1956* to provide for the years that are to be election years for the purposes of that act.
Commencement: 5/8/2014

Civil Registration (Certified Extract of Register of Deaths) Regulations 2014
Number: SI 371/2014
Provide for the issue of certified extracts of entries in the register of deaths. The extract will not include the certified cause of death or the duration of illness.
Commencement: 11/8/2014

European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2014
Number: SI 379/2014
Clarify that the Investor Compensation Company Limited (ICCL) may levy alternative investment fund managers who are covered by the investor compensation fund. In addition, regulations 3(c) and 5 make changes to the principal regulations and the UCITS regulations to transpose requirements of the *Credit Ratings Agencies Directive* restricting the reliance of alternative investment fund and UCIT investment managers on ratings provided by credit rating agencies. These requirements must be transposed into Irish law by 15 December 2014. The effective date of these amendments coincides with the transposition deadline.
Commencement: 21/12/2014

European Communities (Compulsory Use of Safety Belts and Child Restraint Systems in Motor Vehicles) (Amendment) Regulations 2014
Number: SI 380/2014
Give effect to Directive 2014/37/EU of 27 February 2014, which provides for enhanced requirements for child restraint systems.
Commencement: 15/9/2014

Road Traffic (Licensing of Drivers) (Amendment) (No 2) Regulations 2014
Number: SI 381/2014
Amend the driver regulations in order to provide for noting on a driving licence that that licence has been issued in exchange for a licence issued by the driver licensing authorities in Canada.
Commencement: 7/8/2014

Prison (Amendment) (No 2) Rules 2014
Number: SI 385/2014
Amends rule 27 in relation to authorised structured activities engaged in by prisoners and amends rule 59 in relation to enhanced remission.
Commencement: 15/8/2014

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

Prepared by the Law Society Library

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of Robert Sweeney, a solicitor formerly practising as Robert Sweeney, Solicitor, 1st Floor, Crossview House, High Road, Letterkenny, Co Donegal, and in the matter of the *Solicitors Acts 1954-2011* [10658/DT113/12 and High Court record 2013 no 116SA]
Law Society of Ireland (applicant)
Robert Sweeney (respondent solicitor)

On 28 February 2013, 24 July 2013, and 8 October 2013, the Solicitors Disciplinary Tribunal sat to consider a complaint against the respondent solicitor and found him guilty of misconduct in his practice as a solicitor in that he:

1) Failed to comply with his undertaking dated 27 January 2009 to provide a deed of partial discharge in respect of a property at East Road, Dublin 3, to the complainant solicitors on behalf of their clients in a timely manner or at all,
2) Failed to respond to the Society's correspondence in the investigation of this matter and, in particular, the Society's letters of 6 September 2010, 5 October 2010, 28 October 2010, 19 January 2011, 3 February 2011, 21 February 2011, 20 April 2011, 9 December 2011, and 23 January 2012 within the time period required or at all.

The tribunal ordered that the matter go forward to the High Court and, on 30 January 2014, the President of the High Court made the following orders:

1) That the respondent solicitor be suspended from practice until such time as he discharged his undertaking dated 27 January 2009 to provide a deed of partial discharge in respect of the named property at East Road, Dublin 3, to a named firm of solicitors,
2) That the respondent solicitor pay a sum of €3,500 to the compensation fund.

In addition, the President of the High Court made ancillary orders in relation to the closure of the respondent solicitor's practice.

In the matter of Edward A Coonan, a solicitor practising as Edward A Coonan, at Blacksalliers, Prosperous, Co Kildare, and in the matter of the *Solicitors Acts 1954-2011* [2785/DT74/13]
Law Society of Ireland (applicant)
Edward Coonan (respondent solicitor)

On 6 February 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to ensure there was furnished to the Society an accountant's report for the year ended 31 July 2011, within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI no 421 of 2001),
2) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

1) Do stand admonished and advised,
2) Pay a sum of €500 to the compensation fund,
3) Pay a contribution not exceeding €500 towards the whole of the costs of the Society.

NOTICE: THE HIGH COURT

In the matter of Brendan J Looney, solicitor, practising as Brendan J Looney, Solicitor, Mespil House, Sussex Road, Dublin 4, and in the matter of the *Solicitors Acts 1954-2011* [2014 no 91 SA]

Take notice that, by order of the President of the High Court made on 14 July 2014, it was ordered that:

1) Pursuant to section 18 of the *Solicitors (Amendment) Act 2002*, the respondent solicitor be prohibited from practising as a solicitor until such time as he has fully complied with the provisions of the *Solicitors Accounts Regulations*,
2) The respondent solicitor be prohibited from holding himself out as a solicitor entitled to practise in circumstances where he does not hold a valid current practising certificate.

23 July 2014

In the matter of Ruairi O'Ceallaigh, formerly practising as Sean O'Ceallaigh and Company, and in the matter of the *Solicitors Acts 1954-2011*, and in the matter of the Solicitors Disciplinary Tribunal [2014 no 94 SA]

Take notice that, by order of the High Court made on 21 July 2014, it was ordered that the name of Ruairi O'Ceallaigh be struck off the Roll of Solicitors.

19 August 2014

John Elliot,
Registrar of Solicitors,
Law Society of Ireland,

In the matter of David Walsh, solicitor, formerly practising as David Walsh & Co, Solicitors, at 12 Mount Street, Mullingar, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2011* [4550/DT41/10 and 2014 no 37 SA]
Law Society of Ireland (applicant)
David Walsh (respondent solicitor)

On 30 July 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Caused or allowed a deficit of in or about €26,039 to arise on his client account as at 31 October 2006,
2) Caused or allowed debit balances of €3,160, €2,500, €73, €100 and €650 to arise on five clients' ledger accounts as at 31 October 2006,
3) Caused or allowed debit balances to arise on a personal account of the respondent solicitor in the clients' ledger in the amounts of €10,000 on 26 October 2006, €10,612.54 on 15 February 2006, and €142,000 on 29 October 2004,
4) Failed to ensure the stamping of a deed of transfer to named clients with reasonable expedition, which deed (dated 4 July 2006) was not sent to the Revenue Commissioners prior to the investigation carried out in March/April 2007,
5) Improperly caused or allowed €175 of clients' money (made up of €125 received to pay for searches and €50 received to pay other specified outlay) to be drawn from the clients' ledger account of named clients to the office account on or about 22 May 2006, and failed to ensure that the searches were carried out at closing in or about May 2006 or at any time prior to the investigation of his practice in March/April 2007, despite having informed his clients in a section 68(1) letter that searches would be carried out on the day of closing,
6) Improperly caused or allowed clients' money, which included €250 received to pay for searches in two purchases, plus €125 received to pay for searches in a remortgage, to be

drawn from the clients' ledger account of named clients to the office account in March and July 2006, and failed to ensure that the searches were carried out in the case of the two purchases and remortgage at closing in 2006 or at any time prior to the investigation carried out in March/April 2007, despite his clients being informed in section 68(1) letters on the files for the three matters that searches would be carried out on the day of closing,

7) Improperly caused or allowed clients' money of €380 to be drawn from the clients' ledger account of named clients to the office account in 2003, out of a total sum of €755 that had been received to pay registration fees of €625, searches of €80, and other specified outlay of €50, and failed to ensure that the searches were carried out at closing in 2003 or at any time prior to the investigation carried out in March/April 2007, despite having informed his clients in a section 68(1) letter in March 2003 that searches would be carried out on the day of closing,
8) Improperly caused or allowed clients' money of €625, belonging to named clients that had been received to pay outlay, including searches of €75, to be incorrectly transferred from their clients' ledger account as part of a larger amount to the clients' ledger account of named clients on or about 16 December 2004, and failed to ensure that the searches were carried out at closing in 2004 or at any time prior to the investigation carried out in March/April 2007, despite having informed his clients in a section 68(1) letter in November 2004 that searches would be carried out on the day of closing,
9) Improperly caused or allowed clients' money of €500 to be drawn from the clients' ledger account of named clients to the office account in April 2005, out of money received to pay outlay in May 2003 in the case of named clients and out of clients' money received to pay outlay in the case of named clients that had been received into the client account in November 2004,
10) Improperly caused or allowed clients' money of €385 to be drawn from the client's ledger account of named clients to the office account in March/April 2003, out of a sum of €760 that had been received to pay outlay, including searches of €85, and failed to ensure that the searches were carried out at closing in 2003 or at any time prior to the investigation carried out in March/April 2007,
11) Failed to ensure the stamping of a deed of transfer to named clients with reasonable expedition, which deed (dated 27 May 2003) was not sent to the Revenue Commissioners prior to the investigation in March/April 2007,
12) Improperly caused or allowed client's money of €380 to be drawn from a named clients' ledger account to the office account in November 2003, out of the sum of €790 that had been received to pay outlay, including search fees of €80, and failed to ensure that the searches were carried out at closing in 2003 or at any time prior to the investigation carried out in March/April 2007,
13) Failed to ensure the stamping of a deed of transfer to a named client with reasonable expedition, which deed (dated 15 May 2005) was not sent to the Revenue Commissioners prior to the investigation carried out in March/April 2007,
14) Improperly caused or allowed clients' money of €366.63, which had been received to pay outlay, to be drawn from the clients' ledger account of named clients to the office account in April 2003,
15) Failed to ensure the stamping of a deed of transfer to named clients with reasonable expedition, which deed (dated 24 January 2001) was not sent to the Revenue Commissioners until 18 May 2007, causing penalties/interest of in or about €6,680 to arise,
16) Improperly caused or allowed clients' money of €135, which had been received to pay outlay, including searches of €85, to be drawn to the office account from the clients' ledger account of named clients in June 2006, and failed to ensure that the searches were carried out in or about June 2006 at the drawdown of the mortgage or at any time prior to the investigation carried out in March/April 2007, despite having informed his clients in a section 68(1) letter in May 2006 that searches would be carried out on the day of closing,
17) Improperly caused or allowed client's money of €315 to be drawn from a named clients' ledger account to the office account in October 2005 and May 2006, out of client's money received to pay outlay, including searches of €80, and failed to ensure that the searches were carried out at closing in or about April 2006 or at any time prior to the investigation carried out in March/April 2007, despite having informed his client in a section 68(1) letter in June 2005 that he would carry out searches on the day of closing,
18) Improperly caused or allowed clients' money of €300 to be drawn from the clients' ledger account of a named client to the office account in July and September 2006, out of clients' money received to pay outlay including searches of €125, and failed to ensure that a search against named borrowers was carried out at closing in or about August 2006 or at any time prior to the investigation carried out in March/April 2007,
19) Improperly caused or allowed clients' money of €242 to be drawn from the clients' ledger account of named clients to the office account in September 2006, out of clients' money received to pay outlay including search fees of €85, and failed to ensure that the searches were carried out at closing/drawdown of the mortgage in or about May 2006 or at any time prior to the investigation carried out in March/April 2007, despite having informed his clients in a section 68(1) letter in March 2006 that searches would be carried out on the day of closing,
20) In the course of acting for named clients in a purchase of a house, caused or allowed a deed to be updated from in or about August 2005 to February 2006, thereby avoiding possible interest and penalties on the stamp duty,
21) Improperly caused or allowed €532.93 of clients' money to be drawn from the clients' ledger account of named clients to the office account in two tranches in March 2006 and September 2006, out of clients' money received to pay searches and other outlay, and failed to ensure that a search against the clients/borrowers was carried out at closing of the purchase of a house in or about August 2005 or at any time prior to the investigation carried out in March/April 2007,
22) Failed to maintain the deed generated in the course of a purchase of a site by named clients in or about February 2005 on the relevant matter file when the deed had not been submitted to the Revenue or for registration, in breach of regulation 20(1)(h), and failed to locate and provide the deed for examination during the investigation carried out in March/April 2007,
23) Caused or allowed a total of €3,602.25, which included cli-

ents' money of up to €1,575 received to pay outlay, to be drawn to the office account from the clients' ledger account of named clients, and could only provide a bill of costs dated 4 February 2005 for a total of €1,633.50 during the investigation carried out in March/April 2007 in support of the €3,602.25, and also failed to carry out searches at closing of the purchase of a site in 2005 or at any time prior to the investigation carried out in March/April 2007 for these clients,

24) Failed to ensure that the deed arising in the purchase of a site by named clients in or about February 2005 was stamped prior to the investigation carried out in March/April 2007,
25) In the course of acting for named clients in a purchase of a house, caused or allowed a deed to be updated from in or about February 2005 to 11 May 2007, thereby avoiding possible interest and penalties on the stamp duty,
26) Improperly caused or allowed clients' money of €590, out of a total of €1,125 received to pay registration fees of €950, search fees of €100, and other specified outlay of €75, to be drawn from the clients' ledger account of named clients to the office account in two tranches during August/September 2005, and failed to ensure that searches were carried out in the case of named clients at closing in or about July 2005 or at any time prior to the investigation carried out in March/April 2007, despite his clients being informed in a section 68(1) letter in March 2005 that searches would be carried out on the day of closing,
27) Improperly caused or allowed clients' money of €202.47, which had been received to pay outlay, to be drawn from the clients' ledger account of a named client in September 2005 and failed to ensure that a search against the client/borrower was carried out at closing in or about September 2005 or at any time prior to the investigation carried out in March/April 2007,
28) Improperly caused or allowed clients' money of €225, received to pay outlay, including search fees of €75, to be drawn to the office account in August 2006 from the clients' ledger account of a named client in a remortgage matter, and failed to ensure that the searches were carried out at closing/drawdown of the mortgage in or about August 2006 or at any time prior to the investigation carried out in March/April 2007, despite his client being informed in a section 68(1) letter in June 2006 that searches would be carried out on the day of closing,
29) In the course of acting for a named client in a purchase and a mortgage in 2002/2003, improperly drew clients' money in the net sum of €855.35, which included €85 received for searches, from client account to the office account, and failed to ensure that the searches were carried out in 2002/2003 or at any time prior to the investigation in March/April 2007,
30) Improperly caused or allowed clients' money of €1,143.95 to be drawn from the clients' ledger account of named clients to the office account in or about August/September 2006, out of money that had been partly received to pay for searches and failed to ensure that the searches were carried out at closing in or about September 2006 or at any time prior to the investigation carried out in March April 2007, despite his clients being informed in a section 68(1) letter in May 2006 that searches would be carried out on the day of closing,
31) Caused or allowed a purchase deed to be updated from on or about 29 September 2006 to 14 December 2006 in the course of acting for named clients, with the result that possible interest and penalty on the stamp duty of €24,600 was avoided,
32) Improperly caused or allowed clients' money in the net sum of €100, which included €75 received to pay for searches, to be drawn from the clients' ledger account of named clients to the office account during 2002/2003, and failed to ensure that searches were carried out at closing in or about June 2002 or at any time prior to the investigation carried out in March April 2007,
33) Improperly caused or allowed clients' money of €150 to be drawn from the clients' ledger account of a named client to the office account during 2005/2006, out of client's money received to pay outlay, including €75 for searches, and failed to carry out the searches at closing in or about 2005 or at any time prior to the investigation carried out in March April 2007, despite his client being informed in a section 68(1) letter dated 2 November 2006 that searches would be carried out on the day of closing,
34) Caused or allowed title deeds to be furnished to lending institutions that had advanced mortgage loans to named clients without having carried out any or all required up to date searches,
35) Provided incorrect or inaccurate information to the Society during the investigation on 21 March 2007, when he stated that up-to-date searches were done prior to sending the title deeds to the relevant lending institution,
36) In the course of acting for named clients, caused or allowed the purchase deed to be updated from on or about 5 December 2005 to 10 April 2006, with the result that possible interest and penalty on the stamp duty was avoided,
37) Failed to ensure that searches were carried out in the case of named clients at closing in or about December 2005 or at any time prior to the investigation carried out in March/April 2007,
38) Caused or allowed fees to be debited to the office ledger when costs were transferred from the client account to the office account instead of when bills of costs were issued, contrary to regulation 10(4),
39) Caused or allowed client account cheques to be made payable to banks that did not specify the name of the person into whose account each of the cheques were to be lodged or to whom drafts were to be made payable, contrary to regulation 8(3),
40) Failed to maintain proper books of account, in breach of regulation 12.

The tribunal ordered that the matter go forward to the High Court and, on 27 May 2014, the President of the High Court made the following orders:

1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent do pay the Society the costs of the proceedings before the Solicitors Disciplinary Tribunal only, to include witness expenses, to be taxed in default of agreement.

In the matter of David Walsh, solicitor, formerly practising as David Walsh & Co, Solicitors, at 12 Mount Street, Mullingar, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2011* [4550/DT20/12 and 2014 no 39 SA]

Law Society of Ireland (applicant) David Walsh (respondent solicitor)

On 30 July 2013, the Solicitors Disciplinary Tribunal found the

respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to maintain supporting documentation to vouch the transfer of moneys of named clients in the amount of €110,000 approximately to the office account, in breach of regulation 12(1),
2) Prior to the investigation of his practice, failed to discharge outlays received totalling €8,368 from a named client,
3) Prior to the investigation of his practice, failed to discharge outlays received totalling €13,129 from a named client,
4) Failed to maintain books of account that showed the true financial position in relation to transactions with clients' moneys, in breach of regulation 12(2),
5) Withdrew funds for fees from the client account other than as authorised by the regulations and, in particular, regulation 7(1)(a)(iii),
6) Caused or allowed debit balances to arise on the clients' ledger accounts, in breach of regulation 7(2)(a),
7) Breached regulation 7(4)(d) by failing to pay interest due to clients,
8) Breached regulation 10(2) by failing to pay all moneys received in respect of fees into either client or office bank accounts,
9) Breached regulation 4 by failing to pay clients moneys received into clients account,
10) Breached regulation 20(1)(b) by failing to maintain individual client's ledger for each client and each client matter,
11) Breached regulation 8(2) by taking costs from the client account in cash.

The tribunal ordered that the matter go forward to the High Court and, on 27 May 2014, the President of the High Court made the following orders:

1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent do pay the Society the costs of the proceedings before the Solicitors Disciplinary Tribunal only, to include witness expenses, to be taxed in default of agreement.

In the matter of David Walsh, solicitor, formerly practising as David Walsh & Co, Solicitors, at 12 Mount Street, Mullingar, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2011* [4550/DT143/12 and 2014 no 41 SA]

Law Society of Ireland (applicant)
David Walsh (respondent solicitor)

On 30 July 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with a direction made by the Complaints and Client Relations Committee at its meeting on 4 February 2011 to refund the fees he had deducted from a named estate in a timely manner or at all.

The tribunal ordered that the matter go forward to the High Court and, on 27 May 2014, the President of the High Court made the following orders:

1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent solicitor pay the sum of €24,411 as restitution to the complainant,
3) That the respondent do pay the Society the costs of proceedings before the Solicitors Disciplinary Tribunal only, to include witness expenses, to be taxed in default of agreement.

In the matter of David Walsh, solicitor, formerly practising as David Walsh & Co, Solicitors, at 12 Mount Street, Mullingar, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2011* [4550/DT68/11 and 2014 no 36 SA]

Law Society of Ireland (applicant)
David Walsh (respondent solicitor)

On 12 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to honour an undertaking dated 29 April 2004 and an extension thereof given on behalf of named clients over property at Mullingar, Co Westmeath, expeditiously, within a reasonable time, or at all,
2) Failed to honour an undertaking and an extension thereof given on behalf of named clients over property at Carrigallen, Co Leitrim, dated 14 October 2004, expeditiously, within reasonable time, or at all,
3) Failed to honour an undertaking and an extension thereof given on behalf of named clients over property at Mullingar, Co Westmeath, dated 17 January 2006, expeditiously, within a reasonable time, or at all,
4) Failed to respond adequately or in some cases at all to the complainant's correspondence, in particular, letters dated 6 January 2010, 12 August, 2010, 19 August 2010 (email), 14 September 2010, 23 September 2010, 28 September 2010, and 5 October 2010 respectively.

The tribunal ordered that the matter go forward to the High Court and, on 27 May 2014, the President of the High Court made the following orders:

1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent do pay the Society the costs of the proceedings before the Solicitors Disciplinary Tribunal only, to include witness expenses, to be taxed in default of agreement.

In the matter of David Walsh, solicitor, formerly practising as David Walsh & Co, Solicitors, at 12 Mount Street, Mullingar, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2011* [4550/DT04/12and 2014 no 38 SA]

Law Society of Ireland (applicant)
David Walsh (respondent solicitor)

On 12 September 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to honour an agreement expeditiously, within a reasonable time, or at all to pay a proportion of professional fees recovered in respect of a personal injury action for a named client,
2) By omission, misrepresented or allowed to be misrepresented the position in relation to the recovery of the costs for a named client from the defendant's insurers,
3) Failed to reply adequately or at all to the complainant's correspondence and, in particular, letters dated 21 February 2009, 30 October 2009, 19 January 2010, 28 January 2010, 4 February 2010, 17 February 2010, 26 February 2010, 3 March 2010 and 30 March 2010,
4) Failed to honour an agreement expeditiously, within a reasonable time, or at all to pay an agreed portion of the professional fees recovered in respect of a personal injury action for a named client,
5) By omission, misrepresented or allowed to be misrepresented the position in relation to the recovery of costs for a named client from the defendant's insurers.

The tribunal ordered that the matter go forward to the High Court and, on 27 May 2014, the President of the High Court made the following orders:

1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent solicitor pay the sum of €25,208 inclusive of VAT as restitution to the complainant,
3) That the respondent do pay the Society the costs of the proceedings before the Solicitors

Disciplinary Tribunal only, to include witness expenses to be taxed in default of agreement.

In the matter of David Walsh, solicitor, formerly practising as David Walsh & Co, Solicitors, at 12 Mount Street, Mullingar, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2011* [4550/DT141/12 and 2014 no 40 SA]
Law Society of Ireland (applicant)
David Walsh (respondent solicitor)

On 5 December 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with a direction of the Complaints and Client Relations Committee meeting of 9 February 2012 to refund fees totalling €20,470 plus VAT to the complainant.

The tribunal ordered that the matter go forward to the High Court and, on 27 May 2014, the President of the High Court made the following orders:

1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent solicitor pay the sum of €18,970 plus VAT as restitution to the complainant,
3) That the respondent do pay the Society the costs of the proceedings before the Solicitors Disciplinary Tribunal only, to include witness expenses, to be taxed in default of agreement.

In the matter of David Walsh, solicitor, formerly practising as David Walsh & Co, Solicitors, at 12 Mount Street, Mullingar, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2011* [4550/DT124/12 and 2014 no 70 SA]
Law Society of Ireland (applicant)
David Walsh (respondent solicitor)

On 18 February 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with the undertaking given to the complainant dated 26 April 2005 on behalf of a named client over property at Mullingar, Co Westmeath, expeditiously, within a reasonable time, or at all.

The tribunal ordered that the matter go forward to the High Court and, on 27 May 2014, the President of the High Court made the following orders:

1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent do pay the Society the costs of the proceedings before the Solicitors Disciplinary Tribunal only, to include witness expenses, to be taxed in default of agreement.

In the matter of Angela Farrell, a solicitor formerly practising as Farrell Solicitors, 28 North Great George's Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2011* [6102/DT112/13 and 2014 no 57SA]
Law Society of Ireland (applicant)
Angela Farrell (respondent solicitor)

On 11 February 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

1) Failed utterly to protect the interests of her named client by allowing a judgment to be obtained against her client and registered against her client's property in respect of costs,
2) Failed to hand over the client's file to her client's new solicitors in a timely manner or at all, despite being requested and instructed by them to do so,
3) Failed to respond to correspondence received from the complainant,
4) Failed to respond to the Society's correspondence and, in particular, to the Society's letters of 31 October 2012, 19 November 2012, 10 January 2013, 26 February 2013 in a timely manner or at all,
5) Failed to comply in a timely manner or at all with the direction of the Complaints and Client Relations Committee made at its meeting on 25 April 2013 to make the file available to the complainant within seven days.

The tribunal ordered that the matter would go forward to the President of the High Court with a recommendation that the solicitor's name be struck off the Roll of Solicitors and, on 24 June 2014, the President of the High Court made the following orders:

1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent solicitor do make restitution in the sum of €40,600 to her client,
3) That the respondent solicitor do pay to the Society the costs of the proceedings in the High Court and the costs of the proceedings before the Solicitors Disciplinary Tribunal including witnesses expenses, to be taxed in default of agreement.

eurlegal

News from the EU and International Affairs Committee
Edited by TP Kennedy, Director of Education, Law Society of Ireland

TOWARDS A EUROPEAN LAW CONCEPT OF PARODY?

The CJEU delivered its judgment in Case C-201/13, *Deckmyn v Vandersteen*, on 3 September 2014. The much-anticipated decision dealt with knotty questions of free speech and copyright law, and the decision indicates a court willingness to advance the concept of a European law concept of parody.

Belgium is a country famed for its enthusiasm for the comic strip form. Brussels even has a much-lauded museum devoted entirely to this art form. Many of its buildings are adorned with representations of the most famous comic strip characters, including Tin Tin. Less well known outside Belgium, though well known within it, is the comic strip *Spike and Suzy* (*Suske en Wiske*, *Bob et Bobette*) by Willy Vandersteen.

A Flemish nationalistic party, the Vlaams Belang, opposed a finding (with a criminal conviction) in 2004 that its publications, including a parody of *Suske en Wiske*, constituted hate speech. Vlaams Belang, through Deckmyn, tried to rely on the parody exception in Belgian copyright law (article 22(1) of the applicable Belgian act), as well as freedom-of-speech arguments.

Vandersteen's rights holders had sought an injunction preventing the transformative use by Vlaams Belang of some of his work. Specifically, they sought to prevent adaption of his work to a context depicting, in a negative manner, people of colour and those wearing veils. They were successful in obtaining the injunction, but the decision was, perhaps inevitably given the political flavour to the parody, appealed.

The CJEU was asked questions by the referring court in Brussels aimed at assisting that member state in applying the parody exception (which otherwise 'forgives' breaches of copyright law) in an EU law context.

The provision of Belgian law at issue stems from article 5(3)9(k) of the *InfoSoc Directive* (Directive 2001/29). Belgian law did not have a definition of parody *per se*, so the CJEU was asked to elaborate on what the concept meant.

> The essential characteristics of parody are, first, to evoke an existing work while being noticeably different from it, and, secondly, to constitute an expression of humour or mockery

The decision

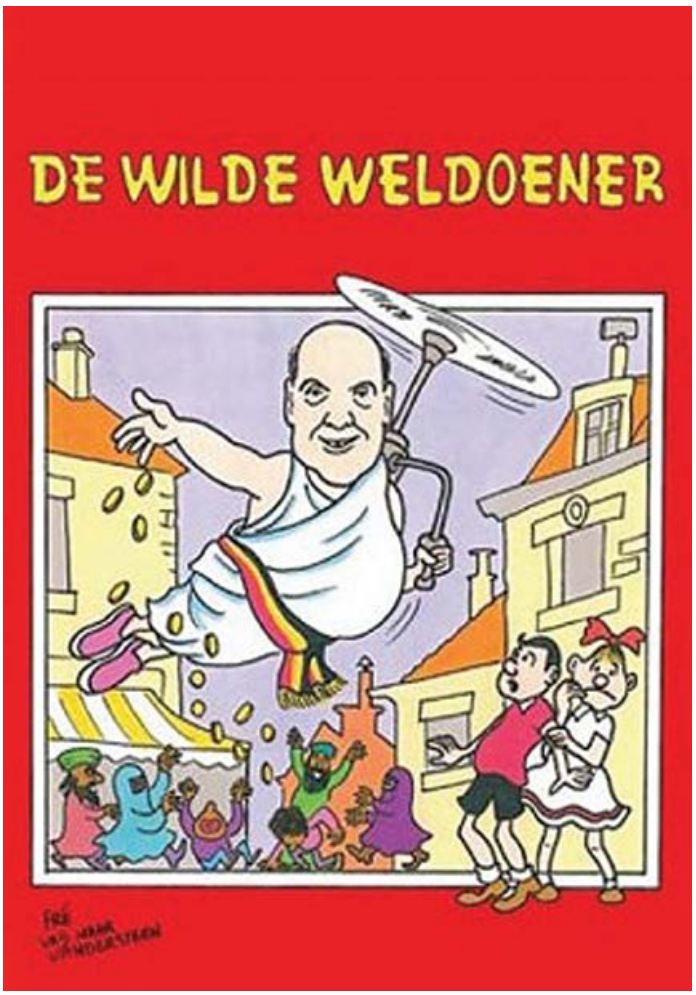
The CJEU favoured a broad concept of parody, and the decision is widely regarded as an extension of the previous scope of the concept in copyright law. It ruled that, considering the absence of a definition in the *InfoSoc Directive*, the meaning and scope of a parody must be determined by considering its usual meaning in everyday language, as follows: "The essential characteristics of parody are, first, to evoke an existing work while being noticeably different from it, and, secondly, to constitute an expression of humour or mockery."

Further, it was forceful in its clarification that "the concept of 'parody' … is not subject to the conditions that the parody should display an original character of its own, other than that of displaying noticeable differences with respect to the original parodied work; that it could reasonably be attributed to a person other than the author of the original work itself; that it should relate to the original work itself or mention the source of the parodied work".

In other words, the parody does not have to directly oppose the original work, or deal with exactly the same subject matter, as it does not need to relate to the original work itself.

The concept of 'noticeable differences' will be for the national courts to interpret in individual cases.

The CJEU found, however, that even where parody is found to exist, using a wide test, the rights holder may have a legitimate interest in ensuring that their work is not associated with a discriminatory message or hate speech. It may be that the European Court of Human Rights



may end up opining on this matter also in due course, as the CJEU's sources for the 'legitimate interests' test are primarily human rights law concepts.

Must a parody be funny?

Vandersteen's rights holders argued that the work at issue here should not be considered as parody as its aim was not humorous.

The rise of user-generated content often heavily relies on parody of existing works. The broad concept of parody described by the CJEU may, if there is no offensive or hate speech element, open the doors for advertisers to increase reliance on parody in their content. What is needed to avail of parody now is an evocation of the original work that is noticeably different from the original and contains a 'fair balance' in how the parody is used. National courts may well become busy in carrying out more and more of those assessments, where the issues at stake are at a level that justifies either the rights holder or the satirist litigating about it.

Irish law

The recent paper *Modernising Copyright*, issued by the Copyright Review Committee following extensive consultation with the public and stakeholders generally, suggested a draft section 52(6) to amend the *Copyright and Related Rights Act*. It posted the introduction of a so-called fair dealing concept into Irish law "for the purposes of caricature, parody, pastiche or satire, or for other similar or related purposes".

Further, it recommended the introduction of an exception for non-commercial user-generated content, a proposal I agree with. However, the CJEU did not have to address the issue of non-commercial user-generated content in its decision in *Deckmyn*.

Parody, caricature and pastiche

The concept of parody is an autonomous concept of European law, although many member states' national copyright laws contain a similar concept that pre-dates their EU entry. It is clear that the terms of the 2001 'parody, caricature and pastiche' exception to copyright law under the *Infosoc Directive* should, therefore, be interpreted independently from the laws of individual member states and in a uniform manner across the EU. The national courts will still have the often unenviable task of determining whether a work has sufficient originality to benefit from the safe harbour afforded by the *Infosoc Directive*. If it does not, it may merely be another (unauthorised) copy of the original work.

Satirists who wish to avail of parody exceptions within the EU will need to be aware that, if the content espouses racist or sexist views, the exceptions may not be as open to them as might have been the case before the *Deckmyn* decision. It is clear that the right of an author not to have its work (even in a parody) associated with offensive content is likely to be the subject of ongoing controversy and further judicial decision.

Jeanne Kelly is a technology law and intellectual property law partner in Mason Hayes & Curran

Recent developments in European law

COPYRIGHT

Case C-345/13, *Karen Millen Fashions Ltd v Dunnes Stores*, 19 June 2014

Karen Millen Fashions is an English company that produces and sells women's clothing. In 2005, it designed and placed on sale in Ireland a striped shirt (in a blue and stone brown version) and a black knit top. Examples of these garments were purchased by representatives of Dunnes Stores, an Irish retail chain, from one of Karen Millen's Irish outlets. Dunnes then had copies of the garments manufactured outside Ireland and put them on sale in its Irish stores in late 2006. In January 2007, Karen Millen commenced proceedings in the Irish courts, seeking to have Dunnes restrained from using its unregistered designs and damages for the unauthorised use of the designs at issue. Dunnes argued that Karen Millen had failed to prove the individual character of the designs at issue and thus it was not the holder of an unregistered community design. It argued that the individual character of a design must be assessed by reference not only to one or more individual designs made available to the public previously but also by a combination of features taken in insolation and drawn from a number of earlier designs. The Irish Supreme Court asked the Court of Justice whether the individual character of the designs at issue is to be assessed solely by reference to one or more earlier designs or also by reference to a combination of features taken in isolation and drawn from a number of earlier designs. It also asked whether the right holder is obliged to prove that his design has individual character or whether it is sufficient for him merely to indicate what constitutes the individual character of the design.

The Court of Justice held that the individual character of a design must be assessed by reference to one or more specific, individualised, defined and identified designs from among all the designs that have been made available to the public previously. That assessment cannot be conducted by reference to a combination of features taken in isolation and drawn from a number of earlier designs. There is a presumption of validity of unregistered community design so that the right holder of an unregistered community design is not required to prove that it has individual character. The right holder need only indicate what constitutes the individual character of that design (what in his/her view are the element or elements which give it its individual character). The defendant may nevertheless contest the validity of the design at issue.

EMPLOYMENT LAW

Case C-354/13, *FOA, acting on behalf of Karsen Kaltoft v Kommunernes Landsforening (KL), acting on behalf of the Municipality of Billund*, opinion of Advocate General Niilo Jääskinen, 17 July 2014

Karsten Kaltoft had been working as a childminder for the Municipality of Billund in Demark for 15 years. A decline in the number of children being minded was stated as the grounds for his dismissal, but no express reason was given for his selection. Throughout his employment, he was classified as obese. His obesity was discussed at his dismissal hearing, but the municipality denied that it was part of its dismissal decision. He argued that his dismissal was rooted in unlawful discrimination against him due to his weight and took action in a Danish District Court claiming damages for this discrimination. The Danish court asked the CJEU whether EU law includes a self-standing prohibition on discrimination on the grounds of obesity or, alternatively, whether it can be classified as a disability falling within the scope of the *Equal Treatment in Employment Directive* (2000/78).

Advocate General Niilo Jääskinen pointed out that there are no references in the treaty or charter to obesity as a prohibited ground of discrimination. All EU legislative acts prohibiting discriminatory conduct are addressed to specific grounds of discrimination within definitive subject areas, rather than precluding any discriminatory treatment in a generalised manner. He concluded that there is no general, stand-alone prohibition on discrimination on grounds of obesity in EU law. He then moved to consider whether obesity can be classified as a 'disability' under the *Equal Treatment in Employment Directive*. The concept of disability is not defined in the directive. The court has stated that disability refers to limitations that result from long-term physical, mental or psychological impairments that in interaction with various barriers may hinder the full and effective participation of the person in professional life on an equal basis with other workers. Certain illnesses, if medically diagnosed and resulting in long-term limitations, could be classified as a disability for the purposes of the directive. Disability results from interaction between persons with impairments and the attitudinal and environmental barriers that hinder their full and effective participation in the workplace. As the directive's purpose is to combat all forms of discrimination on the grounds of disability, no link has to be made between the work concerned and the disability at issue. Even if a condition does not affect the capacity of that person to carry out the specific work in question, it can still be a hindrance to full and effective participation on equal terms with others. There can be long-term physical, mental or psychological impairments that do not make impossible certain work but which make the carrying out of that job or participation in professional life objectively more difficult and demanding. It need not be impossible for Mr Kaltoft to carry out his work as a childminder with the Municipality of Billund before he can rely on the disability discrimination protection afforded by the directive. The advocate general found that, although there is no obligation to maintain an individual in employment who is not competent to perform the essential functions of the post, reasonable measures should be taken to accommodate the disabled individual unless the burden on the employer would be disproportionate. If obesity has reached such a degree that it plainly hinders participation in professional life, then this can be a disability. In the opinion of the advocate general, only extreme, severe or morbid obesity could suffice to create limitations – such as problems of mobility, endurance and mood – that amount to a disability for the purposes of the directive. It would be for the national court to determine whether Mr Kaltoft's obesity falls within this definition. The advocate general noted that the origin of the disability is irrelevant. The notion of disability is objective and does not depend on whether the applicant has contributed causally to the acquisition of his disability through self-inflicted excessive energy intake. Otherwise, physical disability resulting from reckless risk-taking in traffic or sports would be excluded from the meaning of disability.

FAMILY LAW

The *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* entered into force in the EU on 1 August 2014. It makes the enforcement of judicial decisions relating to maintenance obligations easier. Central authorities for such enforcement are to be put in place in each contracting state. The convention will now apply in the EU, but also in Albania, Bosnia & Herzegovina, Norway, and the Ukraine.

PROBATE

The *European Succession Regulation* (650/2012) entered into force on 17 August 2014. It provides for uniform rules on cross-border succession as well as on recognition and enforcement of judgments in this area. It also creates a European certificate of succession. This will enable a person to prove his/her status and rights as an heir or his/her powers as administrator of the estate or executor of the will without further formalities. The regulation does not change national laws on succession.

professional notices

WILLS

Carton, Ann (deceased), late of 32 Beechwood Downs, Clonsilla, Dublin 15. Would any person having knowledge of a will made by the above-named deceased, who died on 6 April 2014, please contact Fabian Cadden & Company, Solicitors, Main Street, Dunshaughlin, Co Meath; DX 80 003 Dunshaughlin; tel: 01 825 0299, fax: 01 825 0612, email: info@fabiancadden.ie

Connolly, Philip (deceased), late of Aughadreena, Stradone, Co Cavan, and formerly of Botanic Road, Phibsboro, Dublin 7. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased, who died on 8 April 2014, please contact Damien Rudden, Solicitors, Stradone Village, Co Cavan; DX 21022 Cavan; tel: 049 432 3027, fax: 049 432 3070, email: pauric@damienrudden.ie

Furey, Catherine Mary (otherwise Kathleen) (deceased), late of 20 Skreen Road, Navan Road, Dublin 7, who died on 16 May 2014. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Thomas Barry of Thomas Barry & Company, Solicitors, 11 St Stephen's Green, Dublin 2; tel: 01 678 6003, email: tom@thomasbarry.ie

Furey, Patrick J (deceased), late of 20 Skreen Road, Navan Road, Dublin 7, who died on 13 October 2006. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Thomas Barry of Thomas Barry & Company, Solicitors, 11 St Stephen's Green, Dublin 2; tel: 01 678 6003, email: tom@thomasbarry.ie

Masiero, Bruno John (deceased), late of Coolacarney, Ballindaggin, Enniscorthy, Co Wexford, who died on 27 December 2013. Would any person having knowledge of any will executed by the above-named deceased please contact Frizelle O'Leary & Co, Solicitors, Slaney Place, Enniscorthy, Co Wexford; tel: 053 923 3547, email: postmaster@folco.ie

Mullany, Catherine (otherwise Kitty) (deceased), late of Shannagh Bay Nursing Home, Bray, Co Wicklow, and formerly of 76 St Alban's Park, Sandymount, Dublin 4. Would any person holding or having knowledge of a will made by the above-named deceased, who died on 15 January 2014, please contact Paula Duffy, solicitor, 16-18 Harcourt Road, Dublin 2; tel: 01 478 4895, email: pd@pauladuffy.ie

Murray, Mary (otherwise known as Maureen Murray) (deceased) (formerly married to Peter Halls and Eric Davis), late of Moycullen Nursing Home, Galway, and formerly of 16 Ard na Mara, Oranmore, Co Galway. Would any solicitor holding or having knowledge of any will made by the above-named deceased, who died on 15 February 2014, please contact Padhraic Harris & Company, Solicitors,

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 November 2014 *Gazette*: 22 October 2014. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877).

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

professional notices

Merchant's Gate, Merchant's Road, Galway; tel: 091 562 066, email: aharris@harrissolrs.ie

Roche, James (deceased), late of 4 Whitechurch Grove, Ballyboden, Dublin 16, who died on 27 June 2014. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding same, please contact Vincent Deane & Co, Solicitors, Thomas Street, Castlebar, Co Mayo; tel: 094 902 2980, email: vincentdeane@eircom.net

Tuohy (o/w Touhy, Twohey) (née Elmore), Julia (o/w Sheila) Esther (deceased), late of 46 Springdale Road, Raheny, Dublin 5, who died on 13 June 2014. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Sarah Flynn of Corrigan & Corrigan, Solicitors, 3 St Andrew Street, Dublin 2; tel: 01 677 6108; fax: 01 679 4392; email: sarah.flynn@corrigan.ie

Zwaartman, Joop (otherwise known as Johannes Antonius Maria Zwaartmann) (deceased), late of Reenmeen East, Glengarriff, Co Cork, and formerly of Grote Achterweg, Naaldwijk, Holland. Would any person having knowledge of any will made by the above-named deceased, who died on 9 August 2012, please contact O'Connell Brennan Solicitors, Armitage House, 10 Lower Hatch Street, Dublin 2; tel: 01 681 4300, email: inquiries@oconnellbrennan.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Ladbroke (Ireland) Limited

Any person having a freehold interest or any intermediate interest in all that and those premises known as number 3 Marlboro Street, in the city of Cork, the subject of an indenture of lease dated 7 February 1918 made between Mary Dalling Camilla Bastidon and Marie Augustine Schroder of the one part and Mary Davies of the other part, and held under said lease for a term of 99 years from 29 September 1917 at the yearly rent of £28, and described therein as "all that and those the dwellinghouse and premises situate at number 3 Marlboro Street in the parish of the Holy Trinity and city of Cork, now and for some time last past in possession of the said lessee and more particularly meered, bounded, laid down and described on the map or plan thereof hereon endorsed and coloured pink".

Take notice that Ladbroke (Ireland) Limited, being the person holding the interest of the lessee under the said lease, intends to apply to the county registrar for the county of Cork for the acquisition of the fee simple and all intermediate interests in the aforesaid property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is

called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

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

Date: 3 October 2014

Signed: Hegarty & Armstrong (solicitors for the applicant), Millennium House, Stephen Street, Sligo

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 54 Grove Park, Rathmines, Dublin 6: an application by John Lowe

Take notice any person having any interest in the freehold estate of the following property: 54 Grove Park, Rathmines, Dublin 6, in the city and county of Dublin.

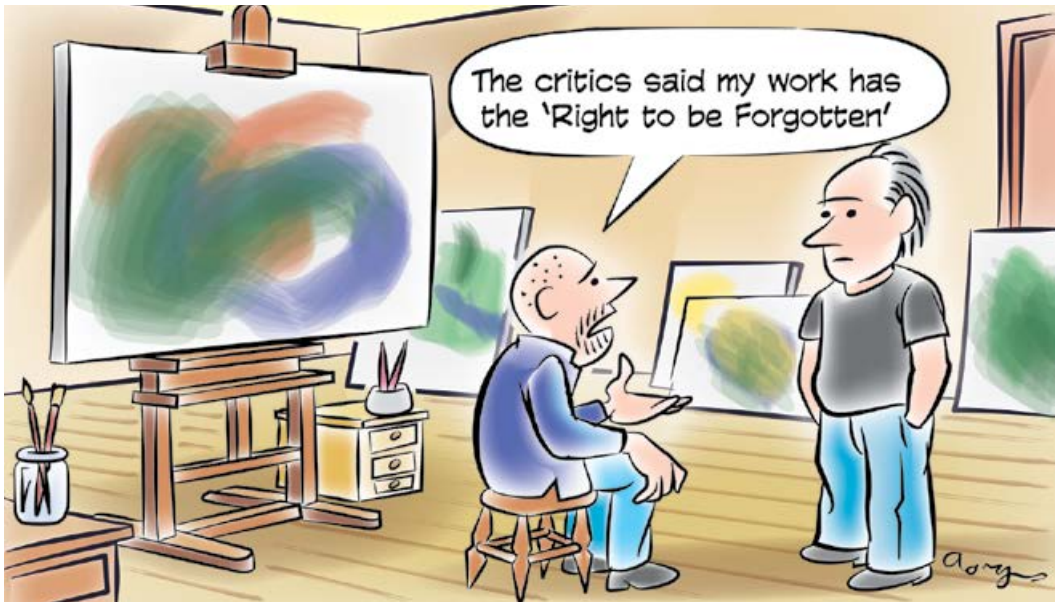
Take notice that John Lowe intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish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

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

Date: 3 October 2014

Signed: Abern Rudden (solicitors for the applicant), 5 Clare Street, Dublin 2

timeo danaos et dona ferentes



Artist wants to forget early work

A regional daily newspaper editor has hit out at "absurd and silly censorship" after a professional artist demanded the right to forget his previous work, *boldthefrontpage.co.uk* reports.

In 2009, the *Worcester News* published a story about budding artist Dan Roach achieving an academic scholarship to help him pursue his dream. But to the paper's surprise, its wholly positive story has now been the subject of a 'right to be forgotten' request by the artist.

Roach has requested its removal from Google searches under the recent ruling by the European Court of Justice that has already led to hundreds of newspaper stories being deleted from search engine listings. Editor Peter John branded it "the most absurd and silly piece of censorship since Google started to try to enact the 'right to be forgotten'.

"We have come across plenty of people wanting to remove reports of their crimes, but an artist wanting to remove part of his back catalogue did not strike us as the sort of principle that the European Court of Justice had in mind when they came up with the 'right to be forgotten' ruling," he said.

"Nor did we think that an artist could argue that their previous work was irrelevant. Would Google remove early Hirsts or Monets on request?

"We are trying to appeal, but have not yet been able to find out if Google have an appeals procedure."

Put a sock in it!

An Indiana judge has instructed a lawyer that local court rules require lawyers to wear socks. The lawyer, Todd Glickfield, initially resisted, reports the *ABA Journal*.

The judge, privately during a break, advised the lawyer about the need to don socks. "I hate socks," he told Blackford Circuit Judge Dean Young.

After Glickfield said that he intended not to comply with the rule unless it was proven to him, the judge documented their conversation in a court order on 26 August requiring Glickfield to wear socks at all future court appearances – as well as a business suit and tie (with which the lawyer appeared to have no issue).

In the future, should Glickfield appear in court without socks, "he will be subject to sanctions from the court."

The same local rule requiring "appropriate business attire" applies to all other lawyers appearing in court, the judge wrote. The order has been distributed to all members of the county's bar.

Sting in the tail for 'sarcastic and sophomoric' statements

A New Jersey lawyer has been suspended for three months for "sarcastic and sophomoric" comments to opposing counsel and misstatements to a judge. The New Jersey Supreme Court suspended lawyer Jared Stolz on 4 September 2014.

The *Legal Profession Blog* says that Stolz admitted making the inappropriate comments in emails and a fax, but attributed his misstatements to a busy schedule that included holidays to the Dominican Republic and Ireland, where he played golf with his father.

"Am I going to get lazy again and play more golf?" Stolz testified at the disciplinary hearing. "I hope so. But I certainly did not intentionally lie." Stolz added that he had learned his lesson and had hired two more lawyers to help him review things.

The complaint targeted emails and a fax Stolz sent to opposing counsel in 2009 and 2010, which included comments such as:

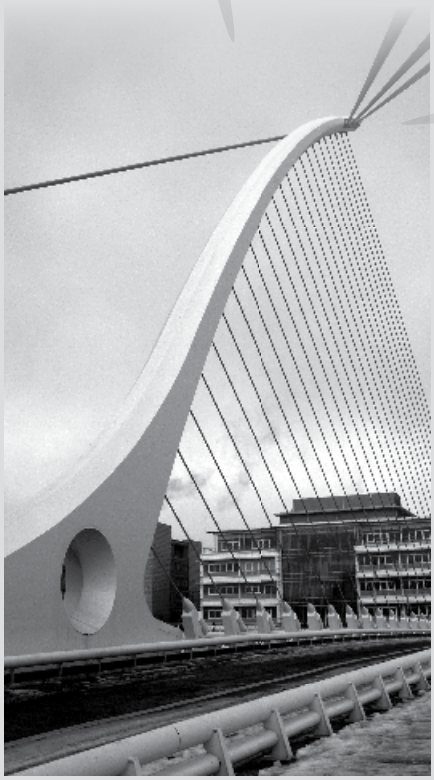
- **"Don't feel you have to email me daily and let me know just how smart you are."**
- **"Did you get beat up in school a lot? Because you whine like a little girl…"**
- **"This will acknowledge receipt of your numerous emails, faxes and letters … In response thereto, bla bla bla bla bla bla."**

At the ethics hearing, Stolz apologised for the statements: "It was not considerate. I have no explanation. I should be disciplined for it." He called the statements inexcusable, undignified and "venomous."

The Disciplinary Review Board recommended a three-month suspension, which was adopted by the New Jersey Supreme Court.

Keane McDonald is an executive search firm focusing on legal appointments. We specialise in the recruitment of high calibre legal professionals. Applicants are assured the utmost confidentiality and discretion when working with us.

Keane McDonald
executive legal recruitment



Fitzwilliam Business Centre
77 Sir John Rogerson's Quay
Dublin 2

Tel: +353 16401988

Web: www.keanemcdonald.com
Email: info@keanemcdonald.com

Opportunities

Commercial Litigation Solicitor, Dublin

Our Client is seeking an experienced litigation Solicitor to join the team. You will represent international and domestic clients across a range of commercial disputes with a focus on contentious regulatory matters. Solid commercial court experience from a top 15 law firm is essential as are impressive academic achievements.

Corporate Lawyers, Dublin

We have a number of opportunities for top calibre corporate lawyers from recently qualified level upwards. You will have the opportunity to work on cutting edge projects in a dynamic and driven environment. Excellent transactional, drafting and communication skills are essential. Top 20 law firm background is preferred.

Employment Law Solicitor, Dublin

Our Client has a highly respected employment law practice. They wish to add an experienced solicitor to the team. This is an excellent opportunity for an ambitious candidate to work with an enviable client base. The role will entail reviewing and drafting employment policies and contracts, representing clients in relation to general employment matters such as bullying and harassment, absence management, performance management, disciplinary and grievance processes and managing claims on behalf of clients. The ideal candidate will ideally have solid experience from a top 10 law firm.

Risk & Compliance Lawyer, Dublin

Our Client, a leading Irish law firm, has a new vacancy for a Risk & Compliance Lawyer. The successful applicant will work closely with the Risk Partner to promote best practice in the area of risk and compliance management across the firm and will assist in aligning the firm's risk and compliance standards across all areas of the business. The ideal candidate will have solid experience in a litigation or risk and compliance position within a large organisation or law firm.

Projects Lawyers, Dublin

Our Client who has a leading Energy and Projects team in Ireland has immediate openings for outstanding commercial lawyers. The team offers a fully integrated end-to-end project delivery service, being able to draw on experts with specialist skills designed to facilitate every stage of project delivery. The successful candidate will work on all aspects of high-end projects ranging from PPPs and regulatory matters to energy and natural resource projects. This is an outstanding opportunity to join one of the best teams in the projects sector. Projects experience is not essential but a solid commercial law background is necessary for this position.

Commercial Property Solicitors, Dublin

Our Client's Property Department is at the forefront of commercial property law in Ireland. They are currently recruiting for a number of Commercial Property Solicitors. The successful applicant will advise clients on every aspect of commercial property law in particular on commercial land acquisitions, commercial property developments and tax based property acquisition/ development. Excellent drafting & negotiation skills are essential as is property experience from a large, medium or boutique Commercial Property firm.

To apply for any of the above vacancies, interested applicants should contact Yvonne Kelly in strict confidence on +353 16401988. Alternatively please email your CV to ykelly@keanemcdonald.com.
For a comprehensive list of our vacancies visit our website at www.keanemcdonald.com

Recognising talent's one thing...

finding the truly successful

fit is another

Talk to the Irish Legal Recruitment Specialists

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

Banking Solicitor – Associate to Senior Associate – J00466

A leading Dublin based law firm requires a highly motivated banking practitioner. Candidates will be experienced in structured finance, project finance and securitisation transactions and will also be comfortable providing regulatory advice to banks and other financial services institutions.

Commercial Property – Assistant to Associate – PP0313

Our client is searching for an experienced commercial property lawyer to advise both domestic and international clients on the full range of property matters including multi-jurisdiction sales and acquisitions, sale and leasebacks, re-financings and investments.

Company Secretary – Associate – J00272

Our client, a front ranking practice, is seeking an experienced Company Secretary to join their busy Company Secretarial Department. You will be ICSA qualified with excellent know-how and IT skills.

Construction – Assistant to Associate – PP0134

A leading Irish law firm is searching for strong Construction lawyers. You will be dealing with contract drafting and advisory matters as well as litigation and all forms of alternative dispute resolution.

Corporate Finance Solicitor – Assistant to Associate – J00424

Advising financial institutions, government bodies and regulators as well as domestic and international companies, the successful candidate will have exposure to a broad range of financial services including asset finance, insolvency, regulation and secured/ unsecured loans.

Energy & Renewables – Associate – J00486

This is an excellent opportunity to join a highly respected legal practice whose client base includes banks, commercial lenders and government agencies. The department advises on the full range of energy transactions and the successful candidate will be dealing with significant project and debt finance related matters.

Environmental & Planning Solicitor – Assistant to Associate – PP0190

This top flight Dublin firm seeks a Planning and Environmental Solicitor. Appropriate candidates will demonstrate a strong knowledge of current legislation and have experience in planning applications. Experience of judicial review cases will be an advantage.

Investment Funds – Assistant to Associate – J00478

A market leading firm is looking to recruit an experienced funds lawyer to advise investment managers, custodians, administrators and other service provider of investment funds on establishing operations in Ireland. A first rate remuneration and benefits package is on offer.

Knowledge Management Lawyer (Corporate/Commercial Contracts) – Associate – J00367

Our client is seeking a qualified lawyer to join its Knowledge Team supporting the Corporate Department and assisting with other knowledge projects. Reporting directly to the Director of Knowledge, you will be a qualified solicitor or barrister with experience in a top firm. Excellent academics with strong communication skills are essential.

Professional Support Lawyer – Finance/Regulatory – PP0386

A top 5 firm is seeking a professional support lawyer to support the work of practitioners in their Financial Services Regulatory Practice. The successful candidate will report to the Group Leader of the Banking and Financial Services Group and the Head of Know-How. You will be qualified as a solicitor or barrister in Ireland or another common law jurisdiction with an excellent academic background. You will have experience in financial services legal practice.

Tax Lawyer – Senior Associate – J00337

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

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

Benson & Associates
Legal Recruitment Specialists